

**Forthcoming
Legislation for
Marine Protected
Areas in Ireland**
A White Paper



FAIR SEAS

Context

The aim of this White Paper is to provide a summary of Fair Sea’s key asks in relation to forthcoming new national legislation on Marine Protected Areas (MPAs), during a decisive time for the future of marine conservation both in Ireland and internationally. Ireland lags far behind international best practice on marine spatial protection. Despite making commitments under international and European law to protect 10% of its waters by 2020, at the end of 2022, Ireland’s MPA coverage still only amounted to 2%, a tiny fraction of which could be described as ‘strictly’ or ‘fully’ protected. However, a new global MPA coverage target of 30% by 2030 (30x30) was agreed at the 15th Conference of Parties of the Convention on Biological Diversity, in Montreal, Canada in December 2022, which is notably already a commitment of the current Government as stated in the 2020 Programme for Government ‘Our Shared Future’. In a positive step forward, the Government announced on 13 December 2022, that it is on track to meet the 10% target by mid-2023 via new offshore protected area designations.¹

The European Union (EU) in its *Biodiversity Strategy for 2030* has already incorporated the new 30x30 targets, of which 10% should be ‘strictly protected’. Member States have until the end of 2023 to demonstrate progress in legally designating new protected areas. Ireland is also a party to the United Nations Law of the Sea Convention (UNCLOS, 1992), under which it is required to protect the marine environment, as well as the Regional Seas Convention for the Protection of the Marine Environment of the Northeast Atlantic (OSPAR, 1992), under which it has committed to establishing an ecologically coherent network of MPAs.

¹ <https://www.gov.ie/en/press-release/11656-ireland-announces-major-boost-in-marine-environmental-protection-at-cop15/>

CURRENT LEGAL BASIS FOR MPAS IN IRELAND

The main legal basis for designating MPAs in Ireland comes from EU law, specifically the Birds and Habitats Directives (1979; 1992), under which *Special Areas of Conservation (SACs)* and *Special Protection Areas (SPAs)* can be established. The Directives are limited by their focus on vulnerable, rare and/or endemic marine habitats and species, thus excluding significant aspects of the Irish marine environment. Even though they apply within Ireland’s territorial seas, Exclusive Economic Zone (EEZ) and the continental shelf, most SACs and SPAs are in coastal areas, with only six offshore designations in Irish seas.

In terms of national law, the Wildlife Acts 1976-2018, provide the legal basis for nature conservation in Ireland and contain provisions for several other categories of protected area, including *Nature Reserves*, *Refuges for Fauna* and *Natural Heritage Areas*, many of which have marine and coastal elements, but would not generally be described as MPAs. The geographical scope of the Act is limited to Ireland’s territorial waters (up to 12nm). The limited scope of the Wildlife Acts means that the Birds and Habitats Directives provide the only current legal basis for the designation of MPAs beyond 12 nm. Therefore, the Wildlife Acts do not provide a realistic means of enabling Ireland to meet the 30x30 targets.

The Irish Government has acknowledged the limitations in the existing legal framework for marine spatial protection, specifically the lack of a legal basis for MPA designations in Ireland outside of SACs and SPAs, and since 2019, it has been in various preliminary stages of developing specific MPA legislation. In July 2022, the Government approved the development of a General Scheme of a Bill, which was published in December 2022.² In light of these recent developments, Fair Seas considers it timely to share with the public its key recommendations for new MPA legislation.

Despite making commitments under international and European law to protect 10% of its waters by 2020, Ireland currently protects only 2% of its waters, a tiny fraction of which could be described as ‘strictly’ or ‘fully’ protected.

² <https://assets.gov.ie/242880/33ace500-a1b4-4197-a04e-72bf68176d78.pdf>

Recommendations for MPA Legislation

1. Clearly identify the relevant authorities responsible for designating new MPAs and how they will work with each other and with stakeholders.

Marine governance in Ireland is fragmented with many functions split across various Government departments and agencies. Effective cross government coordination, throughout the MPA designation and implementation process, is essential for good MPA communication, engagement, and governance. We recommend the creation of a new MPA Implementation Expert Group to review and guide the Government’s implementation of the new legislation, designation and management of protected areas, as well as engagement and consultation with the wider public, and transboundary coordination with neighbouring countries.

2. Clearly state the geographical jurisdiction of the new MPA legislation.

The Wildlife Acts have a limited geographical scope in Irish waters, only up to 12 nm. For this reason, it has had a limited application in the marine environment to date. MPAs must be able to be designated throughout Ireland’s sea area (as defined by the Maritime Jurisdiction Act 2021), and estuarine waters (as defined by the Water Framework Directive under ‘transitional waters’³).

3. Provide a definition of Ireland’s new MPAs, and the premise of their conservation objectives.

There is no definition of an MPA in Irish law. For Fair Seas an MPA is

“a geographically defined area of marine character or influence which is protected through legal means for the purpose of the conservation and or restoration of biodiversity (species, habitats or ecosystems) and their associated ecosystem services, processes and cultural values, and managed with the intention of achieving stated conservation objectives”.

It is recommended that the relationship between the new legislation and relevant national, European and international legislation be made clear, including a statement that current EU derived MPAs (SACs and SPAs) should be counted as MPAs in this legislation. The conservation objectives for individual MPAs must be focused on whether to ‘maintain’

³ Water Framework Directive 2000/60/EC defines ‘transitional waters’ as bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

or ‘recover’ listed conservation features, based on a holistic, ecosystem based, and evidence driven ecological assessment of features and ecosystem processes.

4. Provide a definition of Ireland’s MPA network, and the premise of its conservation objective.

Fair Seas consider an MPA network to be: *“a network of MPAs that is developed based on a suite of design principles which results in ecologically coherent and representative, well connected, resilient MPAs, which contribute positively to the achievement of national and international environmental commitments and goals and help deliver clean, healthy and productive seas.”* An overall conservation objective for the MPA network must be to ‘recover’ considering the current poor health and status of much of Ireland’s marine environment, including our current network of MPAs.

5. State the grounds for which MPAs and conservation features are identified and designated.

Any area of Ireland’s marine environment can be designated as an MPA for the primary purpose of conserving and/or restoring the following conservation feature types:

- Marine flora and fauna;
- Marine habitats or types of marine habitat;
- Features of geological or geomorphological interest;
- Features of biocultural diversity value.

Prioritisation of conservation features within MPAs must be based on whether they are:

- Threatened or declining species or habitats;
- Important or ecologically significant species or habitats;
- Features representative of the range of species, habitats or ecosystems and their associated ecosystem services, processes and cultural values in Irish waters;
- Areas of high biodiversity, naturalness or sensitivity;
- Areas contributing to maintenance of ecosystem functioning and ecosystem services including carbon sequestration;
- Areas with significant biocultural diversity value.

An MPA network must be able to account for, and respond to, the impacts of climate change. The designation of Other Effective Area-based Conservation Measures (OECMs) could play a role here, bolstering the resilience of the MPA network. However, the definition and proposed role of OECMs must be clearly defined. There should be a power to introduce temporary emergency MPA designations, and urgent interim MPA management measures bylaws, but it should only be used in extraordinary and specific situations.

6. State how MPAs will be effectively implemented and managed.

For MPAs to be effective in delivering their conservation objectives, their management needs to be implemented in full, and in perpetuity. The details of the management measures must be published in a detailed management plan for each site. Among other things, full MPA management must include:

- Introduction of measures to protect and restore listed conservation features and ecosystem processes, employing the Whole-Site Approach to MPA management and using co-design and co-management principles where appropriate;
- Comprehensive and regular ecological monitoring of each MPA;
- Comprehensive MPA management, enforcement and compliance strategy in addition to a clearly defined judicial penalisation hierarchy for offenders;
- Inclusive and participatory public and stakeholder communication, education and engagement strategy.
- Comprehensive departmental, state agency and civic society resourcing to enable necessary management and implementation.

A hierarchy of different MPA management levels and strategies will be needed to achieve an ecologically coherent network of MPAs, meaning different MPAs may receive different levels of protection (e.g., lightly to fully protected, according to the MPA Guide definitions).⁴

New MPA legislation must clearly state the processes and mechanisms through which necessary fisheries management measures can be introduced and implemented into new national MPAs (inshore and offshore region) in a timely fashion.

⁴ <https://mpa-guide.protectedplanet.net/>

7. Include a definition of the Whole Site Approach to management, and how it must be adopted.

Fair Seas consider a Whole Site Approach to MPA management to be: “A holistic and ecosystem-based approach to the management of MPAs, which may require the application of wider management measures that aim to improve the health and condition of not just the listed conservation features, but the entire ecosystem and natural processes occurring there.”

8. Include the legally binding nature of national MPA targets, and the criteria for contribution towards those targets.

The legally binding spatial MPA target of 30% by 2030 must be enshrined as a minimum target in the new legislation. Ireland’s MPA targets should also include a legally binding 10% ‘fully’ or ‘strictly’ protected MPA target for Irish waters by 2030. Only designated MPAs that are implemented in full, satisfying the management requirements set out in (6) should be counted towards Ireland’s national or international protected area targets.

9. State that the MPA designation and implementation process must be based on the best available evidence, and on the precautionary principle.

All environmental decision making must be based on the best available science, but when good evidence is lacking, decisions to protect the environment must not be delayed, but taken using the precautionary principle and approach.

10. Explain how MPAs must be treated in Ireland’s new Marine Spatial Planning process.

Protecting the health and character of MPAs and that of the network must be prioritised within all marine planning decision making. MPAs designated under new MPA legislation in Ireland must be treated with the same or higher environmental protections and standards as those designated under EU law with regards to planning and licensing decisions and associated environmental assessments.

How MPAs established under the new legislation will interact with marine planning legislation must be stated clearly. For example, the Maritime Area Planning (MAP) Act, 2021 provides for “Designated Maritime Area Plans” (DMAPs), which are sea areas designated for particular “maritime usages” including for conservation purposes. However, DMAPS for conservation purposes should not be used as a substitute for MPAs and Fair Seas maintain that MPAs established under the new legislation must take precedence. The distinction between DMAPs under the MAP Act 2021 and the establishment of MPAs through new legislation must be addressed. Furthermore, the relevant authority must consider the full list of MPA features in the development and consenting of DMAPs, and their development and implementation must not have a negative impact on any relevant feature within the area.

TIMELINES

Given the ever-worsening biodiversity and climate emergencies, progressing this important piece of legislation is critical to our success in protecting and restoring our seas.

Fair Seas expect the pre-legislative scrutiny stage of the new MPA legislation to begin early next year in 2023.

We are hopeful that the subsequent legislative scrutiny stages in the Dáil and Seanad can be completed before the summer recess, giving rise to new ambitious MPA primary legislation in Ireland before next Autumn.

From Bill to Act



WHO ARE FAIR SEAS

At Fair Seas, we seek to protect, conserve and restore Ireland’s unique marine environment. Our ambition is to see Ireland become a world leader in marine protection, giving our species, habitats and coastal communities the opportunity to thrive.

Fair Seas aims to build a movement of ocean stewardship across ambitious and robust legislation, provide impartial scientific data and research, and propose a network of effective well-managed marine protected areas.

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