

# MARINE (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

#### **Part 5 – Marine Protection and Enhancement: the Scottish Marine Protection Area**

#### **Nature Conservation MPAs**

#### ***Section 68 - Nature Conservation MPAs: additional requirements relating to designation***

103. **Section 68** enables Scottish Ministers to designate by order a Nature Conservation MPA for the purposes of conserving marine flora or fauna, marine habitats and features of geological or geomorphological interest. For flora, fauna, marine habitats and types of habitat, this can include conserving the diversity of such flora or fauna or the habitats or types of such habitats, whether or not any or all of them are threatened.
104. **Section 68** also requires Scottish Ministers to prepare and publish guidance setting out scientific criteria to inform consideration of whether a Nature Conservation MPA should be designated, and to have regard to such guidance when exercising functions under section 67 (which provides for Scottish Ministers to designate MPAs).
105. The designation order is to state the protected feature(s) and conservation objectives for the site. Conserving marine flora or fauna includes in particular conserving any species that is rare or threatened because of the limited number of the species or the limited number of locations in which that species is present.
106. When designating a Nature Conservation MPA, Scottish Ministers must consider its contribution towards the development of a network of conservation sites as specified in section 79.
107. When considering designation of a Nature Conservation MPA, Scottish Ministers may have regard to the extent to which doing so will contribute to the mitigation of climate change. Likewise, when considering designation of a Nature Conservation MPA, they may have regard to any social and economic consequences of designation.
108. Additionally, in considering whether to designate a Nature Conservation MPA for the purposes of conserving or enhancing a marine habitat or feature of geological or geomorphological interest, Scottish Ministers may have regard to the degree to which the feature is representative of its type. Conserving a thing can include assisting in its conservation and enabling or facilitating its recovery or increase. Subsection (9) allows the Scottish Ministers, when considering whether to designate an area, to have particular regard to any views expressed by any person to whom marine planning functions for the relevant region have been delegated.

***Section 69 - Nature Conservation MPAs: further provision***

109. **Section 69** makes further provisions concerning the establishment of Nature Conservation MPAs. A designation order must identify the area's boundaries and may provide for the boundary to be determined by, or by reference to, mean high water spring tide. A Nature Conservation MPA may include, in addition to an area of sea referred to in section 67(1), an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea and at least any one the following conditions are satisfied: (a) the protected feature(s) is or are present in the area of seashore; (b) the area of sea is designated for the purpose of conserving marine flora or fauna which are wholly or part dependent on anything which takes place in, or is present in, the area of seashore; (c) without inclusion of the area of seashore, the identification of the boundary of the MPA (either in order to designate or manage it) would be impossible or impracticable.

***Section 70 - Nature Conservation MPAs: assessment of achievement of stated objectives***

110. This section requires that Scottish Ministers must assess from time to time the extent to which in their opinion the stated conservation objectives of any Nature Conservation MPA have been achieved. This section cross-refers to section 103, which deals with laying reports about MPAs before Parliament.