

# Hebridean Whale & Dolphin Trust

research education conservation

28 Main Street  
Tobermory  
Isle of Mull  
Argyll PA75 6NU

## Consultation on seal haul-out sites

The Hebridean Whale and Dolphin Trust (HWDT) is dedicated to enhancing knowledge and understanding of Scotland's whales, dolphins and porpoises (cetaceans) and the Hebridean marine environment through education, research, and working within Hebridean communities as a basis for the lasting conservation of local species and habitats.

**Question 1: Do you consider that the overall number of seal haul-out sites proposed at national/regional/local level represent a reasonable balance between seal conservation and other sustainable activities around the Scottish coastline?**

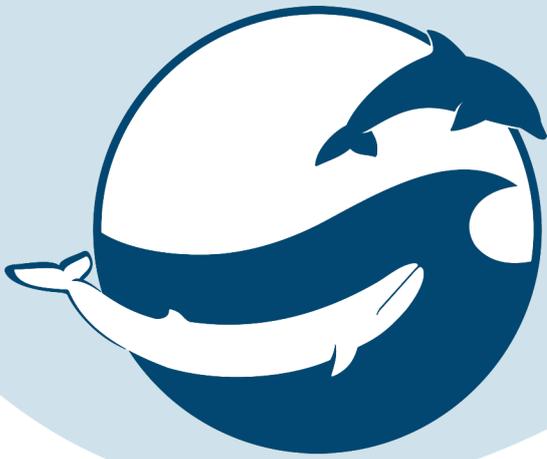
Whilst HWDT is concerned primarily with cetaceans on Scotland's west coast, our survey work and engagement with the favourable conservation status of the Hebridean marine environment also involve us with issues regarding seal conservation.

As part of HWDT's annual programme of boat-based surveys across the Inner and Outer Hebrides and mainland west coasts of Scotland, our teams regularly observe and record sightings of grey and common seals, in the water and on haul-out sites. These haul-out sites include both those that are on the Scottish Government list of proposed protected sites, and those which are not. We note that in the Consultation document there are notable gaps in the sites listed. However we do not make recommendations for the listing of additional sites, as we believe that all seals should be protected from harassment.

The suggestion that harassment can be compatible with sustainable human activities is also of concern. If an activity is genuinely sustainable from an ecological perspective, it will not result in the harassment of a top predator or force it from its natural range.

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The terms of the Act, and its use of the offence of ‘harassment’ rather than ‘disturbance’ appears to imply that seals can legitimately be disturbed, intentionally, recklessly or otherwise anywhere in Scotland, including on any of the haul-outs listed in the Consultation. They are therefore offered less protection than other marine mammals under the Nature Conservation (Scotland) Act 2004, which prohibits ‘intentional or reckless disturbance or harassment’. The Consultation document weakens this further by suggesting that 50% of Scotland’s seals can also be harassed as well as disturbed. This is not the case with other national wildlife protection legislation (eg: US Marine Mammal Protection Act) which prohibits harassment of any marine mammal. However, a fundamental difficulty hampering the ability of HWDT (and we assume others) to respond to this consultation is that harassment is not defined. Unless the threats from which the Act seeks to provide protection are clarified, then it is problematic to form an adequate response. We have consulted transcripts of the debates within the Rural Affairs and Environment Committee for guidance and find these indicate a view of harassment that would involve a very high and persistent level of serious disturbance<sup>1</sup>

**Question 2: Do you consider that additional sites should be included at national/regional/local level and, if so, why, how many additional sites and which sites?**

All haul-out sites should be on the list. Whilst it might be constructive to debate the levels of type of *disturbance* resulting from legitimate activities which might be admissible, no seal should be *harassed* on a haul-out site.

**Question 3: Do you consider that fewer sites should be included at national/ regional/local level and, if so, why, how many fewer sites and which sites?**

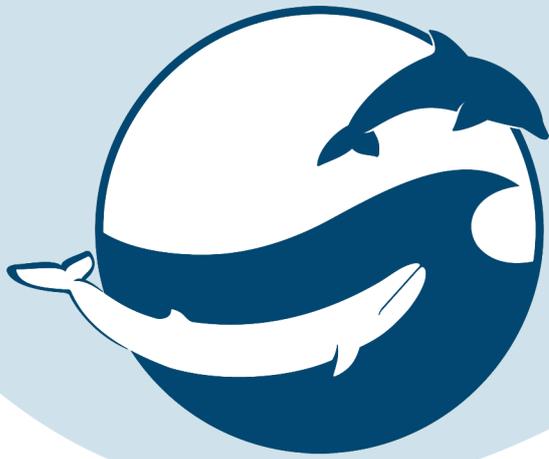
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<sup>1</sup> <http://www.scottish.parliament.uk/Apps2/Business/ORSearch/ReportView.aspx?r=5096&i=44323&c=991628&s=harassment%20seals>

<http://www.scottish.parliament.uk/Apps2/Business/ORSearch/ReportView.aspx?r=5137&i=45016&c=1002599&s=harassment%20seals>

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No. If an activity is genuinely sustainable, it will not conflict with the presence of seals on a haul-out site. If the pursuit of an activity demands that seals be harassed (in effect chased away from that haul-out site), then that activity is by definition, not sustainable.

**Question 4: Do you agree that existing Special Areas of Conservation for seals should be added to the list of seal haul-out sites being considered for possible designation?**

As we suggested in Question 2, HWDT believes that all haul-out sites should be designated. This however does not prevent additional measures to be taken in SACs.

**Question 5: Do you consider that particular national or regional level activities might represent a potential risk of harassment to seals on haul-out sites in general?**

Legitimate activities such as the construction and operation of marine renewables sites, oil and gas exploration, aquaculture, shipping, fishing and recreational activities might cause varying levels of *disturbance* to seals. However, under the terms of Section 117 of the Act, it is not clear whether elements of such activities could also be classified as *harassment*.

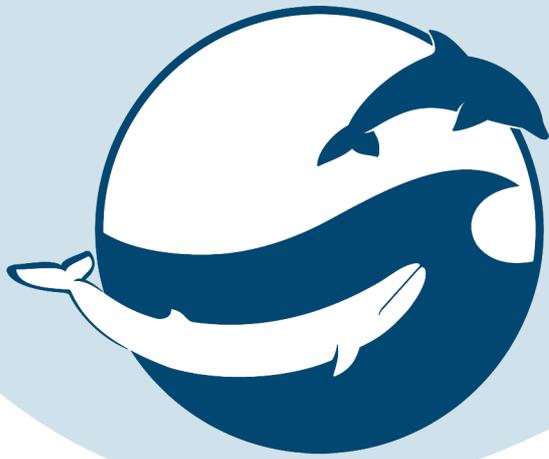
**Question 6: Do you consider that particular local activities might represent a potential risk of harassment to seals on particular haul-out sites included on the list?**

See Question 5.

**Question 7: Do you have any views on whether the boundaries of particular haul-out sites included on the list might be revised?**

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Section 117 would appear to include protection only for those seals hauled out on land. Seals often use the waters immediately surrounding haulout sites as relatively safe locations in which to rest whilst remaining in the water. However, under the terms of the Act, a seal in the water, albeit perhaps only a few metres from a rock used to haul-out, would not be protected. A seal disturbed at a haul-out will almost invariably enter the water. The view of what constitutes harassment implied in the Parliamentary Record seems to indicate an extended and serious level of disturbance. It could be argued that by definition it is impossible to subject seals to this during the time they are on land. For this measure to make any sense at all, the boundaries must include water adjacent to the haul-out site. This is an ambiguity which requires clarification.

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