POLICY NOTE

THE RED ROCKS AND LONGAY MARINE CONSERVATION ORDER 2022

SSI 2022/372

1. The Red Rocks and Longay Marine Conservation Order 2022 ("the Order") is made by the Scottish Ministers in exercise of the powers conferred by sections 85(1)(a), (2) and (4), 86(1) and (3), 92(1) and (5) and 93(1) of the Marine (Scotland) Act 2010 ("the 2010 Act") and all other powers enabling them to do so.

Policy Objectives

2. The purpose of this instrument is to prohibit certain activities in the Red Rocks and Longay Marine Protected Area (MPA), providing permanent protection for flapper skate eggs and egg laying habitat**.** This is in furtherance of the conservation objectives for the Red Rocks and Longay Marine Protected Area ("the MPA"). The permanent designation of the MPA takes effect on 09 February 2023.

Policy Background

3. Flapper skate (Dipturus intermedius) was historically abundant in the North-east Atlantic and widely distributed in the seas surrounding the British Isles. However its range has reduced significantly and catch rates declined throughout the 20th century. Currently, flapper skate distribution is known to encompass the southern coast of Norway, all Scottish coastlines, north-eastern England, the island of Ireland, northern France, Portugal and the Azores, with sites off the west coast of Scotland thought to be a stronghold for the species. Part of the common skate complex (along with blue skate), flapper skate is on the OSPAR Threatened and/or Declining Species and Habitats List and the list of Priority Marine Features[1].

4. The Red Rocks and Longay MPA was first designated on 10 March 2021, following provision of advice from NatureScot regarding the discovery of flapper skate eggs in the Inner Sound of Skye. According to section 3 of the 2010 Act, Scottish Ministers must act in a way best calculated to further the achievement of sustainable development, including the improvement of the health of the Scottish Marine Area, when exercising any function that affects that Area under the Act. In 2021, having identified approximately 100 flapper skate eggs, Scottish Ministers determined there was a need to act in a way that helped recovery, and therefore improve the health of our seas. In accordance with section 77(1) of the 2010 Act, an MPA designated on an urgent basis can only be in place for up to two years.

5. At the same time as the Red Rocks and Longay MPA was urgently designated, an urgent Marine Conservation Order (MCO) was made on 10 March 2021 to further the conservation objectives for the Red Rocks and Longay MPA. The MPA was re-designated in December 2021 to extend the site boundary due to discovery of an estimated 725 further flapper skate eggs outside the original site boundary, and the urgent MCO was revoked and

[1] Priority Marine Features are species and habitats which have been identified as being of conservation importance to Scotland. Most are a subset of species and habitats identified on national, UK or international lists. For further information, see Scotland's National Marine Plan.

replaced by The Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021 to make reference to the re-designated MPA, to further the conservation objectives for the MPA.

6. In accordance with section 88(2) of the 2010 Act, an MCO made on an urgent basis can only last for a maximum of one year. However, the Scottish Ministers may extend such an order for up to a further year by making an urgent continuation order in accordance with section 88(6) and (7) of the 2010 Act. If making an urgent continuation order, the Scottish Ministers must have published notice of their proposal to make a permanent MCO. On this basis, the Scottish Ministers extended the duration of the urgent MCO pursuant to Red Rocks and Longay Urgent Marine Conservation (No. 2) Order 2021 (Urgent Continuation) Order 2022 and published notice of their proposal to make a permanent MCO for Red Rocks and Longay. At the same time, the Scottish Ministers also published notice of their proposal to make a permanent MPA for Red Rocks and Longay.

7. Following the public consultation (as described further below) Scottish Minsters have determined that Red Rocks and Longay merits designation as a permanent MPA to protect flapper skate and their eggs and the Quaternary of Scotland geodiversity feature.

8. To further the conservation objectives for the permanent MPA, the Order has been made to restrict activities which may adversely affect flapper skate and their eggs, including deployment and use of all bottom contacting fishing gear, sea angling, aquaculture, anchorages and moorings, deposits on the seabed and marine infrastructure within the MPA. Flapper skate eggs are highly sensitive to disturbance and take around 18 months to hatch. The range in stages of egg development indicates the area has been used for egg-laying for at least two years which means the Order is considered necessary to ensure that the permanent MPA can achieve its conservation objectives.

9. Some activities that may otherwise be prohibited by the Order may be authorised to take place for the purposes of scientific research. The Order makes provision for those activities to be authorised by way of a permit, provided that Ministers are satisfied there is no significant risk of the activity hindering the achievement of the conservation objectives for the MPA.

10. The permanent MPA takes effect at the same time as the Order as it provides the boundary of the site and therefore defines the spatial extent of the measures contained in the Order.

Consultation

11. A public consultation on the case for making a permanent MPA took place between 01 February 2022 and 26 April 2022. At the same time, a draft of the Order was made available, and sent to stakeholders that could be interested in or affected by the making of the Order in accordance with section 87 of the 2010 Act.

12. A total of 61 responses were received to the consultation, with 57 in support of and only two opposed to a permanent MPA being designated . Those supporting the designation included individuals, environmental organisations and fishing industry. 55 out of 60 respondents also noted their support for the scientific evidence.

13. A majority of respondents, 48 out of 60, agreed with the list of proposed protected features. 38 out of 58 also agreed with the list of prohibited activities included in the draft Order. Those supporting the draft Order included individuals and environmental organisations.

14. Having taken into account the representations received, the Scottish Government concluded that the proposal should remain unchanged. The consultation analysis report has been published at: http://www.gov.scot/ISBN/9781804359129.

Impact Assessments

15. A Business and Regulatory Impact Assessment ("BRIA") has been carried out for the Order and has been provided as a separate document.

16. An Equality Impact Assessment and a full Islands Community Impact Assessment were not required.

Scottish Government
Directorate for Marine Scotland
07 December 2022