

GENERAL SCHEME OF MARINE PROTECTED AREAS BILL 2022

PART ONE

PRELIMINARY AND GENERAL

HEAD 1: Short Title and Commencement

1. (1) The Act may be cited as the Marine Protected Areas Act 2023.

(2) The Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

Head 1 Explanatory note:

This head is a standard provision that provides for a formal short title of the Act and enables the Minister to commence different parts or sections of the Bill at different times if so desired.

HEAD 2: Interpretation

2. (1) In this Act-

“Act of 1976” means the Wildlife Act 1976 (as amended)

“Act of 1987” means the Monuments Act 1987

“Act of 2021” means the Maritime Jurisdiction Act 2021

“Activities” has the meaning assigned to it in Commission Directive (EU) 2017/845 of 17 May 2017 Annex 1, Table 2b, set out in Schedule 1 of this Act.

“biodiversity” means the variability among living organisms arising from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and includes diversity within species, between species and of ecosystems.

“conservation measures” means regulations, restrictions or conservation or restoration actions that are put in place so that an MPA can achieve its site objectives.

“conservation objectives” means statements specifying the features to be protected by an individual area and setting the objectives to be achieved in relation to them. In areas declared as refuges from particular pressures, site objectives may include absolute or specified partial exclusion of a particular pressure.

“continental shelf” has the meaning assigned to it by Section 2 of the Act of 2021.

“ecosystem services” means the direct and indirect contributions of ecosystems to the economic, social, cultural and other benefits that people derive from those ecosystems.

“ecosystem” means a dynamic complex of plant, animal, and micro-organism communities and their non-living environment interacting as a functional unit.

“exclusive economic zone” has the meaning assigned to it by Section 2 of the Act of 2021.

“Expert Body” means a Scientific and Technical and Socio-Economic Body which may advise the Minister in relation to his functions under this Act (as set out section 16 of this Act).

“Foreshore” has the meaning assigned to it by the Foreshore Act of 1933.

“Habitats Directive” means Council Directive No. 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and the European Communities (Birds and Natural Habitats) Regulations 2011.

“Management authorities” means the authorities appointed by the Minister referred to in Section 11(4)(i) of this Act.

“Marine Protected Area” means a geographically defined area of marine character or influence which is protected through legal means for the purpose of conservation or protection of specified species, habitats or ecosystems and their associated ecosystem services and cultural values, and managed with the intention of achieving stated objectives over the long term.

“Maritime Area Planning Act” means the Maritime Area Planning Act of 2021.

“Other Effective Means of Conservation” means a geographically defined area other than a Marine Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.

“Pressures” has the meaning assigned to it in Commission Directive (EU) 2017/845 of 17 May 2017 set out in Schedule 2 of this Act.

“Seashore” has the meaning assigned to it by the Foreshore Act of 1933.

“territorial waters” has the meaning assigned to it by Section 2 of the Act of 2021.

“The Minister” means the Minister for Housing Local Government and Heritage.

“Vessel” means seagoing vessel.

Head 2 Explanatory Note:

This head provides for definitions of key terms in the proposed Bill.

Definitions for “ecosystem”, “ecosystem service” and “biodiversity” come from Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

The Definitions of “Marine Protected Area”, “Other Effective Conservation Measures”, and “conservation objectives” come from the Expert Advisory Group Report on Marine Protected Areas.

Head 3: Application

3(1) This Act applies to –

(a) the waters, the seabed and subsoil of that area of the State (in this Act referred to as the “maritime area”) extending from the high water of ordinary or medium tides of the sea to the outer limit of the continental shelf and includes—

(i) the sea and tidal areas of internal waters of the State as construed in accordance with the Act of 2021,

(ii) the territorial seas of the State as construed in accordance with the Act of 2021,

(iii) the exclusive economic zone as construed in accordance with the Act of 2021,
and

(iv) the continental shelf as construed in accordance with the Act of 2021.

(b) Areas of seashore under State ownership [including the area between the high watermark and low water mark] and including the surface.

(c) The airspace above the area of application set out in subsections (1)(a) and (1)(b) of this section in respect of birds, bats and any other flying animal using that space.

(2) In this section “waters” includes the surface and water column.

Head 3 Explanatory Note:

It is intended that this legislation will apply to the waters (surface and water column), the seabed and subsoil of Ireland’s coastal and intertidal zones; the territorial seas of the State, its exclusive economic zone and continental shelf measured from the baseline to its outer limits.

Subsection 1 is derived from the Marine Area Planning Act 2021 and the Marine Strategy Framework Directive.

The Act also covers seashore areas (beaches, cliffs etc) and intertidal areas of the coast and estuaries etc.

Application extends to the airspace above the area of application.

HEAD 4: Regulations, etc.

4. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Regulations made under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every Order made pursuant to sections 11 and 12 of this Act or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Head 4 Explanatory Note:

It is intended to set out the Minister's general powers to make regulations under this Act to assist the Minister in perform his / her functions under this legislation whether they are incidental, supplementary or consequential.

Subsection 3 provides that Designation Orders and Emergency Designation Orders and regulations shall be laid before Oireachtas and may be annulled if a resolution is passed by either House within 21 days.

HEAD 5: Advisory Role of the Expert Body

5. (1) The Minister shall establish an Expert Body in accordance with section 16(1) and may request the Expert Body or, to the extent as may be necessary, any other specialist body or other person, in accordance with sections 16 and 17, to provide advice on scientific, technical and socio-economic matters in accordance with this Act, or any other matter as the Minister considers appropriate.

(2) Without prejudice to subsection (1), the Minister may obtain advice from any person or body in relation to any function assigned to him by this Act or any matter which he considers to be related to any such functions.

(3) The Minister shall make such arrangements as are necessary to convene ad-hoc working groups to obtain appropriate expertise to achieve the aims and priorities set out in the Ocean Environmental Policy Statement.

Head 5 Explanatory Note:

This allows the Minister to establish an expert body or other bodies in relation to scientific, technical and socio economic matters arising under this Act.

The Minister may or also seek advice from any person or body he / she deems appropriate.

Subsection 3 provides that the Minister may also establish ad-hoc working groups to achieve aims and priorities set out in Ocean Environmental Policy Statement.

PART TWO

DESIGNATING MARINE PROTECTED AREAS

HEAD 6: Ocean Environment Policy Statement

6. (1) The Minister shall publish on a government website an Ocean Environment Policy Statement.

(2) The purpose of the Ocean Environment Policy Statement shall be to set priorities for protection of the marine environment including priorities and targets for the designation of Marine Protected Areas and to provide guidance to the Expert Body or other specialist bodies for the purposes of enabling provision of advice to the Minister pursuant to section 5.

(3) The Ocean Environment Policy Statement shall take into account as appropriate:

- i) international, European and national laws and treaties for the protection, conservation and restoration of the marine environment.
 - a. United Nations Convention on the Law of the Seas (1982);
 - b. Directive 2008/56/EC of the European Parliament and of the Council (The Marine Strategy Framework Directive);
 - c. The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention);
 - d. The UN Convention on Biological Diversity;
 - e. The London Convention;
 - f. United Nations Sustainable Development Goals;
- ii) international, European and National plans, laws and programmes, for the conservation and sustainable use of the marine environment.
 - a. the European Green Deal;
 - b. the EU Biodiversity Strategy;
 - c. the EU Adaptation Strategy;
 - d. the national Marine Strategy in accordance with Article 5 of Directive 2008/56/EC

e. any relevant international or regional marine strategy for the purpose of developing and implementing the Marine Strategy Framework Directive.

- iii) the National Marine Planning Framework including any marine spatial plans, planning policy statements or guidelines that will be prepared under the Maritime Area Planning Act 2021;
- iv) the Climate Action and Low Carbon Development Act of 2015 (as amended) and its climate action plan.
- v) other policies of Government such as renewable energy policies, fishery and aquaculture policies;
- vi) cross border cooperation;
- vii) other policies and plans that the Minister considers relevant;
- viii) the ecosystem-based approach;
- ix) the precautionary principle;
- x) the polluter pays principle.

(4) For the purposes of subsection (2) and sections 7, 8 and 11 and having regard to the powers under section 11(3), the Minister, shall to the extent possible and appropriate aim to designate up to 10% of the maritime area as Marine Protected Areas as soon as practicable after commencement of this Act and up to 30% of the maritime area as Marine Protected Areas by 2030 and may designate a larger area if necessary under European or International strategies or international conventions, or national policies or strategies.

(5) In preparing the Ocean Environment Policy Statement the Minister shall consult any government Minister or State agency he deems appropriate

(6) The Minister shall publish, or cause to be published, a draft Ocean Environment Policy Statement on its website. The draft Ocean Environment Policy shall be available for public consultation for a period of four weeks from the date of its publication. If necessary and appropriate, the Minister shall revise the draft Ocean Environment Policy Statement to take into account any relevant considerations arising from public consultation.

(7) The Minister shall lay the Ocean Environment Policy Statement before both houses of the Oireachtas.

(8) The Minister shall, not later than six years after the Ocean Environment Policy Statement comes into force, carry out a review thereof and prepare and publish a new Ocean Environment Policy Statement in accordance with this section.

Head 6 Explanatory Note:

The Ocean Environment Policy Statement will set the priorities for designation of Marine Protected Areas based on international and national government priorities and targets. The regular priority setting enables a process of adaptive management to provide for timely and dynamic response and adaptation to the climate and biodiversity crises. The six year period for Policy Statement provides for alignment and harmonisation with the Marine Strategy Framework Directive.

The inclusion of UNCLOS, MSFD and the OSPAR convention provides for international and regional cooperation on Marine Protected Areas.

HEAD 7: Identification of Potential Marine Protected Areas

7. (1) The Minister shall, subject to section 6(4), compile a list of potential Marine Protected Area designations, taking account of the features and priorities set out in subsection (5) and the priorities of the Ocean Environment Policy Statement.

(2) The Minister may request advice from the Expert Body or other specialist body or other person or body as referred to in section 5(1) and section 5(2) in relation to individual proposals for potential Marine Protected Area designations.

(3) Pursuant to subsection (1) the Minister for the purpose of identifying species, habitats, ecosystems, ecosystem services and cultural values for consideration for inclusion in Marine Protected Areas, shall invite submissions from:

- (i) the public; and
- (ii) may invite submissions from any government departments and State agencies it deems appropriate to include;
 - a. the Marine Area Regulatory Authority;
 - b. the Minister for the Environment, Climate and Communications;
 - c. the Minister for Agriculture, Food and the Marine;
 - d. the Minister for Transport;
 - e. every planning authority within whose functional area contains part of or adjoins that proposed Marine Protected Area;
 - f. An Bord Pleanála and the Environment Protection Agency;
 - g. the National Parks and Wildlife Service;
 - h. any other Department the Minister considers should be notified;

(4) The Minister shall publish or cause to be published the details of such invitation on the Department's website and shall allow a period of six weeks for the receipt of such submissions.

(5) When generating the list of potential Marine Protected Area designations outlined in subsection (1) the Minister shall, to the extent possible and appropriate, and based on the best available scientific information:

- i) seek to protect, conserve and restore biodiversity;
- ii) consider species and listed under;
 - a) OSPAR threatened and declining species;
 - b) species contained on IUCN lists;

- c) Vulnerable Marine Ecosystems identified by the International Councils for The Exploration of the Sea;
- iii) consider ecosystem services ;
 - a) provisioning ecosystem services;
 - b) regulating ecosystem services;
 - c) cultural ecosystem services;
- iv) consider areas under Other Effective Conservation Measures;
- v) consider sustainable development;
- vi) consider energy security, climate policy, and associated national and European Union plans and strategies;
- vii) seek to minimise negative economic impacts / costs;
- viii) seek to maximise positive economic impacts / benefits;
- ix) consider social and cultural considerations;
- x) apply the precautionary principle;
- xi) apply the polluter pays principle;
- xii) apply an ecosystem-based approach;
- xiii) apply the scientific criteria in Schedule 3.

(6) The identification of potential Marine Protected Area designations described in subsection (1) shall:

- i) specify;
 - (a) species;
 - (b) habitats;
 - (c) ecosystems;
 - (d) ecosystem services;
 - (e) cultural values;
 - (f) conservation objectives, and
- ii) to the extent possible and appropriate include;
 - (a) relevant scientific information;
 - (b) socio-economic information;
 - (c) culture and traditional knowledge.

(7) The Minister shall have regard to existing areas of conservation including:

- (i) Natural Heritage Areas under the Act of 1976;
- (ii) statutory nature reserves under the Act of 1976;
- (iii) refuges for fauna and wildfowl sanctuaries under the Act of 1976;
- (iv) the Natura 2000 Network

but shall not consider proposals relating to the protection and conservation of species or habitats protected under the Natura 2000 Network unless such proposals provide additional protection to species or habitats beyond those required by the Habitats Directive and outside of the Natura 2000 network.

- (8) The Minister shall notify the public of the list of recommended proposals by publication on the Department's website.

Head 7 Explanatory Note:

This head allows the Minister to compile proposals for Marine Protected areas (subsection 1). It sets the principles to be followed (Section 2) sets the broad types of features that might be protected (subsection 6); There is mandatory public consultation provided for and the groups from whom proposals may be sought are listed (in subsection 3). Subsection 7 sets a clear distinction between the proposals to be sought for Marine Protected Areas and those listed in the Birds and Habitats Directives.

HEAD 8: Proposals for Marine Protected Area Designation

8. (1) The Minister shall, subject to section 6(4), develop proposals for Marine Protected Area designation (“Proposals”) from the list referred to in section 7(1) as soon as possible but not later than one year from enactment.

(2) On foot of a request pursuant to section 7(2), the Expert Body, specialist body or any other person or body as referred to in section 5(1) and 5(2) shall provide the Minister with advice in relation to proposals not later than 12 weeks from the date of the request or within such a period as may be agreed with the Minister.

(3) Proposals shall include the following elements:

- (i) name of the area in English and Irish;
- (ii) a Map of the area including coordinates;
- (iii) features and species proposed for conservation;
- (iv) a description of ecosystem services where relevant;
- (v) a list of Activities occurring within the area;
- (vi) a list of Management Authorities with competence for the Activities in the area;
- (vii) conservation objectives;
- (viii) conservation measures;
- (ix) any relevant environmental objectives relating to water quality under the Water Framework Directive.
- (x) other relevant information as the Expert Body sees fit

(4) The Minister may make such arrangements as are necessary, including the establishment of ad-hoc working groups, to assist with the development of the Proposals.

(5) The Minister shall prepare a pro-forma for a Proposal, containing the elements listed in subsection (2) above.

(6) The Minister shall notify the public of the list of proposals by publication of same on the Department’s website.

Head 8 Explanatory Note:

This head provides for the development of proposals based on a pro-forma which contains the elements essential to each proposal. It allows the Minister to set up ad-hoc working groups or make any other arrangements they deem necessary to assist with the development of proposals.

The head also provides for the publication of the list of proposals.

HEAD 9: Public Participation on Marine Protected Area Designations

9. (1) Where the Minister has prepared a proposal pursuant to section 8 of this Act he shall notify:

- (i) the public;
- (ii) any government departments and agencies it deems appropriate to include;
 - a. the Marine Area Regulatory Authority;
 - b. the Minister for the Environment, Climate and Communications;
 - c. the Minister for Agriculture, Food and the Marine;
 - d. the Minister for Transport;
 - e. every planning authority within whose functional area contains part of or adjoins that proposed Marine Protected Area;
 - f. An Bord Pleanála and the Environment Protection Agency;
 - g. the National Parks and Wildlife Service;
 - h. any other Department the Minister considers should be notified;
- (iii) any other person or organisation that the Minister considers should be notified.

(2) The Minister shall notify the public of the particulars of a proposed Marine Protected Area or areas:

- (i) in one or more national newspapers which notice shall be in summary form and shall draw attention to the publication on the relevant government website;
- (ii) by publication on the relevant government website which shall contain the following:
 - a) location of the area, including a map and coordinates, proposed for designation as Marine Protected Area;
 - b) purpose and objective of establishing a Marine Protected Area;
 - c) conservation measures referred to in section 7(2) relating to licensed activities requiring consent within the Marine Protected Area regulations pursuant to section 13;
 - d) types of activities and development that will and / or will not be permitted in the Marine Protected Area;
 - e) information that persons can make submissions to the Minister;

- f) confirmation that the submissions will be taken into account prior to final designation of such sites;
- g) details of the procedures under section 10 by which a person may make submissions on the proposal to designate a Marine Protected Area;
- h) any environmental report and Natura Impact Statement pursuant to subsection (4)
- i) notice that submission must be made within four weeks of the publication of the newspaper notice and first publication on the website.

(4) The Minister shall conduct an Appropriate Assessment and Strategic Environmental Assessment as may be required.

(5) The Minister may revise (if necessary) the proposal to designate a Marine Protected Area to take account any relevant considerations arising from the public consultation, Appropriate Assessment and Strategic Environmental Assessment. The Minister shall publish, or cause to be published, any revised proposal on the Government / Department's website.

Head 9 Explanatory Note:

This head describes the process for public consultation and notification, including a broad variety of actors from government and the public at large.

HEAD 10: Consultation

10. (1) The Minister shall endeavour to notify individually the following parties:

- (i) any person who holds a private foreshore interest;
- (ii) holders of extant foreshore leases and licenses;
- (iii) holders of extant petroleum or gas licenses in the maritime area;
- (iv) The Minister may by regulations prescribe a list of any other interested parties to be notified.

(2) If, having made reasonable efforts to identify the parties listed in subsections (1) and being unable to do so, the Minister shall by public notice addressed generally to the interested parties provide the details contained in section 8(2)(ii).

(3) Any person or body referred to in subsections (1) or any person claiming to have or to be entitled to an interest in or over the maritime area it is proposed to designate, who objects to the making of the proposed order on the grounds that it will interfere with such interest, may give notice to the Minister giving particulars of the grounds of objection.

(4) Such objection may be given not later than 12 weeks after the publication of the notice,

(5) The grounds of objections referred to in subsection (3) and (4) shall be based on the criteria set out in Schedule 3 and other relevant scientific information.

(6) The Minister shall, after consultation with such other persons as he or she considers ought to be consulted—

- (a) consider any objections received pursuant to subsection (3) and
- (b) shall determine any objections referred to in subsections (3) and provide reasons in writing informing the relevant parties of their determination.
- (c) The Minister shall publish, or cause to be published, on the relevant government website a copy of its determination.

(7) The Minister may

- (a) having determined any objections received pursuant to subsection (3); and
- (b) having considered any advice he may have required from the Expert Body, or other specialist body or other person or body as referred to in section 5(1) and section 5(2);

accept, reject or amend the proposal for designation as a Marine Protected Area.

Head 10 Explanatory Note:

This head describes the process for consultation with ‘interested parties’ such as the holders of leases and / or licences in the area proposed to be designated. This head sets out the role of the Minister considering and responding to objections.

HEAD 11: Marine Protected Area Designation

11. (1) Subject to sections 6(4), 7, 8, 9 and 10, the Minister may, by order designate any area of the Irish Maritime area as a Marine Protected Area (“a Designation Order”).

(2) A Designation Order shall set out the particulars provided in the pro-forma pursuant to section 8(5).

(3) Existing designations in the maritime area under other acts (including those specified below) or de-facto protections through Other Effective Conservation Measures, including the airspace above the seabed, may be recognised by the Minister as Marine Protected Area pursuant to subsection (1). Without prejudice to the foregoing, the Minister may recognise any of the following as a Marine Protected Area:

- i) sites protected under the Birds and Habitats Directives and the Minister may include in that order their conservation objectives;
- ii) any marine area waters, the seabed and subsoil protected under the Act of 1976;
- iii) any area that, through the regulation of activity or the absence of an activity, including seasonal or temporary absence of activity, the Minister considers to be under Other Effective Conservation Measures;
- iv) Sites under the RAMSAR Convention 1971 on Wetlands of International Importance especially as Waterfowl Habitat;
- v) Natural Heritage Areas under the Act of 1976;
- vi) statutory nature reserves under the Act of 1976;
- vii) refuges for fauna and wildfowl sanctuaries under the Act of 1976.

Any such order made by the Minister under this section shall not interfere with existing conservation objectives, conservation measures, management arrangements or protection systems applied in respect of that area.

(4) In making Designation Orders the Minister:

- i) shall appoint relevant authorities with competence for the management of human activities in a Marine Protected Area in order to achieve the conservation objectives as set out in the pro-forma pursuant to section 8(5).

- ii) shall provide or ensure there is provision for management recommendations and reporting guidance in accordance with sections 17(2) to those competent authorities;
- iii) may identify monitoring authorities with specific expertise in relevant monitoring or provide for monitoring to be established through a public tender process;
- iv) where regulations relating to a particular area have been made under subsections (6) and (7) of this section, shall appoint enforcement authorities subject to section 14.

(5) Without prejudice to section 13, when making a Designation Order, the Minister may make Regulations prohibiting, restricting or regulating:

- (a) entry into or movement, activity or works in the area protected by the order (“the Protected Area”) by a—
 - (i) person;
 - (ii) domestic animal;
 - (iii) vessel (or a specified type of vessel); or
 - (iv) vehicle or thing (or a specified type of vehicle or thing);
- (b) the anchoring of any vessel (or types of vessel) within the protected area (including the fixing of moorings or anchors to the seabed);
- (c) the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the protected area;
- (d) the removal of all or part of any thing (or category of things) from the protected area, including in particular all or part of any asset protected under the Act of 1987;
- (e) the depositing (by any means) of anything in a protected area;
- (f) the doing of anything in the protected area which, in the opinion of the Minister, may:
 - i) interfere with or damage the seabed;
 - ii) damage or disturb any object in the protected area (including any asset protected under the Act of 1987);
 - iii) otherwise cause harm to the protected area.

(6) Regulations that may be made under subs (6) may also include:

- (a) restrictions to the speed at which any vessel or vehicle may move in the protected area or in any specified area outside the protected area

where that movement might hinder the conservation or protection objectives for that Marine Protected Area;

- (b) Prohibition of or restricting entry into, or any movement or other activity on, any part of the foreshore that adjoins the protected area by persons, animals or vehicles.

(7) For the purposes of subsection (6)(a), the reference to works or activities includes reference to:

- (a) the use of equipment (or types of equipment);
- (b) surveying or exploring a site (whether or not by intrusive methods);
- (c) fixing or attaching anything to the seabed or (if appropriate) the seashore.

(8) Without prejudice to section 13, a person who undertakes an activity prohibited, restricted, or in a manner contrary to a direction set out in Regulations made under this section shall be guilty of an offence.

(9) The Minister may repeal, amend or replace the Designation Order under subsection (2) or regulations under subsection (6) accordingly as they sees fit.

(10) The designation of a Marine Protected Area shall not preclude appropriate development in that area.

Head 11 Explanatory Note:

Following international best practice, this section gives the Minister the power to designate Marine Protected Areas (subsection 1) including new Marine Protected Areas as well as to recognise and incorporate existing protected sites for the purposes of counting toward MPA targets, but without prejudice to management (subsection 3). These include areas protected under the birds and habitats directives and areas which experience protection through regulations such as the control of fisheries, or which are conserved to some degree already due to the nature of their use or non-use (subsection 3). Subsection 4 sets out the obligations for the Minister when making the designation order including the identification of the competent authorities. Subsection 5 mandates that the Minister issue a management plan for competent authorities.

This head also describes how the Minister makes recommendations to the management authorities on how to manage activities within Marine Protected Areas to ensure that conservation objectives are met.

Sections 6, 7 and 8 give the Minister the power to make regulations for activities in a Marine Protected Area but does not apply to activities that have already been licensed. The scope of the regulation powers is adapted from the Marine Scotland Act 2010, but modified to ensure it is not repugnant to the constitution.

HEAD 12: Emergency Temporary Marine Protected Area Designation Order

12. (1) Should an event occur, whether by natural causes or arising from human activity, that has, or is likely to have, an immediate and significant adverse impact on marine biodiversity; species; habitats; or ecosystem services, the Minister may make an Emergency Designation Order to put in place a temporary Marine Protected Area with an appropriate management action plan to remediate the adverse impacts of the event.
- (2) A Designation Order made under this section shall be considered necessary only if the threat or adverse impact of an activity cannot be managed in a timely manner by a designation pursuant to section 11 of this Act, or by remedial action taken under the provisions of any other Act, Regulation or formal national accident or disaster management contingency plan.
- (3) An Emergency Designation Order shall:
- (i) specify the geographic co-ordinates of the Marine Protected Area;
 - (ii) the duration of the Order;
 - (iii) set out the actions to be taken to remediate the impact of the event;
 - (iv) specify monitoring and assessment requirements;
 - (v) where appropriate, prohibit, restrict, or limit such activities that the Minister considers are likely to exacerbate any adverse impact of the event or hinder its remediation; and
 - (vi) appoint an appropriate management authority or management authorities necessary to implement the Order.
- (4) Any actions, monitoring and assessment requirements, prohibitions, restrictions or limitations specified in an Emergency Designation Order shall be based on the best available science and scientific information.
- (5) The Minister may consult the Expert Body, any other Minister, any Public Body or any person that the Minister considers appropriate when making an Order under this section.
- (6) An Emergency Designation Order made under this section may be put in place for a period not exceeding two years after the date the Order is made.
- (7) Without prejudice to subsection (6), if the Minister deems it necessary to extend the time period of the Emergency Designation Order to remediate the harmful impact of the event, ,

the Emergency Designation Order may be extended for a period of no more than two further years to a maximum of four years after the date the initial Order was made.

- (8) When making an Order pursuant to subsection (3), the Minister may make any such regulations that it deems necessary or appropriate to achieve the aims set out in the Emergency Designation Order.
- (9) An Emergency Designation Order may apply to a Marine Protected Area already designated under this act or to an area that has not been previously designated under this act.
- (10) An Emergency Designation Order may be amended, replaced or repealed by further Order of the Minister or by an Order made under section 11 of this act.
- (11) An Emergency Designation Order shall be subject to the provisions of section 22 but exempt from the conditions relating to sections 8, 9 and 10.
- (12) In making an Emergency Designation Order under this section, and notwithstanding the urgency of the circumstances, the Minister shall have regard to all appropriate assessments as may be required under the EIA, SEA and Habitats Directive, having due regard to the circumstances requiring an Emergency Designation Order.

Head 12 Explanatory Note:

The purpose of this head is to provide the Minister with the powers to put in place an emergency Marine Protected Area Designation at short notice in response to a natural disaster, accident or other extreme event (whether caused by natural phenomena or human activities) that presents a severe threat of harm to the marine environment, its habitats biodiversity or species.

For example, new scientific information could indicate an urgent need to protect a threatened, endangered or newly discovered species, or vulnerable marine ecosystem, threatened by natural or anthropogenic impacts. In this case, measures would be consistent with the application of precaution.

This would also cover measures required to respond to an emergency, i.e. an activity, natural phenomenon or human caused disaster. These measures may only be needed temporarily until the emergency subsides, but in some cases may be replaced by more permanent measures. Some examples of such emergencies are: underwater volcanic eruptions or submarine landslides; an incursion or sudden expansion of invasive species; climate change impacts, e.g. marine heatwaves; a shipping disaster; marine pollution; or a space debris strike.

Such an Order should only be put in place if no other existing legal or administrative emergency response plan is available to mitigate the event.

The Minister may set out a management plan for the Emergency Designation Order. This plan should specify actions required to remediate harmful impacts and threats. It should set out monitoring requirements providing the necessary data to assess ongoing impacts or threat levels and should require such an assessment. These actions monitoring plans and assessments should be drawn up based on the best scientific evidence available.

If necessary, the Minister may prohibit or restrict or limit certain activities in the designated Marine Protected Area for such a time as is necessary to reduce the threat or mitigate harmful impacts. Again, this should be based on the best scientific evidence available.

An Emergency Order should be time limited and where no end date has been put in place, should have an automatic “sunset clause” of two calendar year following the date the order is made. In exceptional cases, if after scientific assessment, the Expert Body recommends that the Emergency order should remain in place, the Minister may extend the Order on a once-off basis for up to two further Calendar years.

Head 7 provides for the fact that new measures may be required in existing MPAS in the case of an emergency. For example if a windfarm was operating in an MPA one set of measures might be required to minimize or eliminate day-to- day impacts on animals, plants or habitats, if an oil-spill were to occur within the same MPA a new set of conservation measures would be required to minimize the impacts of that spill.

The Head allows the Minister to consult appropriate expertise widely when making an Emergency Designation Order.

An Emergency Designation Order can be amended, replaced or repealed by either a further Emergency Designation Order or a standard designation Order made under Head 5.

HEAD 13: Urgent area proposals to facilitate climate adaptation

13. (1) Where there is an urgent need in the national interest to identify Marine Protected Areas unsuitable for specific types of activity, the Minister may in consultation with the Minister for Environment, Climate and Communications, and the Expert Body, or other specialist body or other person or body as referred to in section 5(1) and section 5(2), develop designation proposals pursuant to section 8(3) to (5) in specified locations.
- (2) In preparing a designation proposal pursuant to subsection (1), the Minister and the Expert body, or other specialist body or other person or body as referred to in section 5(1) and section 5(2) in providing advice to the Minister, shall, to the extent possible and appropriate and based on the best available scientific evidence;
- i) take into account the priorities of the Ocean Environment Policy Statement;
 - ii) consider the matters described in sections 7(5) and 7(6);
 - iii) have regard to the existing conservation areas described in section 7(7);
- (3) Subject to sections 6(4), 9, 10 and 11 the Minister may, by order designate any area of the Irish Maritime area as a Marine Protected Area.
- (4) In making an Urgent Designation Proposal under this section, and notwithstanding the urgency of the circumstances, the Minister shall have regard to all appropriate assessments as may be required under the EIA, SEA and Habitats Directive, having due regard to the circumstances requiring an Urgent Designation Proposal.

Head 13 Explanatory Note:

This section gives the Minister the power to direct the Expert Body to identify and propose for protection, areas that are incompatible with specific activities or developments. It is included for rapid identification of areas which are not suitable for Offshore Renewable Energy development in order to pursue national climate adaptation goals and the Government's decision of 14 September 2022 (S180/20/10/177) to prioritise ORE plans and projects. The development of proposals remains subject to public participation and are still subject to consultation and objections.

HEAD 14: Existing Authorisations

14. (1) Regulations made under section 11(6) and management recommendations made under section 17 shall apply only to activities occurring within the geographic bounds stated in the designation order as Marine Protected Areas under section 11(1), 12(1) and 13(1).
- (2) The designation of Marine Protected Areas under section 11, 12 and 13 shall be without prejudice to existing rights, consents, authorisations, leases, licenses or the like (hereinafter called authorisations) granted on or before the date of the designation of the Marine Protected Area.
- (3) Competent authorities shall take into account the provisions of this Act when undertaking environmental assessments under the EIA, SEA and Habitats Directives.
- (4) Where the Minister has made a Designation Order under section 11(1), 12(1) or 13(1) public authorities considering an application for an authorisation or for renewal of an authorised activity in Marine Protected Areas shall –
 - (a) satisfy itself that the proposed activity would, based on the best available scientific information, comply with the conservation objectives in the Designation Order; and
 - (b) insert, vary or amend any conditions for carrying out the authorised activity as it considers appropriate.
- (5) (a) A public authority may grant an application for an authorised activity which does not comply with the conservation objectives in the Designation Order, where the public authority considers that -
 - (i) imperative reasons of overriding public interest exist, including social or economic reasons, requiring the authorisation of the activity; and
 - (ii) no reasonable alternative solutions exist.
 - (b) The public authority may grant such an application for an authorised activity subject to such conditions as the public authority considers appropriate.
 - (c) Before granting an application under subsection (6)(a) the public authority shall consult with the Minister for Housing Local Government and Heritage.
- (6) When making ministerial guidance under section 22(1(d)) of the Maritime Area Planning Act 2021, the Minister shall have regard to the location, conservation objectives and measures included in the Designation Order.
- (7) For the purposes of Article 6(v) of the Water Framework Directive where the maintenance or improvement of the status of water is an important factor in reaching the conservation

objectives of a Marine Protected Areas designated pursuant to section 11, that Marine Protected Area shall be a “protected area” within the meaning of the Water Framework Directive.

(8) (a) The Minister shall make written submissions under section 10(1)(d) and 10(3) of SI 236 of 1998 to the Minister for Agriculture, Food and the Marine, where –

- (i) The Minister receives a notice of an application of renewal of a licensed aquaculture activity occurring within the boundaries of a Marine Protected Area; and
- (ii) The Minister considers, based on best available scientific evidence, that said licensed activity adversely affect the conservation objectives of that Marine Protected Area.

(b) The written submissions under section 10(3) of SI 236 of 1998 shall include-

- (i) The conservation objectives for the Marine Protected Areas;
- (ii) Any relevant reports which may be provided by Expert Body / Expert Bodies;
- (iii) Any supporting scientific evidence;
- (iv) Any proposed mitigation measures and additional license conditions;
- (v) A request that the Minister for Agriculture Food and the Marine attach any measures and additional license conditions proposed under subsection (9)(b)(iv) as license conditions to the renewed license, pursuant to Section 70(2)(d) of the Fisheries Amendment Act of 1997.

(c) The Minister for Agriculture Food and the Marine shall comply with a request under this subsection or may seek a derogation under subsection (6)(a).

Head 14 Explanatory Note:

This head confines the application of recommendations and regulations made under the Bill to within the boundaries of areas designated as MPAs.

Subsection 2 guarantees the rights of current license holders.

Subsection 3 requires that this Bill be taken into account in any assessments undertaken pursuant to the Strategic Environmental Assessment Regulations and the Environmental Impact Assessment Regulations.

Subsection 4 requires the Minister to satisfy itself any authorisation or renewal of activity in the MPA is in compliance with conservation objectives. The Minister can vary or amend the conditions of carrying out the activity as it deems appropriate. Subsection 5 provides for derogations for reasons of overriding public interest.

Sections 6-8 give three separate examples of how the MPAs will interact with licensing. Subsection 6 relates to the Maritime Area Planning Act, Subsection 7 relates to EPA licensing and Subsection 8 describes the interaction with Aquaculture licensing.

HEAD 15: Appointment of enforcement authorities

15. (1) Where regulations have been made pursuant to sections 11 or 12 of this Act, the Minister shall appoint enforcement authorities.

(2) For the purpose of carrying out its functions under subsection (1) and in respect of those functions described under section 21, the Minister may make arrangements with or enter into agreements, including Service Level Agreements, or contracts with the Minister for Defence or, with the consent of the Minister for Defence, the Naval Service and the Air Corps of the Permanent Defence Forces, or with those authorities identified in subsection (5).

(3) The enforcement authorities shall appoint authorised personnel to carry out the functions described in section 22.

(4) If Marine Protected Areas do not contain any terrestrial component the enforcement authority shall be the Irish Naval Service.

(5) Where the Marine Protected Areas have terrestrial components the Minister shall appoint an enforcement authority, being a public service body, and one of either;

- (i) a relevant local authority;
- (ii) The National Parks and Wildlife Service;
- (iii) The Environmental Protection Agency;
- (iv) An Garda Síochána;

to enforce such regulations under this act that apply to the terrestrial component of a Marine Protected Area.

(6) The Minister may as he deems fit appoint for the purposes of enforcing regulations under this act appoint a new enforcement authority in place of an existing enforcement authority.

(7) Based on reports described in section 19 (2), where the Minister considers:

- (i) that the regulations within a Marine Protected Area are not being obeyed; or
- (ii) license conditions for activities within a Marine Protected are not being met;

he may direct an appropriate enforcement authority to conduct an investigation or examination subject to section 22.

Head 15 Explanatory Note:

This section gives the Minister the power to appoint enforcement authorities, the Irish Naval Service at sea, or from a range of public bodies inshore.

Subhead 6 enables the Minister to select a new management authority (e.g. Marine Area Regulatory Authority), this will enable flexibility as the national marine management regime continues to develop.

The conditions under which the Minister may trigger enforcement proceedings are set out in subsection 7. The Minister may find out about breaches either through the management authorities or from the reports of the secretariat.

HEAD 16: The Composition and appointment of the Scientific and Technical and Socio-economic Body

16. (1) The Minister shall establish a Scientific and Technical and Socio-economic Body or Bodies (in this Act referred to as the Expert Body or any specialist body) for the purposes of this Act.

(2) Any body referred to in subsection (1) or such other person or body as referred to in section 5(1) and section 5(2) may, either of its own volition or at the request of the Minister, provide advice to the Minister as to the Minister's general policy (including administrative policy) in relation to Marine Protected Areas or as to objectives to be fixed or programmes to be implemented by the Minister in relation to Marine Protected Areas, but nothing in this subsection shall be construed as enabling the person or body to make to the Minister any recommendation as regards a particular administrative matter.

(3) The Expert Body or other specialist body or other person or body in providing advice to the Minister shall :

- (i) seek to protect, conserve and restore marine biodiversity;
- (ii) consider species and habitats listed under;
 - a) OSPAR threatened and declining species;
 - b) species contained on IUCN lists;
 - c) Vulnerable Marine Ecosystems identified by the International Councils for The Exploration of the Sea;
- (iii) consider ecosystem services;
 - a) provisioning ecosystem services;
regulating ecosystem services;
 - b) cultural ecosystem services;
- (iv) consider areas under Other Effective Conservation Measures;
- (v) consider sustainable development;
- (vi) consider energy security, climate policy, and associated national and European Union plans and strategies;
- (vii) seek to minimize negative economic impacts/costs;
- (viii) seek to maximize positive economic impacts/benefits;
- (ix) consider social and cultural considerations;
- (x) apply the precautionary principle;
- (xi) apply the polluter pays principle;

- (xii) apply an ecosystem-based approach;
- (xiii) apply the priorities in the Ocean Environment Policy Statement;
- (xiv) apply the scientific criteria in Schedule 3.

(5) The members of the Expert Body shall be selected for their:

- (i) expertise in any of the elements described in subsection (3) of this section;
- (ii) social, cultural or historic, linguistic knowledge;
- (iii) location specific knowledge;
- (iv) expertise in relevant sectors or policies.

(5) Any specialist body or other person or body from whom advice is sought shall have expertise in any of the matters referred to in subsection (4) of this section;

Head 16 Explanatory Note:

This Section gives the Minister power to establish the Expert Body and sets out its composition including a secretariat and a chairperson and sub-chairs in natural, social and economic sciences, as well as ad-hoc working groups.

This provides the structures to operate the MPA process, the inclusion of the ad-hoc working groups will enable the participation of different stakeholders in development and management of different MPAs.

HEAD 17: Duties and tasks of the Minister

17. (1) It shall be the duty of the Minister, with the assistance and advice from the Expert Body or any other specialist bodies or any other person or body as he or she deems it appropriate to consult, and taking into account the priorities of the Ocean Environment Policy Statement published pursuant to section 6, to:

- (i) identify suitable areas for the designation of potential Marine Protected Areas pursuant to section 7;
- (ii) supervise and assist with the development of all elements of proposals made pursuant to section 8(2)(i -x) and section 8(7);
- (iii) review the condition of Marine Protected Areas with respect to the criteria as set out in Schedule 1, the effectiveness of the measures being adopted, the priorities and the need for any additional or different measures;
- (iv) to draw up, programmes and measures for the protection and conservation of biodiversity and for the control of activities which may, directly or indirectly, adversely affect the conservation objectives of the Marine Protected Areas.

(2) The Minister may seek such scientific and technical analysis and guidance, from the Expert Body or any other specialist bodies or other person or body as he or she deems it appropriate to consult, for the designation and management of Marine Protected Areas, that shall include:

- (i) assessment of the species, habitats and ecosystem services and other features of conservation interest within the areas of interest;
- (ii) assessment of the activities and Pressures within the areas of interest;
- (iii) Suggestions for site designations under section 8(7)(i) and Emergency Designation Orders under section 12;
- (iv) Suggestions for site conservation objectives and measures for Marine Protected Areas;
- (v) the operation of Marine Protected Areas;
- (vi) scientific analysis of the evidence base for the selection of Marine Protected Areas and identification of potential Marine Protected Areas under section 7;

- (vii) processes for stakeholder participation in the Marine Protected Area designation process;
- (viii) identifying effective management arrangements for Marine Protected Areas;
- (ix) recommendations to the Management Authorities identified in section 11(4i) for appropriate management measures;
- (x) an assessment report on the performance of the Marine Protected Areas.
- (xi) the carrying out of any other duties relevant to the management of Marine Protected Areas as requested by the Minister.

(3) The Minister shall consider such advice, analysis or guidance as received from the Expert Body or other specialist body or other person or body and have regard to same in performing his or her functions.

Head 17 Explanatory Note:

This head sets out the general duties and specific tasks of the Minister. Including the power to establish specialist groups.

HEAD 18: Duties of the Secretariat

18 (1) The Minister shall set up a Secretariat by way of Regulation and assign such duties for the purpose of assisting the Minister and, if appropriate, the expert body or any other specialist bodies or other person or body in carrying out their respective functions under this Act, managing MPA's or for discharging the duties imposed by the Act.

(2) The Secretariat, in consultation with the Expert Body or such other specialist bodies or other person or body as the Minister may appoint, shall produce a cost efficiency analysis for the Minister identifying management measures that may be applied to Marine Protected Areas.

Head 18 Explanatory Note:

This section describes the role of the Secretariat in performing duties to assist the Minister in carrying out his functions under this act and providing a cost efficiency analysis.

HEAD 19: Duties of the Management Authorities

19 (1) The Management Authorities shall,

- a) act on any management recommendations of the Minister;
- b) implement management plans made by the Minister;
- c) review and monitor and report on such plans to the Minister at such times as he may request; and
- d) provide relevant data pertinent to the management objectives of the area to the Minister at such times as he may request.

(2) Following receipt of the management recommendations, the Management Authorities shall, report to the Minister on, the activities under their competence, occurring within each Marine Protected Area. The report shall contain:

- (i) a quantitative assessment of the amount of activity under their competence in the Marine Protected Areas;
- (ii) a quantitative assessment of the pressures resulting from activity in the Marine Protected Areas;
- (iii) an assessment of the implementation of measures described in section 17(2);
- (iv) a summary of any enforcement activities it has carried out for regulations made under section 10 and licensed activities described in section 13;
- (v) any data, in a re-usable format, relevant to the assessments under (i) and (ii) and implementation of measures under (iii) above pursuant to Section 25;
- (vi) In the case where the Management Authority fails to or cannot perform the assessments identified above at (i) and (ii), the management authority shall provide:

- a. a written justification of the reasons why the assessments have not been performed, and
- b. an analysis of the monitoring required to enable the production of such assessments.

Head 19 Explanatory Note:

This section describes the duties, including general and reporting duties of the management authorities.

HEAD 20: Referral to European and International Organisations

20(1) Where the Minister identifies or is advised of an issue which has an impact on the conservation objective of a Marine Protected Area which cannot be addressed by measures adopted at the national level, or which is linked to European Union policy or international agreement, the Minister shall provide a reason for its view.

(2) Where the Minister considers action by the European Union or other relevant international organisation is needed in order to address any issues identified in subsection (1), the Minister shall:

- (i) consult with the relevant management authorities;
- (ii) make appropriate recommendations to the European Commission or relevant international organisation in respect of the issue referred to in this section and provide a justification to substantiate the recommendations made.

Head 20 Explanatory Note:

Certain activities at sea are regulated internationally under the United Nations Convention on the Law of the Sea (1982), and others are regulated centrally through European Union Policy.

This head provides a mechanism where activities which are damaging the marine environment but are regulated at the EU or international scale are referred back to the relevant authorities- the text is adapted from the Marine Strategy Framework Directive (56/2008) Article 15.

HEAD 21: Monitoring

21 (1) If the Minister identifies a requirement for additional monitoring the Minister may:

- i) in consultation with the Management Authority address the requirement through the monitoring programmes under Directive 2008/56/EC of the European Parliament and of the Council (The Marine Strategy Framework Directive);
- ii) direct the Management Authority to establish the relevant monitoring.

Head 21 Explanatory Note:

This head provides for the use of the Marine Strategy Framework Directive monitoring programmes to fill gaps in data.

PART 3

REGULATION AND MANAGEMENT

HEAD 22: Appointment and Powers of Authorised Persons

22(1) A Management Authority may appoint an officer or member of the staff of that Authority to be an authorised person for the purposes of enforcing regulations made under Section 11 (6) of this Act.

(2) An authorised person appointed under subsection (1), may at all reasonable times (and, if necessary, by the use of reasonable force) enter any vehicle, place or premises, and board any vessel, aircraft or offshore installation at which he or she has reasonable grounds for believing may contain evidence of an offence committed under this Act and, while there and for the purposes of this Act may—

(a) carry out any inspection and examination which the authorised person reasonably considers necessary for those purposes,

(b) require the person in charge to either or both—

(i) be present during the inspection and examination and to furnish such information, and

(ii) procure the attendance of any other person who is within the power of the person in charge to procure,

as the authorised person may reasonably require for the purposes of this Act,

(c) require any employee present at that vehicle, place, premises, vessel, aircraft or installation to afford the officer such facilities within that employee's power as the authorised person may require for the purposes of exercising functions under this Act,

(d) inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom and require the person by whom any such document is kept or who produced the document to certify a copy of

that document or other record (including a copy in a legible form of a record kept in non-legible form) as a true copy,

(e) open or cause to be opened any container,

(f) examine (by the carrying out of tests or otherwise) and take samples of any material or substance,

(g) carry out, or have carried out, such tests, examinations, analyses, inspections and checks of—

(i) that vehicle, place, premises, vessel, aircraft or installation, or

(ii) any relevant thing at that vehicle, place, premises, vessel, aircraft or installation,

as the authorised person reasonably considers being necessary for the purpose of exercising their functions under this Act,

(h) require any person at, or the owner or other person in charge of, that vehicle, place, premises, vessel, aircraft or installation to give the authorised person such assistance and information as that officer may reasonably require for the purpose of exercising functions under this Act,

(i) remove any such books, records, documents, from such premises and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act, except where the document or other record concerned is required by law to be kept or maintained at the vehicle, place, premises, vessel, aircraft or installation concerned,

(j) take possession of any container, product, article or substance found at the vehicle, place, premises, vessel, aircraft or installation and retain it for such period as is necessary for any of the following purposes:

(i) to enable its examination;

(ii) to ensure that it is not tampered with before the examination is complete;

(iii) to ensure that it is available to be adduced as evidence in any proceedings,

(k) take photographs or make any record or visual or audio recording of any relevant activity carried on at the vehicle, place, premises, vessel, aircraft or installation concerned, and

(l) monitor the effects of any activity that the authorised person considers to breach the requirements of a Designation Order made under Section 10 of this Act

(3) For the purpose of entering a vehicle, place or premises or boarding a vessel, aircraft or offshore installation, an authorised person may require the person in charge to do anything

that will facilitate entry or boarding and the power conferred by this subsection includes power, in the case of a vehicle, vessel or installation, to require the person in charge to stop it within the national jurisdiction.

(4) An authorised person may, for the purposes of this Act, require the attendance of the master of a vessel, the pilot in command of an aircraft or the person in charge of an offshore installation and may, for the purposes aforesaid, make of such master, pilot or person any inquiry which appears to the authorised person to be necessary.

(5) Where an authorised person reasonably suspects that, in relation to a vessel, aircraft or offshore installation in a Marine Protected Area, a contravention of regulations made under this Act is taking, or has taken, place, he may detain the vessel, aircraft or offshore installation at any place in the maritime area or at any convenient harbour, airport or other place in the State until the happening of one of the following—

(a) the authorised person becoming satisfied that a contravention of regulations made under this Act has not taken place in relation to the vessel, aircraft or installation;

(b) the final determination of any court proceedings (including any appeal, re-trial or other proceedings) in respect of such a contravention as aforesaid and the payment of any fine imposed in the proceedings;

(c) the giving of security which, in the opinion of a judge of the District Court, is satisfactory for payment, in the event of a conviction of an offence in relation to the said contravention or in the event of a failure by a defendant in any proceedings in relation to such a contravention to attend before any court when such attendance is required for the purposes of the proceedings, of a sum that in the opinion of the judge is sufficient to provide for—

(i) payment of the maximum fine or fines ordered, or which may be ordered, to be paid in respect of the offence or offences, and

(ii) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to the offence or offences concerned awarded, or which may be awarded, against the defendant concerned,

or require the said vessel, aircraft or offshore installation to be removed from such maritime area, harbour, airport or other place.

(6) The security provided for in *subsection (5)* of this section is in addition to and not in substitution for any other bond or recognisance which the defendant concerned may be required to enter into by the judge of the District Court concerned in relation to any trials, appeals or other proceedings in relation to the offence or offences.

(7) Where an authorised person has detained a vessel or offshore installation under this section—

- (a) any authorised person may, if the vessel or offshore installation, as the case may be, is not in a harbour, take it to the nearest or most convenient harbour or place in the maritime area, or
- (b) any authorised person may, if the vessel or offshore installation, as the case may be, is in a harbour detain it at that harbour or take it to a more convenient harbour or place in the maritime area,

and there detain it until the happening of one of the events described in *paragraphs (a) to (c)* of subsection (5) of this section.

(8) Where an authorised person has, in the exercise of the powers conferred on him by this section, detained a vessel, aircraft or offshore installation, any authorised person who suspects that in relation to the vessel, aircraft or offshore installation, as the case may be, a contravention of this Act is taking or has taken place shall, as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of all persons on board the vessel, aircraft or offshore installation, as the case may be, and the said judge may, if they are satisfied that the authorised person applying for the order so suspects, make an order authorising the detention of those persons for a period of 48 hours from the time of the making of the order.

(9) (a) An authorised person shall not enter so much of a vehicle, place, premises, vessel, aircraft or installation that consists of a dwelling, other than—

- (i) with the consent of the occupier, or
- (ii) in accordance with a warrant issued under *paragraph (b)*.

(b) Upon the application of an authorised person, a judge of the District Court, if satisfied that there are reasonable grounds for believing that—

- (i) a relevant thing is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling, or
- (ii) documents or other records referred to in *subsection (2)(d)* are being stored or kept in any dwelling,

may issue a warrant authorising a named authorised person accompanied by such other authorised persons or persons with expertise relating to any relevant thing, as may be necessary, at any time or times within one month of the date of issue of the warrant, to enter the dwelling and perform any of the functions of an authorised person under this section.

(10) Any person who—

- (a) obstructs or interferes with an authorised person or a person with expertise relating to any relevant thing, in the course of performing a function conferred under this section or a warrant under subsection (9)(b),
- (b) impedes the performance by the authorised person, as the case may be, of such function or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the authorised person, or person with expertise, as the case may be, pursuant to this paragraph, or
- (c) in purported compliance with such request or requirement or in answer to such question gives information to the authorised person or person with expertise, as the case may be, that that person “knows to be false or misleading in any material respect”,

shall be guilty of an offence.

(11) (a) Where an authorised person, upon reasonable grounds, believes that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(b) A person who, without reasonable excuse, does not comply with a requirement under paragraph (a) shall be guilty of an offence.

(12) A statement or admission made by a person pursuant to a requirement under sub section (2)(h) shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under subsection (10)).

(13) A person who falsely represents himself or herself to be an authorised person shall be guilty of an offence.

(14) Nothing in this section shall be taken to compel the production by any person of a document which that person would be exempt from producing in proceedings in a court on the ground of legal professional privilege.

(15) An authorised person shall be furnished with a certificate of his appointment and, when performing any function under this section, the authorised person shall, if requested by any person affected, produce the certificate to that person.

(16) No action or other legal proceedings, whether civil or criminal, shall be instituted in any court in respect of the doing of anything authorised to be done by an authorised person under

this section, whether such thing is done personally by an authorised person or by a person acting on the orders or instructions of an authorised person.

Head 22 Explanatory Note:

Sets out the power to appoint authorised persons to enforce regulations. Precedent drawn from dumping at Sea Act (as amended) and Microbeads (Prohibition) Act 2019.

HEAD 23: Prosecution of Offences

23(1) A person who contravenes regulations set out under Section 11 of this act shall be guilty of an offence. Proceedings for any offence under this Act may be prosecuted by the Minister in:

- a) cases where offences are alleged to have occurred outside Irish Territorial waters and where enforcement proceedings are taken by the DPP, the High court;
- b) cases where offences are alleged to have occurred inside Irish Territorial waters and where enforcement proceedings are taken by the DPP, the District Court or Circuit Court as appropriate;
- c) cases where enforcement proceedings are taken by other authorities listed in Section 15(5) the District or Circuit courts as appropriate.

(2) With the consent of the Minister or an officer of the Minister, nominated by the Minister for the purpose, proceedings for any offence under this Act may be prosecuted by an authorised person appointed under section 22, these offences may include:

- (i) Summary proceedings;
- (ii) Indictable offences.

(3) Proceedings for any offence under this Act may be instituted at any time within one year after the date of the offence.

(4) Nothing in this section shall prevent the prosecution under the Customs Acts for offences committed under the said Acts in respect of a contravention of section 53A of The Wildlife Act of 1976 as amended.

(5) Where an authorised person has reasonable grounds for believing that an offence under this act has been committed by a person, the authorised person shall serve, or cause to be served, personally or by post, on the person a notice under this section.

(6) If a notice is served pursuant to subsection (5) of this section, it shall, contain a statement to the effect that:

- (a) the person on whom it is served is alleged to have committed an offence specified in the notice;

- (b) the person may, during the period of 28 days beginning on the date of the notice, make to an authorised person at a specified place, a payment of a fixed charge in the amount prescribed in section 22 of this Act accompanied by the notice, duly completed;
- (c) if the person does not make the payment specified in paragraph (b) of this subsection, during the period so specified, accompanied by the notice, duly completed, the person may, during the period of 28 days beginning on the expiration of that period, make to an authorised person at a specified place a payment of a fixed charge of an amount 50 per cent greater than the prescribed amount referred to in paragraph (b) of this subsection accompanied by the notice, duly completed, and
- (d) a prosecution in respect of the alleged offence will not be instituted during the periods specified in the notice or, if a payment so specified accompanied by the notice, duly completed, is made during the appropriate period so specified in relation to the payment, at all.

Head 23 Explanatory Note:

This sets out the standard procedures for prosecution of summary and indictable offences such as fines. Subsections 1-4 are adapted from the wildlife Act 1976 as amended in 2000. Subsections 5 and 6 come from the road traffic act.

HEAD 24: Penalties and forfeiture

24 (1) A person guilty of an offence under this Act shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 5 years or both.

(2) Where the authorised person is of the opinion that a person is committing or has committed an offence under this Act, he or she may arrest the person without warrant.

(3) A court in which a person is convicted of an offence under this Act may order the interest of the person, whether as owner or otherwise, in any specimen of flora or fauna or any part or product of such a specimen or any firearm, trap, snare, net or other thing in relation to, or with, or by means of which, the court is satisfied the offence was committed to be forfeited.

~~(2)~~ A court shall not order anything to be forfeited under this section if a person claiming to be the owner of the thing in question, or otherwise interested in it, applies to be heard by the court unless an opportunity has been given to him or her to show cause why the order should not be made.

Head 24 Explanatory Note:

Provides for proportional and graduated penalties. This article sets out the penalties for criminal offences with indicative levels of penalty for first and subsequent offences, these are considered proportional and graduated and sufficiently flexible to cover individuals and large companies.

HEAD 25: Open Access Data

25(1) For the purpose of compliance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1993;

(a) Data generated by the management authorities of Marine Protected Areas in performance of their duties shall be High-Value Datasets for the purposes of the Open Data and re-use of Public Sector Information Directive (EU) 2019/1024 and shall be made available by the Secretariat according to the conditions set out in Article 14 of the European Union (Open Data and Re-use of Public Sector Data) Regulations of 2021, Statutory Instrument No. 376 of 2021.

(b) Scientific data generated by Expert Body shall be High-Value Datasets for the purposes of the Open Data and re-use of Public Sector Information Directive (EU) 2019/1024 and shall be made available by the Secretariat according to the conditions set out in Article 14 of the European Union (Open Data and Re-use of Public Sector Data) Regulations of 2021, Statutory Instrument No. 376 of 2021

(2) To ensure compliance with section 4(1) and 4(2) of Statutory Instrument No. 382 of 2010 European Communities (Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)) Regulations, 2010, the Minister shall:

(a) ensure that metadata are created for the spatial data generated through the designation process in section 10 (2) of this Act;

(b) make available the spatial data generated through section 9(2) of this Act.

(3) Any processing of data pursuant to this Act shall comply with the Data Protection Act 2018.

Head 25 Explanatory Note:

This section ensures that the scientific data generated through the Marine Protected Areas are subject to FAIR principles. That they are Finable, Accessible, Interoperable, and Reusable. This means that they are freely available to the public and researchers for re-use and analysis.

Subsection 2 refers to the INPSIRE directive on spatial data infrastructure.

Subsection 3 is to ensure that data sharing, processing, etc., is compliant with the GDPR, where applicable.

HEAD 26: Effectiveness Review

26 (1) The Minister shall, not later than six years following the commencement of the Act and at least every six years thereafter, direct the Expert Body or any other specialist body or other person or body to carry out a review of the Marine Protected Area designation and management processes and their operation.

(2) In carrying out the review referred to in subsection 1 the Expert Body or any other specialist body or other person or body shall:

- (i) consult with all the management authorities for Marine Protected Areas;
- (ii) hold a public consultation process;
- (iii) submit a report on the review to the Minister who shall place a copy of the report before both houses of the Oireachtas.

Head 26 Explanatory Note:

This ensures the Act functions properly and can be updated and changed if and when necessary.

Schedule 1

Activities

A. Uses and human activities in or affecting the marine environment	
Theme	Activity
Physical restructuring of rivers, coastline or seabed (water management)	Land claim
	Canalisation and other watercourse modifications
	Coastal defence and flood protection
	Offshore structures (other than for oil/gas/renewables)
	Restructuring of seabed morphology, including dredging and depositing of materials

Extraction of non-living resources	Extraction of minerals (rock, metal ores, gravel, sand, shell)
	Extraction of oil and gas, including infrastructure
	Extraction of salt
	Extraction of water
Production of energy	Renewable energy generation (wind, wave and tidal power), including infrastructure
	Non-renewable energy generation
	Transmission of electricity and communications (cables)
Extraction of living resources	Fish and shellfish harvesting (professional, recreational)
	Fish and shellfish processing
	Marine plant harvesting
	Hunting and collecting for other purposes
Cultivation of living resources	Aquaculture — marine, including infrastructure
	Aquaculture — freshwater
	Agriculture

	Forestry
Transport	Transport infrastructure
	Transport — shipping
	Transport — air
	Transport — land
Urban and industrial uses	Urban uses
	Industrial uses
	Waste treatment and disposal
Tourism and leisure	Tourism and leisure infrastructure
	Tourism and leisure activities
Security/defence	Military operations
Education and research	Research, survey and educational activities

Schedule 2

Pressures

Anthropogenic pressures, uses and human activities in or affecting the marine environment

B. Anthropogenic pressures on the marine environment	
Theme	Pressure
Biological	Input or spread of non-indigenous species
	Input of microbial pathogens
	Input of genetically modified species and translocation of native species
	Loss of, or change to, natural biological communities due to cultivation of animal or plant species
	Disturbance of species (e.g. where they breed, rest and feed) due to human presence
	Extraction of, or mortality/injury to, wild species (by commercial and recreational fishing and other activities)
	Physical disturbance to seabed (temporary or reversible)
	Physical loss (due to permanent change of seabed substrate or morphology and to extraction of seabed substrate)

	Changes to hydrological conditions
Substances, litter and energy	Input of nutrients — diffuse sources, point sources, atmospheric deposition
	Input of organic matter — diffuse sources and point sources
	Input of other substances (e.g. synthetic substances, non-synthetic substances, radionuclides) — diffuse sources, point sources, atmospheric deposition, acute events
	Input of litter (solid waste matter, including micro-sized litter)
	Input of anthropogenic sound (impulsive, continuous)
	Input of other forms of energy (including electromagnetic fields, light and heat)
	Input of water — point sources (e.g. brine)

Schedule 3

Indicative Designation Criteria

The following scientific criteria may be applied to the selection of species, features, habitats or ecosystem services in the area to be protected or conserved and for the purposes of deciding on the location, size, boundaries and numbers of Marine Protected Areas:

- (i) Threatened or declining species and habitats/biotopes
- (ii) Important species and habitats/biotopes
- (iii) Ecological significance
- (iv) Level of biological diversity
- (v) Level of representativeness
- (vi) Level of sensitivity
- (vii) Level of naturalness
- (viii) Size
- (ix) Potential for restoration
- (x) Degree of acceptance
- (xi) Potential for success of management measures
- (xii) Potential damage to the area by human activities
- (xiii) Scientific value
- (xiv) Ecological coherence