

CONSULTATION

Response Document



Facilitating marine nature restoration through legislation

21st March 2024

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 740 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.

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?

0 Yes

0 No

0 Unsure

0 Other – Please explain

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

We welcome a clear definition of marine nature restoration for primary legislation. However, we would like some clarification, beyond there being a general principle, that the proposals will not present a 'regulatory loophole for commercial operations to carry out for-profit activities under the guise of 'restoration''. For example, we have concerns that, without greater clarity, fish-farms could be installed and simply registered as "habitat restoration", or coastal engineering projects as 'sand-dune restoration'.

More examples of what would be considered 'restoration', beyond the most familiar examples such as planting of seagrass and placement of oysters, would be useful, and perhaps another list of what is explicitly *not* to be considered.

Both NatureScot's and Natural England's definitions of nature restoration appear limited to activities intended to restore habitat/ecosystems/functions/species where they had been previously. While creating a definition of nature restoration, consideration should be given to situations where a habitat is being created (e.g. an artificial reef to help protect from storm damage), or species introduced, where there is no evidence it has been present in that location in the past. Such introductions to new locations may be appropriate given ongoing and future changes in water temperature or other environmental factors; however, marine environments are highly dynamic, and conditions can be highly unpredictable, carrying the risk of unintended consequences. Translocations should therefore only be implemented as a last resort in mitigation.

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.

Managed realignment where coastal defences are deliberately altered to allow for natural coastal processes to reshape and stabilise coastlines should be included within the scope of this scheme. This could include breaching seawalls as a precursor to the development of saltmarsh and mudflat habitats, for example, at Paull Holme Strays on the Humber Estuary¹, or at Medmerry nature reserve in Sussex². As noted in answer to the previous question, unpredictable variables, particularly tidal dynamics in this case, mean that outcomes are not always as predicted.

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.

As the consultation notes, marine licensing/project registration is only part of the process, and some aspects of projects may be subject to other checks, e.g. translocations, for which there would still be a requirement to apply for a translocation licence and, if the translocation has the potential to affect protected areas in a European marine site, be subject to a Habitat Regulations Assessment. This is important to protect against bad practice, misuse, and to anticipate and avoid unintended consequences.

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.

¹ <https://www.omreg.net/query-database/22-paull-holme-strays/>

² <https://www.ice.org.uk/engineering-resources/case-studies/managed-realignment-at-medmerry-sussex>

The third approach suggested, “several thresholds for different types of restoration project”, seems most appropriate for capturing the range of considerations that will need to be made for the variety of different restoration projects that are anticipated in the near future. It should be possible to add thresholds for project types as new methods of restoration, and potential sources of impact, emerge.

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.

These should be subject to the current marine licensing legislation. However, this might be simplified by focussing on the sectors that might be affected by the activity. In that case, questions and information on objects that may present a navigational risk should also be included on the register for the purposes of informing both applicants and habitat restoration data collection.

Note also that there can be an entanglement risk to cetaceans so any lines should be temporary.

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.

Skippers of vessels navigating inshore waters are used to having to avoid creel buoys. Objects presenting a risk to navigation should not normally be permitted in recognised anchorages. The location of hazards should be intimated to the UK Hydrographic office and to the editors of the Sailing Directions used by recreational boaters.

Notices to mariners are also regularly and routinely issued to vessel operators working in an area — it could be helpful to have some kind of automatic feed-in process where the information on restoration plans entered into the register was passed along (where appropriate) to the Hydrographic office / Trinity house.

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.

Yes, provided it was to a public body that was qualified to do so and had the necessary staff and resources to do this.

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.

A simple self-declaration model lays itself open to becoming a tick box exercise with possible impacts on other features and stakeholders neglected. There needs to be an approval mechanism. However, this should be as light-touch as possible while ensuring that key details have been included and that standards have been understood and will be adhered to.

Clear guidance and national standards for restoration activities are essential to the design and implementation of effective ecological restoration projects, and to supporting projects through the

registration process. CIEEM's *Good practice principles for ecological restoration*³ could be a basis for this, and we would welcome the opportunity to be involved in the development of national guidance.

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.

Yes. Each location and project will be different with different issues being raised. Conditions might relate to timing of activities in relation to, for example, the bird nesting or seal pupping season.

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.

How the project application aligns with an overall strategy, such as the National Marine Plan, or has regard to any other relevant plans or policies, should be included as part of the registration process and national guidance/standards for restoration activities. As noted in answer to question 9, these are essential to the design and implementation of effective ecological restoration projects. CIEEM's *Good practice principles for ecological restoration* could be a basis for this.

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

³ <https://cieem.net/resource/good-practice-guidance-for-ecological-restoration/>

Monitoring

Navigational risk

Other – Please explain

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

All of these are important.

Added to this should be the timing of proposed activity as it relates to the seasonality of species, for example the breeding season of species. This need not be as specific as to the day of the activity, but should be to the month.

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.

The information should be publicly available where possible, but with the potential of removing sensitive information if this is to the benefit of the species / habitat involved, particularly those that are at risk of exploitation.

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.

The information should be publicly available where possible, but with the potential of removing sensitive information if this is to the benefit of the species / habitat involved, particularly those that are at risk of exploitation.

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.

The examples given in the consultation document seem sensible:

- 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.

It is important that progress on marine restoration is not frustrated by spurious objections, and we agree with ScotLINK that some pre-defined scenarios on how and when the proposed powers could be used would be helpful.

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.

Scottish Ministers should be able to create offences, but we would like more information on who will be responsible for monitoring and enforcement; we consider this should be carried out by bodies with the

appropriate resources and expertise, for example, the Marine Directorate – Licensing Operations Team (MD-LOT), Environmental Standards Scotland, NatureScot, local councils, or Harbour Authorities.

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

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.

Yes, provided that registration is a straightforward, light-touch approval process, and applicants are supported by clear national guidance and standards.

Question 21

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

0 Yes

0 No

0 **Unsure**

0 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.

A range of bodies from whom consent is required is given. Mention should be made of Statutory Harbour Authorities, some of whom cover extensive marine areas. The area covered by Forth Ports, for example, includes areas being used for seagrass and oyster bed restoration.

The ownership of the foreshore and adjacent seabed is sometimes uncertain as not all is owned by Crown Estate Scotland.

The Marine (Scotland) Act 2010 states that the upper limit of the area covered by the act is the line of mean high water spring tides. This is presumably taken to be the line marked on the charts of the UK Hydrographic Office. According to the National Tidal and Sea Level Facility MHWS at Leith, as an example, is 5.61 m above chart datum while the highest recorded tide is almost a metre higher. This takes no account of waves nor of sea level rise. Moreover, on dynamic coasts there is often coastal retreat even without seawalls being breached. This is important for projects such as recreating salt marsh and managed realignment in general. In these cases, the project is likely to be subject to both the marine and the terrestrial planning regime with an uncertain boundary between them, which does not have any ecological meaning.

Part 2 – Marine Conservation Orders

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.

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.

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

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?

0 Yes

0 No

0 Unsure

0 Other – Please explain

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

Island communities

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?

0 Yes

0 No

0 Unsure

0 Other – Please explain

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

Equalities

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?

0 Yes

0 No

0 Unsure

0 Other – Please explain

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

Environment

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?

0 Yes

0 No

0 Unsure

0 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?

0 Yes

0 No

0 Unsure

0 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.