

Rural Affairs, Islands and Natural Environment Committee

9th Meeting, 2022 (Session 6), Wednesday, 16 March

Subordinate legislation

1. This paper supports the Committee's consideration of the Red Rocks and Longay Urgent Marine Conservation (No. 2) Order 2021 (Urgent Continuation) Order 2022.
2. The SSI is subject to the negative parliamentary procedure. Further information about this procedure is set out in paragraphs 11 and 12.

Background

3. Under the Marine (Scotland) Act 2010, the Scottish Ministers can designate a marine protected area (MPA) on an urgent basis without publishing notice of their proposals or consulting those likely to be affected.
4. Following confirmation of the discovery of flapper skate nursery grounds, the Scottish Government made the [Red Rocks and Longay Nature Conservation Marine Protected Area Order 2021](#) on 10 March 2021. The Order designated the Red Rocks and Longay area of the Inner Sound of Skye as a nature conservation marine protected area ("the Red Rocks and Longay MPA"), in order to protect flapper skate and their eggs. This Order remains in force until 10 March 2023.
5. At the same time, the Scottish Government introduced [the Red Rocks and Longay Urgent Marine Conservation Order 2021](#). The urgent marine conservation order (MCO) was put in place to manage fisheries activity and protect a flapper skate egg laying habitat. This Order remains in force until the end of 16 March 2022.
6. Following the discovery of an estimated 725 further flapper skate eggs outside the original site boundary, the Scottish Government made the [Red Rocks and Longay Nature Conservation Marine Protected Area \(No.2\) Order 2021](#) on 8 December 2021, coming into force on 16 December 2021. The second order extends the site boundary of the original MPA to include the area where the new eggs were found. This Order remains in force until the end of 10 March 2023.
7. On 9 December 2021, the Scottish Government introduced [the Red Rocks and Longay Urgent Marine Conservation \(No. 2\) Order 2021](#). The urgent MCO was put in place to manage fisheries activity and protect a flapper skate egg laying habitat in the extended MPA. This Order remains in force until the end of 16 March 2022.

The Red Rocks and Longay Urgent Marine Conservation (No. 2) Order 2021 (Urgent Continuation) Order 2022

8. The purpose of this [Order](#) is to extend the duration of the Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021, which prohibits the deployment and use of certain fishing gears and other activities in the Red Rocks and Longay MPA. The urgent continuation order comes into force on 16 March 2022 and is to remain in force until the end of 10 March 2023.
9. Further information is set out in the policy note, provided at **Annexe A**.

DPLR consideration

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [22 February 2022](#). The Committee was content with the instrument.

Parliamentary procedure – negative instruments

11. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
12. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

Wider committee consideration of the Red Rocks and Longay MPA

13. When the Committee considered the [Red Rocks and Longay Urgent Marine Conservation \(No. 2\) Order 2021](#) at its meeting on [26 January 2022](#) (paragraph 7), it agreed to [write](#) to the Scottish Government asking for further information relating to the consultation undertaken in November 2021, noting that only summaries of the minutes are available on the Scottish Government's website.
14. In her [response](#), the Minister for Environment and Land Reform stated that—

"Stakeholder engagement undertaken in November 2021 was not a formal public consultation. In order to understand the views of key stakeholders regarding the extension to the Red Rocks and Longay Urgent MPA, and to gather any evidence that could support the decision making process, a series of meetings were held. It is these meetings that are summarised on the Scottish Government website."
15. The Committee also asked what consideration the Scottish Government had given to the possibility that divers and other fishers may be reluctant to report areas of

natural habitat that might need protection where that would also result in access being restricted or limited in some other way.

16. In her [response](#), the Minister argued that this should not have a bearing on management measures where they are subsequently put in place, stating that-

“it is important that any measure adopted to protect marine biodiversity be based on the risk that an activity poses, without exception. Citizen scientists have an important role to play in reporting discoveries of marine biodiversity and I expect they will continue to do so.”

17. On 1 February 2022, the Minister for Environment and Land Reform [wrote](#) to the Committee explaining the process for designating the Red Rocks & Longay as an MPA on a permanent basis. Under the Marine (Scotland) Act 2010, the Scottish Government is required to consult on proposals for a permanent MPA. The associated documentation can be found here:

<https://consult.gov.scot/marine-conservation/red-rocks-longay-marine-protected-area>.

For decision

18. **The Committee is invited to consider if it wishes to raise any issues in relation to the instrument**

**Rural Affairs, Islands and Natural Environment Committee clerks
March 2022**

POLICY NOTE

THE RED ROCKS AND LONGAY URGENT MARINE CONSERVATION (NO. 2) ORDER 2021 (URGENT CONTINUATION) ORDER 2022

SSI 2022/39

1. The Red Rocks and Longay Urgent Marine Conservation (No. 2) Order 2021 (Urgent Continuation) Order 2022 is made by the Scottish Ministers in exercise of the powers conferred by section 88(6) of the Marine (Scotland) Act 2010 (“the 2010 Act”) and all other powers enabling them to do so.

Policy Objectives

2. The purpose of the Order is to extend the duration of The Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021, which prohibits the deployment and use of certain fishing gears and other activities in the Red Rocks and Longay Marine Protected Area (MPA). The original Red Rocks and Longay MPA was designated to conserve flapper skate and their eggs.

Policy Background

3. The Red Rocks and Longay MPA was first designated in 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 Marine (Scotland) Act 2010 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.
4. At the same time as the Red Rocks and Longay MPA was urgently designated in March 2021, The Red Rocks and Longay Urgent Marine Conservation Order 2021 was implemented. 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 Marine Conservation Order was revoked and 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 of the MPA.
5. In accordance with section 88(2) of the 2010 Act, an urgent marine conservation order can only remain in place for a maximum of 12 months. However, the Scottish Ministers may extend such an order for up to a further 12 months 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 intend to make

a permanent marine conservation order in respect of the MPA concerned and must have published notice of their proposal to do so.

Notice to designate permanent MPA and permanent Marine Conservation Order

6. In accordance with the requirements of the 2010 Act, on 01 February 2022 the Scottish Ministers published notice of their proposal to designate the Red Rocks and Longay MPA on a permanent basis and to implement a permanent marine conservation order in respect of the Red Rocks and Longay MPA. All of the relevant documents can be found at:

<https://consult.gov.scot/marine-conservation/red-rocks-longay-marine-protected-area>.

Consultation

7. In determining the need for this Order the Scottish Ministers have taken account of advice from NatureScot. There has been no public consultation on this Urgent Continuation Order, however as noted above, there is an ongoing consultation on the proposal to designate Red Rocks and Longay as a permanent MPA with an associated marine conservation order.

Impact Assessments

8. A Business and Regulatory Impact Assessment (BRIA) has not been carried out for this Urgent Continuation Order, however a partial BRIA has been published for the consultation on the designation of a permanent MPA and a permanent Marine Conservation Order in respect of the Red Rocks and Longay MPA. A draft Islands Community Impact Assessment screening (ICIA) has also been published, which determined a full assessment was not required. Screening for an Equality Impact Assessment was undertaken and full assessment was not required.