

From: [REDACTED]
Marine Planning and Policy
04 February 2021

Minister for Rural Affairs and the Natural Environment
Cabinet Secretary for Environment, Climate Change and Land Reform
Cabinet Secretary for Rural Economy and Tourism

POSSIBLE PROTECTION FOR FLAPPER SKATE NURSERY AREA IN THE INNER SOUND

Purpose

1. To provide the background, conservation recommendations from NatureScot, views of key stakeholders and options for implementing urgent protection for a recently discovered flapper skate nursery area in the Inner Sound of Skye.

Priority

2. Routine.

Background

3. Flapper skate (*Dipturus intermedius*) was historically abundant in the North-east Atlantic and widely distributed in the seas surrounding the British Isles, however its range has reduced significantly and catch rates declined throughout the 20th century. It now only occurs in the northern North Sea and off Scotland's north-west coast. Part of the common skate complex (along with blue skate), they are on the OSPAR Threatened and/or Declining Species and Habitats List and the list of Priority Marine Features. Furthermore they are considered 'Critically Endangered' globally and in European waters by the International Union for Conservation of Nature (IUCN).

4. Common skate are a protected feature of the Loch Sunart to Sound of Jura MPA which has stringent management in place, however little is known about their breeding grounds and breeding habits due to their rarity. Their eggs take around 18 months to hatch and are sensitive to disturbance from a number of marine activities during that time.

5. Dive surveys by members of the public identified over 100 flapper skate eggs in the Inner Sound of Skye in 2020 following their initial identification by commercial scallop divers. The divers who undertook the surveys contacted Ministers to make them aware on 09 October 2020. Officials encouraged them to share their survey findings with NatureScot so that they could verify the findings.

6. Marine Scotland then sought advice from NatureScot to verify this information and provide advice. NatureScot has reviewed information from their own video survey in the area in March 2020 which verified the diver surveys, showing a number of flapper skate eggs in the same area. They advise that the quantity of eggs observed suggests that a number of females are using the same nursery area.

Furthermore the eggs are at different stages of development, suggesting that this site has been used for at least two consecutive years.

7. Initial advice was received on 26 October 2020, with full advice on the need for immediate protection of the site following on 18 December 2020. Officials have continued to engage with NatureScot to fully understand the national context and limitations of the advice. Following a meeting with NatureScot on 22 January 2021, it became clear that the case for protection of this flapper skate nursery area merited Ministerial consideration.

8. The nursery area gained some media traction in October 2020 and an Oral Parliamentary Question (S5O-04743) was asked on the topic on 11 November 2020 (see Annex A for the question, answer and background).

9. Their advice (as outlined in Annex B) states that this is the first flapper skate nursery area of this scale to be identified in Scotland and is of **national importance** for conservation of this species. They recommended that the Scottish Government implements **permanent protection** at this site, with an **interim measure** in place from 01 April 2021, when the current seasonal fisheries restrictions end. This would provide protection whilst proposals are drafted for permanent protection measures. Additionally, they recommend that, due to the importance of the area, a **precautionary approach** is taken.

10. Two boundary options were identified for a potential interim management area:

- The **potential boundary discussed with stakeholders** - NatureScot provided us with two suggested management areas; this option was a middle ground between the two but is still precautionary and was discussed with key stakeholders. It extends slightly beyond the buffer zone (varied to meet the warp length: depth ratio) based on the depth of the skate egg location, to encompass some additional areas of similar habitat type and depth. This interim management area covers approximately **9.2** square kilometres. By comparison the Inner Sound area between the Royal Navy British Underwater Test and Evaluation Centre (BUTEC), Loch Carron MPA, and Lochs Duich, Long and Alsh MPA is approximately 257.3 square kilometres (figure 1).
- An **alternative boundary** – This is smaller and takes into account the concerns of stakeholders, and was the most minimal option recommended by NatureScot. It is approximately **6** square kilometres.

11. A separate project is underway to improve the national protection for Priority Marine Features (PMFs), and is considering locations in this geographic area. This work is on hold due to COVID-19 and will be resumed when it is possible to have face to face stakeholder meetings again. Officials will send advice on this work to Ministers once the initial round of stakeholder engagement is completed.

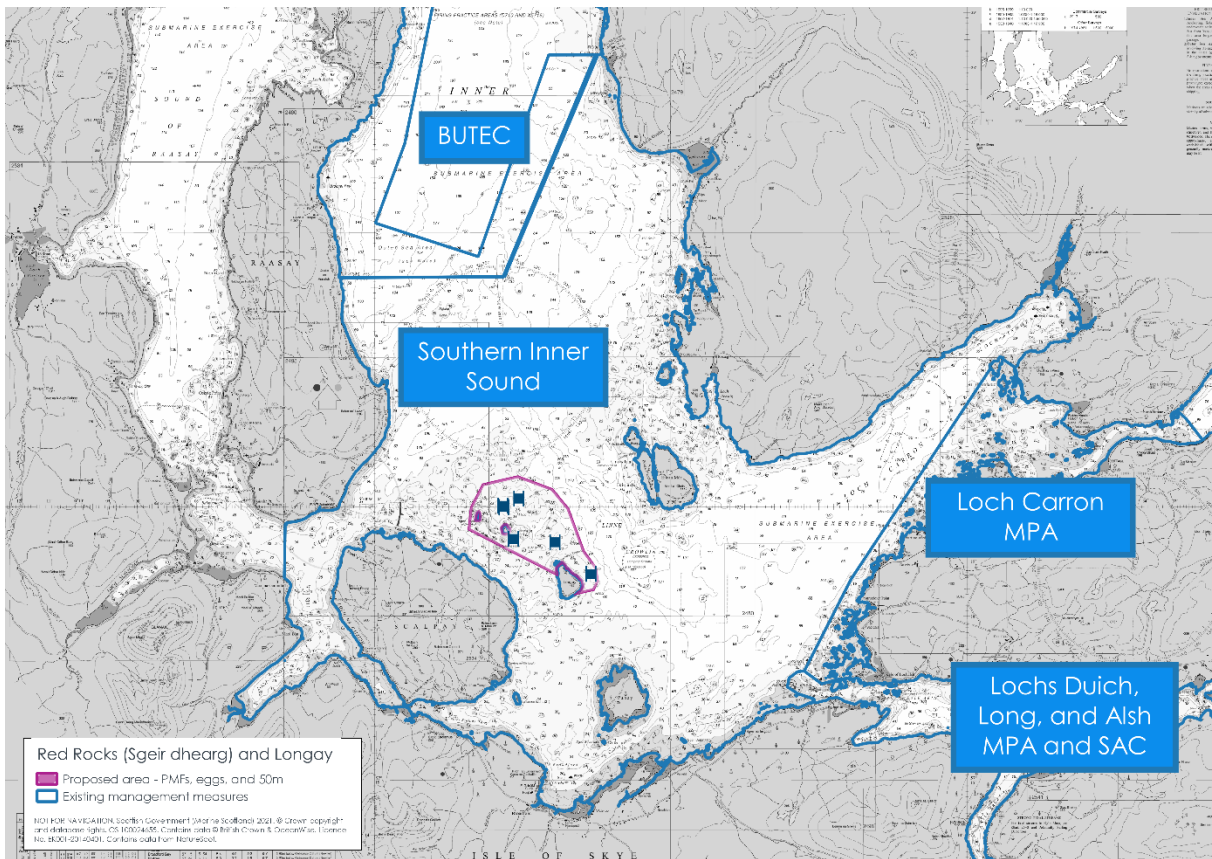


Figure 1. Location of potential boundary discussed with stakeholders, within the context of Inner Sound.

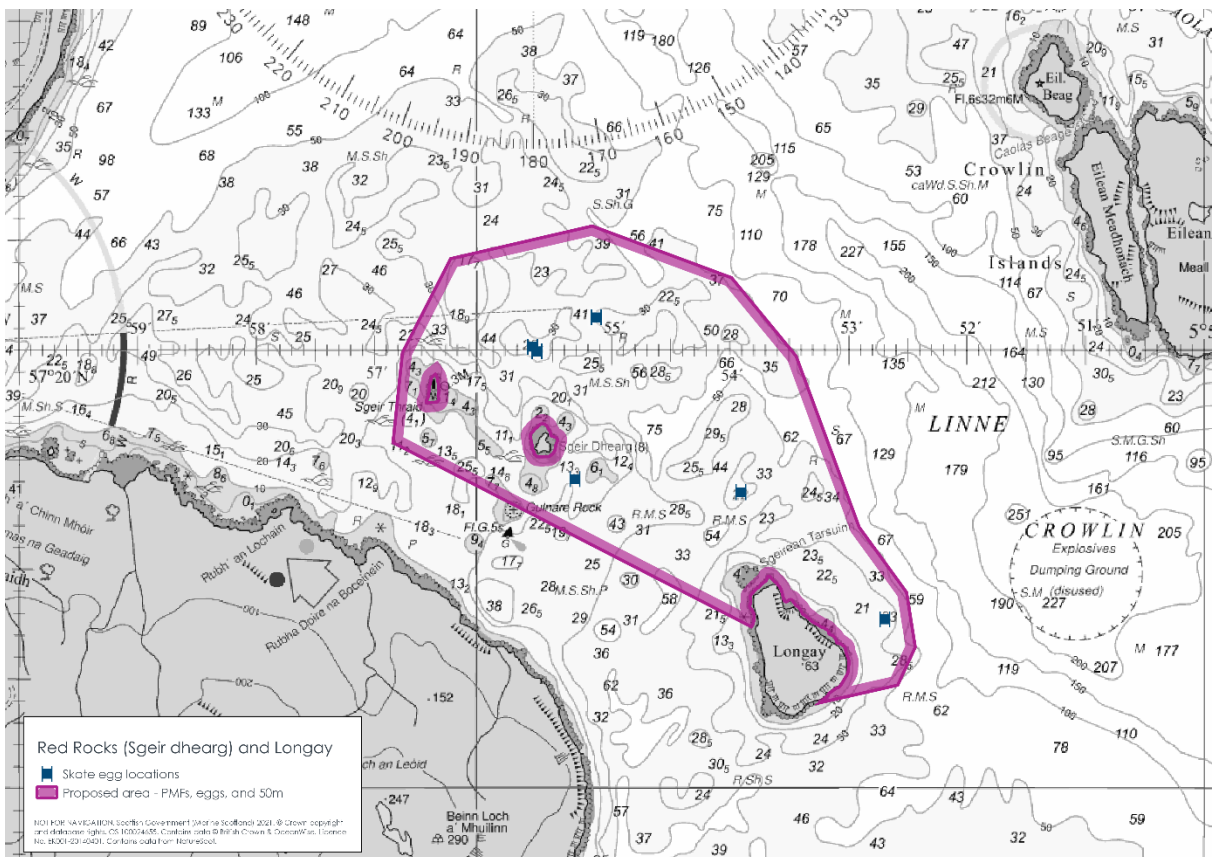


Figure 2. Proposed interim management area that was discussed with stakeholders.

NatureScot's advice

12. NatureScot has advised this area is of national importance based on current information and have recommended that due to the vulnerability of the skate eggs to marine activities, "*Spatial protection of this location is required on a **permanent** basis to support the conservation of flapper skate in Scotland. The current uncertainties in our understanding of the extent of this habitat mean that some form of **interim measure** should be put in place to provide protection whilst further survey work and assessment are carried out.*" Furthermore they recommend "*In light of our advice on national importance of this area, a **precautionary approach is appropriate** in our view.*"

13. Marine Scotland asked NatureScot to confirm whether there are other known flapper skate nursery sites in Scotland. NatureScot confirmed that limited numbers of flapper skate eggs have been identified elsewhere but not in such high densities. They reiterated their recommendation that it is a site of national importance based on current information.

14. NatureScot have outlined a number of existing and potential activities that could adversely impact upon the flapper skate nursery area. These include:

- Fishing - dredging
- Fishing - creels
- Fishing - demersal trawling or seine
- Fishing – gill/trammel nets
- Marine historic munitions disposal site
- Marine deposit sites/waste disposal
- Aquaculture
- Marine infrastructure
- Anchoring (at specific anchorages)
- Diver collection of eggs

Urgent Marine Protected Area (MPA) and Marine Conservation Order (MCO)

15. An urgent Marine Protected Area Order (MPA) and urgent Marine Conservation Order (MCO) would enable protection by 01 April 2021 when the existing seasonal closure for bottom contacting mobile fishing gear comes to an end as well as protecting the area from other marine activities.

16. Utilising provisions in the Marine (Scotland) Act 2010 ("2010 Act") to bring forward an urgent MPA allows Ministers to forgo the usual process for assessment and consultation, and would allow the measures to be in place by 01 April 2021. However measures would be temporary and require that full assessment, stakeholder engagement process and public consultation be undertaken to maintain the site in the long term. An urgent MPA can be designated for a period of up to 2 years but Scottish Ministers must review the order every 6 months.

17. An MPA would not prevent fishing activity in the area, or rule out other potentially damaging activity. In order to ensure appropriate protection of this

vulnerable site, an urgent MCO would also be required. By following the procedure for an urgent MCO under s.88 of the 2010 Act, Ministers can forgo the usual consultation and assessment requirements but a full stakeholder engagement process, public consultation and assessment of impacts would need to take place before an MCO could be made permanent.

18. An urgent MCO can be in force for up to 12 months, but can be extended for a period of up to 12 months if the Scottish Ministers providing Scottish Ministers have published a proposal to make both the MPA and the MCO not limited by time. A decision about whether to make the MPA and MCO permanent must therefore be reached within 12 months of the urgent MCO coming into force.

Interim protection

19. Based on NatureScot advice, stakeholder comments and consideration by officials, we recommend the designation of an urgent MPA with associated urgent Marine Conservation Order (MCO) restricting all activities with the potential to adversely impact on the flapper skate nursery area in line with a precautionary approach, to come into effect before 01 April 2021. This will provide protection for the flapper skate nursery area from a range of activities whilst options are drafted for permanent protection measures should that be required. An urgent MCO would include the following activities:

- Fishing - dredging
- Fishing - creels
- Fishing - demersal trawling or seine
- Fishing – gill/trammel nets
- Fishing – scallop diving
- Recreational sea angling
- Recreational diving
- Marine deposit sites/waste disposal
- Aquaculture
- Marine infrastructure
- Anchoring

20. Officials from Marine Planning & Policy, Sea Fisheries, Aquaculture and Compliance divisions of Marine Scotland are in agreement that interim measures should apply to all marine activities without exception. This is more stringent than NatureScot advice due to the inability to do full and comprehensive evaluations in advance of determining interim protection and the vulnerability of the nursery area. A more nuanced longer term approach may be possible once evaluations are completed.

Stakeholder engagement

21. As outlined in the submission of 28 January 2021, officials urgently engaged with stakeholders from 28 January to 03 February to understand the potential impacts of urgent protection measures for flapper skate in the Inner Sound. A short

summary document providing background and context, including the potential boundary (see paragraph 10), was shared with stakeholders in advance of the meeting. We undertook dialogue with a range of interests representing the activities that NatureScot has indicated capable of adversely affecting the flapper skate nursery area. This included regulators, environmental interests and representatives for mobile and static fishing and aquaculture. These are summarised below, and a table outlining more detailed views can be found in Annex C.

22. In terms of fisheries interests, officials met with representatives of Scottish Fishermen's Federation (SFF), Scottish Whitefish Producer's Association (SWFPA), West Coast Regional Inshore Fisheries Group (WCRIFG), Communities Inshore Fisheries Alliance (CIFA), Ross, Sutherland, Skye and Lochalsh Fishermen's Association (RSSLFA), and Scottish Creel Fishermen's Federation (SCFF).

23. SFF, SWFPA and WCRIFG were generally supportive of the proposals put forward, recognising the need for environmental protection where required. None raised any specific impacts to local fishers but noted that due to recent local issues, static and mobile gear should be equally restricted throughout the site. Additionally, SFF noted that scallop divers should also be restricted.

24. CIFA and RSSLFA agreed that protection should be implemented where evidence of site importance is present, but did not agree that the evidence presented by NatureScot was sufficient to support the importance of this site to flapper skate. In their opinion, citizen science observations should not be used as a basis for protected sites. They noted that flapper skate populations in the region appeared to be thriving and could be predated upon and therefore reducing fish stocks, so further protection does not seem necessary. Furthermore, they were concerned about the use of the urgent MPA process, and the possibility that this process could be overused in future. They noted a number of fishers using both static and mobile gear in the region that could be affected by the proposals. Additionally they noted these proposals come after months of hardship for the fishing industry caused by Covid-19 and EU Exit. They highlighted that the high level of gear competition within the Inner Sound would make it challenging for displaced fishers to relocate elsewhere.

25. SCFF were supportive of the proposals to protect the eggs, having taken part in the citizen science surveys which provided part of the initial evidence base. SCFF were of the view that creels and divers should not be restricted from the full site, due to the lower impact of these fishing methods compared with mobile gear. They highlighted that some deeper parts of the site were used by creel fishers. They also noted the importance of the sheltered areas to the west and south of Red Rocks which are used by scallop divers, particularly in poor weather. They disagreed with a blanket restriction on all gear types due to the perceived lesser impacts by creels and diving compared with mobile gear, and suggested restricting creeling only within a smaller area around the egg records. They would be content to restrict scallop diving in the proposed site with the exception of the important areas around the Red Rocks. They would favour restricting mobile gear across a much greater area than proposed. They also suggested that recreational angling should be limited due to the disturbance caused by the weighted gear. They highlighted that the high level of gear competition within the Inner Sound would make it challenging for displaced fishers to relocate elsewhere.

26. Officials have considered the issues raised by fishing stakeholders.
- In terms of the restrictions to all gear types, we consider that it is necessary to prohibit all types of fishing with the potential to adversely impact on the nursery area.
 - Concerns about other activities raised by fisheries stakeholders are addressed in the proposed interim management measures, as outlined in paragraph 19. This approach provides equivalence between all fishing interests.
 - Some concerns over the use of the urgent MPA process were also raised. We do not take the use of this process lightly, and it has only been used once before in nearly 11 years of this power being available. We wish to undertake full assessment and engagement with stakeholders wherever possible, however this is not always possible and in this instance NatureScot's advice is that urgent protection is necessary.
 - In response to claims about the populations of flapper skate, Marine Scotland Science advice is that flapper skate are too rare for stock assessments to be possible.
 - In response to claims about predation by flapper skate, Marine Scotland Science advice is that flapper skate feed on a wide variety of prey species including demersal and pelagic fish and shellfish.
 - Regarding issues raised about the reliability of Citizen Science data, NatureScot has validated the Citizen Science data used to inform their advice and considered other evidence from their own monitoring activities.
27. Officials also met with representatives from the Scottish Salmon Producer's Organisation (SSPO), who noted no active or proposed finfish farms in the vicinity of the site and did not foresee future impact on the industry.
28. From a regulatory point of view, representatives from Scottish Environment Protection Agency (SEPA), and Highland Council were content with proposals and noted that limiting activities through the use of MCO would be agreeable to them.
29. Officials met with representatives from Scottish Environment Link (SE Link) and local recreational divers (including members of Our Seas, Coastal Communities Network). SE Link were content with proposals and agreed with the precautionary approach suggested by NatureScot in terms of limiting activities. Noting they had not seen full advice and scientific evidence, they suggested the area proposed would be acceptable as a minimum. Local divers were unhappy with the extent of the site proposed and suggested the site should be much larger to be precautionary. They also noted mobile gear should be excluded from a larger area than static gear due to its greater possible impacts.
30. Officials met with representatives from the Ministry of Defence (MOD), who were content that their activities will be unaffected by the proposals, and did not believe that their activities in the nearby Royal Navy BUTEC range had the potential to negatively impact on the flapper skate eggs based on NatureScot's advice.
31. A wide range of Marine Scotland views were included in considerations. Sea fisheries colleagues agree that prohibitions on fishing should be applied to both static and mobile gear, as both represent a risk. Aquaculture policy colleagues are content that there are unlikely to be impacts to the aquaculture sector due to the exposed

nature of the site. Licensing Operations Team (MS-LOT) were content with proposals to prevent licensable activities taking place within the site.

Potential impacts of interim protection

32. Due to the urgent nature of the proposed interim protection, Marine Scotland has been unable to undertake a full assessment of impacts arising from measures. If permanent measures were implemented this would be undertaken. However, officials have discussed the potential impacts with stakeholders and they have advised the approximate number and scale of affected fisheries for the potential boundary discussed with stakeholders (see paragraph 10). These would be reduced by the alternative boundary. All affected fisheries may be able to make up shortfalls elsewhere however it is recognised that a high level of competition for fishing areas exists in the Inner Sound.

33. Static fishing gear

- It is anticipated by SCFF that impacts to this sector would amount to approximately 600-800 prawn creels year round, accounting for approximately 30% of activity by two vessels, as well as ~300 crab/lobster creels seasonally.

34. Mobile fishing gear

- VMS data shows that the proposed management area is largely unfished by mobile vessels over-12m (figure 3), with stakeholders confirming that this is due to the rocky substrate. This is based on VMS data from four vessels using the area, one of which has since been sold outside of Scotland. There is no VMS data for the site area in, 2017, 2018 or 2020 which suggests this is not a regular fishing ground for over-12m vessels, although it is recognised that COVID-19 may have impacted on fishing activity in the area in 2020.
- RSSLFA have nine member vessels, all registered under-10m, that typically fish in the close proximity to the area. They were unable to provide information regarding what proportion of the proposed management area is fished by mobile gear. Four of these vessels use the area fairly frequently, the other five are more transient, only fishing there during periods of adverse weather.

35. Scallop divers

- SCFF estimated that four scallop diving companies use the area.
- They suggested that it may be fished around 15 – 20 days annually and amount to approximately £15,000 - £30,000 per company.

36. Aquaculture

- Stakeholder engagement suggests that there will be no impacts to aquaculture sites arising from the proposed interim management measures.

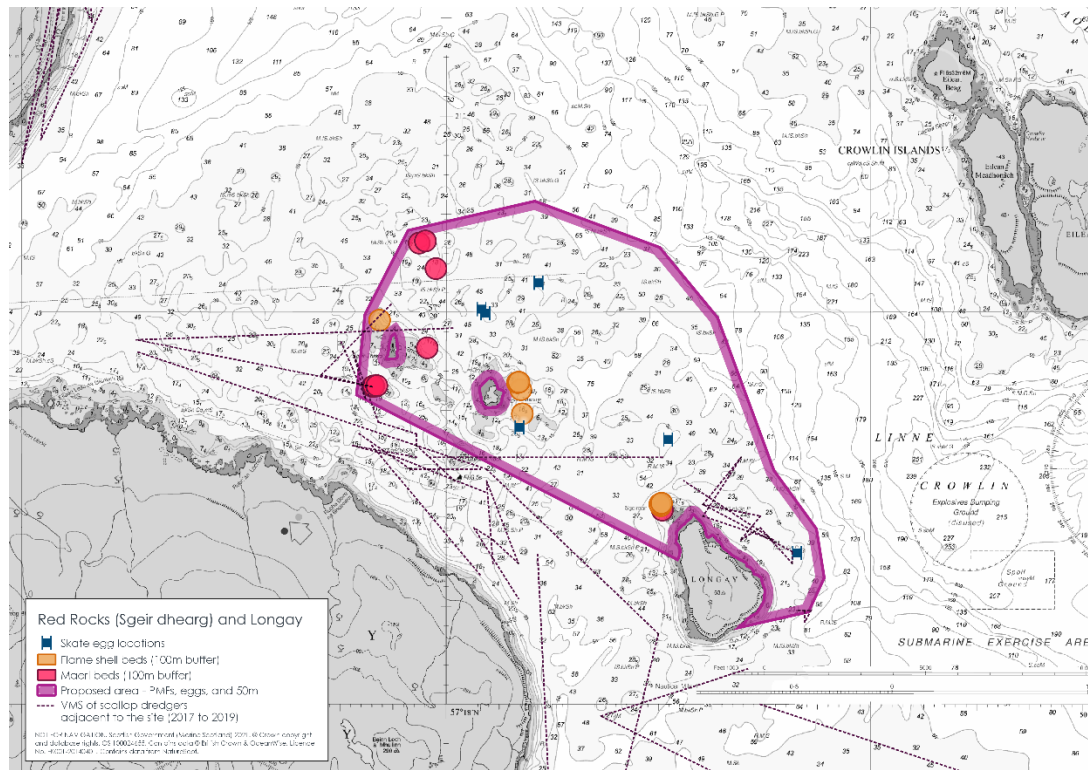


Figure 3. The potential boundary discussed with stakeholders including VMS vessel tracking data for vessels over-12m. This data shows 4 vessels, once of which has since been sold outside Scotland. This does not capture vessels under-12m.

Boundary options for interim protection

37. In light discussions with stakeholders, officials have considered the potential boundary for protection. We therefore present two options for protecting the site. In both cases we would propose prohibition of all activities listed in paragraph 18.

38. **Option 1:** This is to proceed with the boundary discussion with stakeholders. This is the most precautionary approach in terms of area covered. This area was deemed acceptable to most mobile fishing interests, although it was considered too large for the static gear fisheries. SE Link considered this boundary acceptable as a minimum although local divers felt it should be larger. This boundary may lead to impacts on around a number of mobile and static gear fisheries.

39. **Option 2:** To alleviate some of the issues raised, we could use the original smaller boundary proposed by NatureScot (see figure 4). This boundary protects the flapper skate nursery sites with the minimum buffers used by NatureScot. This boundary would release a good portion of the area identified as important to creel fishers and scallop divers, thereby lessening the impact on these fisheries. We have not been given enough information about mobile gear activity to understand the impact. From the perspective of environmental stakeholders, this option will be less desirable, although it does still protect the core areas of the flapper skate nursery habitat as advised by NatureScot. Following designation, additional NatureScot surveys will gather further evidence and inform options for permanent proposals, with a view of expanding the boundary if appropriate. Taking account of NatureScot

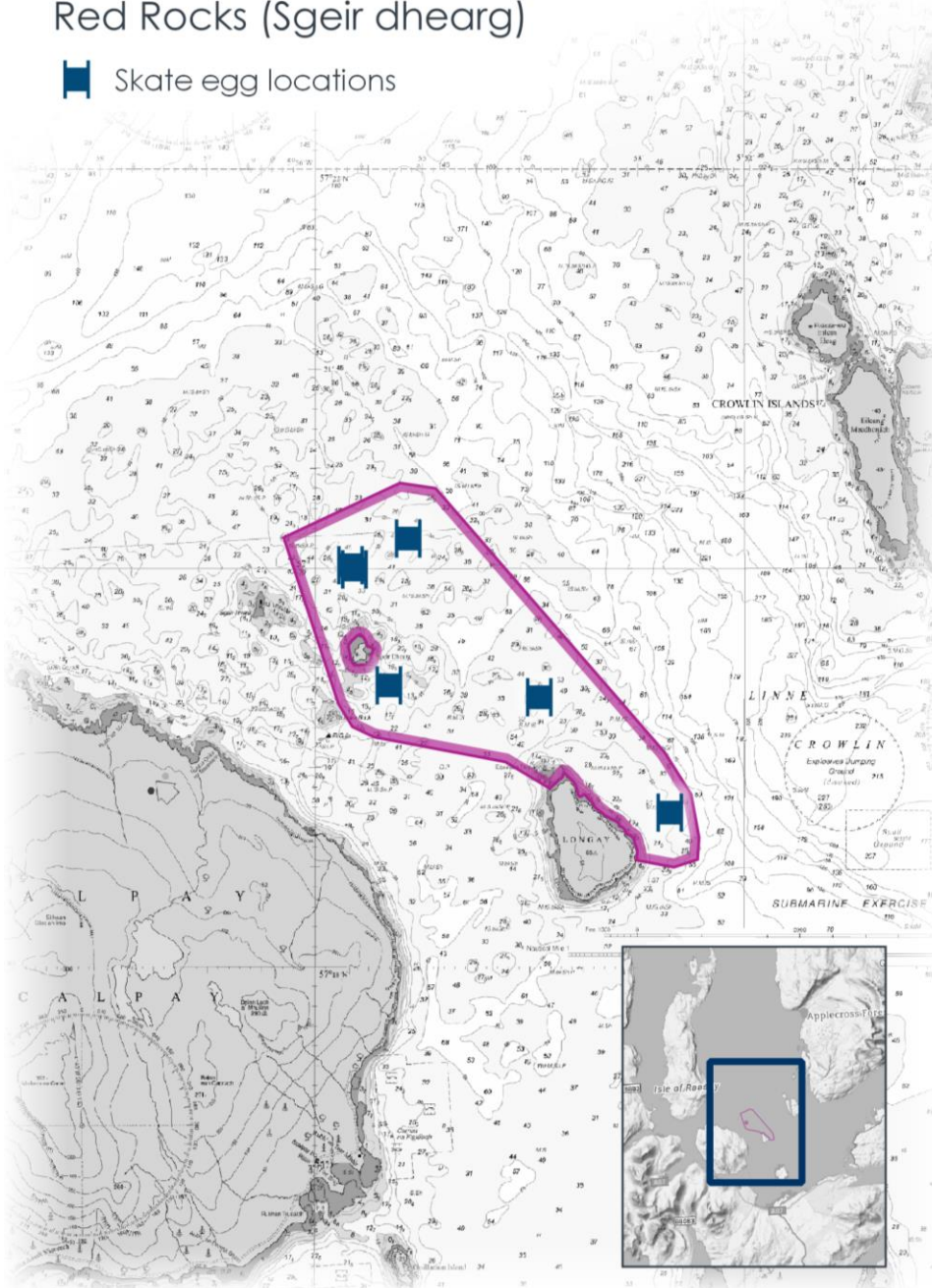
advice, stakeholder views and consideration by Marine Scotland officials, we recommend this boundary option.

40. It should be noted that if no protection is implemented and the nursery area is damaged then the media coverage and damage to Ministers reputation as stewards of the environment would be fairly significant.

41. As this is an interim measure to provide urgent protection for the flapper skate eggs, this is independent to ongoing work to improve the national protection for Priority Marine Features (PMFs), as described in paragraph 11.

Red Rocks (Sgeir dhearg)

 Skate egg locations



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Figure 4. Option 2 proposed interim boundary area.

Permanent protection

42. Scottish Ministers are required to publish the proposals for a permanent MPA and MCO within 12 months if they wish to lay an Urgent Continuation Order to extend protection of the Urgent MCO beyond that period. This would require a stakeholder engagement process, public consultation and a Business and Regulatory Impact Assessment (BRIA).

43. Should you agree to designation of an urgent MPA, NatureScot plans to undertake additional seabed surveys in 2021 to increase our understanding of the distribution of the eggs within the nursery area, thereby enabling the boundary of any permanent MPA options to be refined. This will help to ensure that any options for permanent protection accurately reflect the extent of the flapper skate nursery area.

Media handling

44. NatureScot have received a Freedom Of Information request for the advice that they have provided to Scottish Government officials in relation to this flapper skate nursery area. The request will be fulfilled and advice in the public domain on the afternoon of Friday 05 February 2021.

45. Media handling will need to be carefully managed, and kept separate to the Judicial Review of the Fisheries Pilot in the Inner Sound, however it does present an opportunity to highlight an even handed approach to management in the area.

46. In addition to contacting key stakeholders directly, officials will prepare media lines, taking into account the difficulties facing the fishing industry and the sensitivity around the Inner Sound. We will also contact all stakeholders registered to our MPA mailing list to make them aware of the interim designation and management.

47. There is likely to be some level of stakeholder discontent in response to either of the options. We will be clear that this boundary is for interim management only, and that further surveys will inform development of proposals for a permanent MPA.

Timeline and further advice

48. The timeline for putting interim protection in place is short due to two factors; partial protection at the site from seasonal fisheries closures ceases on the 01 April, and the upcoming Scottish Parliamentary elections. Although it is possible that elections may be moved, we are working with the assumption that Campaign Recess will begin on 25 March 2021.

49. If you agree to designation of an urgent MPA then the supporting urgent Marine Conservation Order would need to be laid in Parliament, subject to negative procedure (the MPA is a Ministerial Order, not an SSI). Under normal circumstances, Standing Orders dictate that a negative instrument should be laid in Parliament for 28 days before coming into force. As recess begins on 25 March, the latest laying date would 25 February, however it will not be possible to complete the drafting process

for the orders by this time. It will therefore be necessary to breach Standing Orders with regard to the urgent MCO, although officials will endeavour to allow as much time as possible to allow Parliament to scrutinise the order before recess. Officials will therefore need to write to the Presiding Officer when the MCO is laid. The letter would be cleared with the Minister. In this event, the MPA and associated MCO would come into force on 01 April 2021. The table below shows the further timeline of events for the interim and permanent MPA and MCO.

Table 1. Timeline for implementation of proposed urgent and permanent MPA and associated MCOs.

TBC	Designation Order made and Marine Conservation Order laid in Parliament.
By 01 April 2021	MPA and Marine Conservation Order comes into effect.
Spring/summer 2021	NatureScot gather additional evidence. Marine Scotland gather plotter data and VMS data for fishing industry.
September 2021	First review of MPA by Scottish Ministers due.
February 2022	Second review of MPA by Scottish Ministers due; announce intent for the site. If a decision to create a permanent MCO is taken, launch public consultation and lay Urgent Continuation Order.
April 2022	Urgent Continuation Order comes into effect
July 2022	Public consultation closes
September 2022	Third review of MPA by Scottish Ministers due.
October 2022	Decision on permanent MPA. If agreed, MPA and MCO orders drafted.
January 2023	Lay Marine Conservation Order in Parliament.
March 2023	Permanent MPA & Marine Conservation Order comes into effect.

Recommendation

50. That the Cabinet Secretaries and Minister;

- 1) Agree to designate an urgent MPA and associated urgent MCO for the protection of the flapper skate nursery area, in line with the advice from Nature Scot; and
- 2) Determine a preferred boundary from Option 1 or 2 outlined in paragraphs 38 and 39 (noting officials' recommendation of Option 2); and
- 3) Note the proposed development of media handling outlined in paragraphs 44, 45, 46 & 47.

[REDACTED]
Marine Planning and Policy
[REDACTED]

04 February 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Rural Affairs and the Natural Environment	X				
Cabinet Secretary for Rural Economy & Tourism	X				
Cabinet Secretary for the Environment, Climate Change and Land Reform	X				
Minister for Local Government, Housing and Planning					X
Minister for Energy, Connectivity and the Islands					X
Lord Advocate					X

DG Economy
 Solicitor General
 Legal Secretariat to the Lord Advocate
 Director of Marine Scotland
 Mike Palmer
 Allan Gibb
 Donald Carmichael
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 Lisa McGuinness
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 Mairi McAllan
 Kate Higgins
 Economy Comms
 Marine Scotland Comms

**POSSIBLE PROTECTION FOR FLAPPER SKATE NURSERY AREA IN THE
INNER SOUND**

RECENT ORAL PARLIAMENTARY QUESTION

SCOTTISH PARLIAMENT

ORAL ANSWER

11 November

Pauline McNeill (Scottish Labour): To ask the Scottish Government what urgent action it is taking to protect the eggs of the critically endangered flapper skate, which have recently been found off the northwest coast of Scotland.

S5O-04743

Mairi Gougeon:

I welcome the discovery of flapper skate eggs in the Inner Sound, which provides further evidence of our rich and outstanding biodiversity.

Officials have received initial advice from NatureScot regarding this particular location and are now working with NatureScot to consider the available evidence, including the potential threats from all human activities, in order to determine the most appropriate action.

I expect to receive advice on this matter as soon as practically possible, taking account of the importance of acting without undue delay in determining next steps.

BACKGROUND NOTE FOR S50-04743

FLAPPER SKATE & PMFs

- **ISSUE:** A series of recent surveys have revealed a number of flapper skate eggs in the Inner Sound of Skye. As flapper skate are on the OSPAR Threatened and/or Declining Species and Habitats List, the list of Priority Marine Features and are identified as 'critically endangered' on the IUCN Red List, eNGOs are calling for urgent protection for the eggs from seabed impacts. Marine Scotland are considering statutory advice from NatureScot as a matter of priority.

Top lines

- We are delighted that recent surveys have identified a number of flapper skate eggs, at a concentration not known to presently exist elsewhere in Scotland's marine environment.
- Marine Scotland will consider conservation advice provided by NatureScot, and await a full report on their most recent survey completed in March 2020.
- Flapper skate are already a protected feature of the Loch Sunart to Sound of Jura MPA which has stringent management measures in place.
- We will consider all potential threats to flapper skate in the area that eggs have been identified.
- We are considering whether existing management proposals, for the 11 Priority Marine Features most vulnerable to bottom contacting fishing gear outside of MPAs, may provide interim protection for these skate eggs.
- NatureScot had planned to do further survey work in 2020 but this has been hampered by COVID-19. This will be rescheduled when it is safe and appropriate to do so.

Delivering additional protection for vulnerable Priority Marine Features will complement the MPA network

- Development of management measures for Priority Marine Features has been postponed in light of the COVID-19 pandemic.

It is our intention to resume this project when it is again safe and appropriate to do so.

- Proposals for inshore waters will be taken forward to public consultation alongside options to protect the 11 Priority Marine Features (PMFs) most vulnerable to bottom contacting fishing gears outside of MPAs.
- This consultation will take place following engagement with stakeholders, to be resumed when safe and appropriate to do so after the COVID-19 pandemic.
- Response to the scoping consultation on vulnerable PMFs was published in 2019.

Our National Marine Plan requires that significant impact on the national status of Priority Marine Features is avoided.

- The 11 Priority Marine Features play a key role in the marine ecosystem providing natural benefits to the fishing industry and wider society.
- In light of the recent survey evidence, we will consider whether additional management is appropriate for flapper skate as a matter of priority.
- Once we have implemented protection for the 11 Priority Marine Features, we will consider if any of the other 70 Priority Marine Features require to be considered in the same manner.

Q&A

Flapper skate need urgent protection, how are you going to ensure these eggs aren't damaged by trawlers?

- We will consider whether additional management is appropriate for flapper skate and, if so, determine the appropriate mechanism.
- We will consider all potential threats to flapper skate in the area that eggs have been identified, not just fisheries impacts.
- We will undertake this work as a matter of priority.

Doesn't the current threat reflect the serious continuing lack of protection for protected species in our waters, as will be shown by the poor progress in protecting the seas from fishing highlighted in Scotland's Marine Assessment 2020?

- The assessment has identified priority areas that we need to address to protect our marine environment.
- We will use the outputs to inform future marine policy, including the development of a Blue Economy Action Plan as well as the forthcoming review of Scotland's National Marine Plan next year.
- The evidence in this assessment will help us plan for future sustainable development and use of our marine area in a way which will protect and enhance the marine environment whilst promoting both established and emerging industries.

Why hasn't the Scottish Government consulted on proposed management for Phase 2 MPAs and protection for Priority Marine Features yet?

- Development of management measures for Priority Marine Features and Phase 2 MPAs has been postponed in light of the COVID-19 pandemic.
- Proposals for inshore waters will be taken forward to public consultation alongside options to protect the 11 Priority Marine Features (PMFs) most vulnerable to bottom contacting fishing gears outside of MPAs.
- This consultation will take place following engagement with stakeholders, to be resumed when safe and appropriate to do so after the COVID-19 pandemic.

How many Marine Protected Areas have fisheries management measures in place?

- 99 sites have fisheries management measures, of which 25 are specifically for nature conservation purposes.

Why hasn't the Scottish Government completed designation of MPAs and classification of SPAs?

- Progress has been delayed by COVID-19. Public consultation is complete and we are actively working towards the designation of remaining proposed MPAs and SPAs.

Are the Scottish Government considering a 3 mile limit for fisheries?

- The Scottish Government does not plan to introduce a 3 mile limit for mobile gear. Such restrictions are not only inequitable but can be damaging to coastal communities whose livelihoods depend on fishing businesses.
- Instead of supporting national blanket restrictions or arbitrary fisheries closures, we intend to take a more tailored approach to fisheries management. This we believe to be proportionate, protect stocks and special marine features, and lead to greater benefits for fishermen and their communities

Supplementary background for S5O-04743

PROTECTION FOR FLAPPER SKATE

- NatureScot last surveyed the eggs in March 2020. They recommend protection for the species at this location and the gathering of additional evidence.
- We are working with NatureScot to consider the available information and develop recommendations for you to consider.

“Emergency” MPA

- The Marine (Scotland) Act 2010 contains a provision enabling Scottish Ministers to use an urgent procedure to designate a Marine Protected Area.
- As one of the greatest threats to these skate eggs is fishing activity, it would also be necessary to also lay an Urgent Marine Conservation Order in parliament to take effect at the same time as the MPA designation, should this be identified as the best form of protection for the skate eggs.
- It is necessary to determine whether the skate eggs are at urgent risk before selecting this route of protection.

- This route does not require public consultation, though a public notice must be published to bring it to the attention of any persons likely to be affected.
- An urgent MPA can remain in place for up to two years, but is subject to 6 monthly reviews.
- An urgent Marine Conservation Order remains in force for a period not exceeding 12 months. However this can be extended for 12 months providing Scottish Ministers have published their proposal for making the MPA permanent.
- It may take around 4 weeks for an Urgent Marine Conservation Order to be drafted and laid in parliament, though this may be affected by the busy parliamentary schedule due to COVID-19 and EU Exit matters.

Issues with an emergency MPA

- Whilst there is arguably enough evidence to justify an emergency MPA, we do not think it is sufficient to underpin a permanent one.
- This means that to keep the Urgent Marine Conservation Order in place beyond 12 months additional evidence would need to be gathered and analysed to underpin a proposal for a permanent MPA within the first 12 month period.
- NatureScot have not undertaken additional dive surveys due to COVID-19. Furthermore they are restricted by weather and seasonality. Therefore there is a significant risk of not having sufficient evidence to make a proposal for a permanent MPA within 12 months. This would result in the Urgent Marine Conservation Order lapsing. However if the Urgent Marine Conservation Order only applied to fisheries then it may be possible to replace this with an Order under fisheries legislation, providing there was sufficient justification.

CASE STUDY - The Loch Carron MPA

- Loch Carron was designated as an urgent MPA with an associated urgent marine conservation order. The order was then extended and the MPA made permanent.
- In April 2017 a scallop dredger damaged an area of flame shell bed within Loch Carron. It was operating legally at the time.
- Using powers under section 77 of the Marine Scotland Act 2010, the Cabinet Secretary for Environment, Climate Change, and Land Reform designated Loch Carron on an urgent basis, with an associated Urgent Marine Conservation Order, to provide protection for flame shell beds in May 2017, one month later.
- Following this urgent designation, additional surveys were conducted to accurately map the location and extent of the flame shell beds. This led to the discovery that this area supports the largest reefs of this kind in the world. The surveys also found high quality maerl beds which were subsequently included in the permanent MPA.
- A consultation to make Loch Carron a permanent MPA ended on 25 June 2018. The MPA was made permanent on 19 May 2019.
- **To note** – The surveys completed following the urgent marine conservation order enabled us to maximise protection for flame shell beds and maerl in the area, whilst minimising socioeconomic impacts arising from the measures, by helping us to fully understand the extent of the flame shell beds.

ANNEX B

**POSSIBLE PROTECTION FOR FLAPPER SKATE NURSERY AREA IN THE
INNER SOUND**

**NATURESCOT ADVICE: PROTECTION OF FLAPPER SKATE – 18 DECEMBER
2020**

Please see separate attachment.

POSSIBLE PROTECTION FOR FLAPPER SKATE NURSERY AREA IN THE INNER SOUND

STAKEHOLDER ENGAGEMENT – DETAILED COMMENTS

Organisation	Key points raised Fisheries
Scottish Fishermen's Federation and Scottish Whitefish Producers' Organisation	<p data-bbox="577 539 1075 577">Agree that protection is necessary.</p> <p data-bbox="577 593 2029 667">Asked that protection is afforded from all types of fisheries with the potential to negatively impact upon skate eggs, not just mobile gear.</p> <p data-bbox="577 689 2029 762">Specified that they felt restrictions should be extended to include scallop divers, as they feel that their disturbance of the seabed could cause siltation over the eggs.</p> <p data-bbox="577 785 1697 823">They assert diving may also exert pressure on the feature under consideration.</p> <p data-bbox="577 845 2029 948">Highlighted that if only mobile gear were restricted then members will be less likely to engage in future management discussions as the industry feels unfairly impacted by protection measures for seabed features.</p>
West Coast Regional Inshore Fisheries Group Chair	<p data-bbox="577 976 1989 1050">Very supportive, particularly given that proposed management area overlaps with known maerl and flame shell beds.</p> <p data-bbox="577 1072 2029 1145">Encouraged MS to put protection measures in place as soon as possible, with the view that this should be treated with urgency.</p> <p data-bbox="577 1152 2029 1225">Highlighted that local political representatives (Ian Blackford MP & Kate Forbes MSP) would likely be supportive of proposals.</p> <p data-bbox="577 1232 1966 1294">Felt that measures should be implemented for all marine activities including all fishing activity with seabed impacts.</p>

Communities Inshore Fisheries Alliance (CIFA) and Ross, Sutherland, Skye and Lochalsh Fisherman's Association (RSSLFA)	Do not feel that NatureScot's advice is credible; accept that skate eggs are there but skeptical that there are not equally sized egg laying sites elsewhere that have simply not been surveyed yet. Stand by our original assertion – RSSLFA members don't trust NatureScot/SNH 'science. With very, very good reason.
	Seek further information regarding flapper skate populations (e.g. if they regionally endangered, and what predatory impact they have on commercial fisheries, particularly in tandem with spurdog).
	Robustly object to further restrictions to industry, as the industry is already facing restrictions and difficulties due to other work (e.g. EU Exit, protection for Priority Marine Features).
	Question timing of the proposal, as COVID-19 and EU Exit have had significant impacts on the industry.
	Asked MS to recognise gear competition in the area.
	Acknowledged that impacts over and above what has previously been discussed for PMF management for this process are likely to be small and not immediately debilitating to local mobile fishers.
	Displacement of effort likely to be an issue for local creel fishers, with serious implications to their livelihoods.
	Feel that closures in the Sound of Jura MPA/Firth of Lorne have resulted in increase in skate numbers. Although they agree with the restrictions, they feel that skate are not locally uncommon and therefore may not warrant protection of this egg laying site.
	Query data validity and source, as they do not trust surveys undertaken by some sets of stakeholders, feeling that they have an ulterior motive.
	Would prefer that this proposal went through full consultation process and not urgent process, to enable the existing evidence base to be improved in advance of measures being implemented.
	Feel local fishers have been victims of whimsical science.
	RSSLFA will robustly argue against fisheries closures in the absence of high quality evidence.
	Don't want whimsical process.

Not against protecting species that require protection, but lose faith in the process when more measures are being put through as emergency measures.

Highlighted that they do not have access to the advice from NatureScot to enable them to critique the science.

Supportive if science shows that area is important.

From RSSLFA knowledge - from their members - 9 mobile vessels, no static vessels that commonly fish that area. 4 of those 9 commonly fish their during open season, other 5 more nomadic.

Worried about speed due to precedent that will be set, want to work in partnership.

Question the scale of the impacts on the nursery area from mobile fishing, as they feel that fishing must not be having significant impacts since the eggs have survived so far.

One of our members steamed passed the proposed area and counted 12 creel buoys in that defined area; assuming each fleet (2 buoys per fleet?) had 60 creels (commonly creel boats will fish 60 – 80 creels per fleet locally), then this closure will displace those (360 min.)

**Scottish Creel
Fishermen's
Federation (SCFF) -
Creel fishers**

Expressed surprise at the scale of the proposed interim management, particularly with how far south the boundary extends.

As far as protection of the area from modification by mobile gears are concerned, they support exclusion of mobile gear throughout the whole Inner sound.

Highlighted that they felt that both the flapper skate eggs and the juvenile/adult flapper skate should be protected features of the site.

Expressed their wish to be proactive and to demonstrate their environmental credentials. They would support a No Take Zone for all gear in **areas that the skate eggs are known to exist only** (with reduced buffers). However they feel that the proposed interim management area covers a large area of ground where no data is held and are not supportive of the current extent of the proposal.

Question why protection is not being afforded to the juveniles and adults throughout the whole sound in line with that which has previously been afforded to known aggregations of flapper skate i.e. Sounds of Jura and Mull, where mobile gears are excluded and where there are no restrictions on creel gears.

Outlined the ongoing issue of gear conflict in the area, and highlighted that members would likely be supportive of a No Take Zone across the **full extent of the existing management proposal** so long as mobile gear was simultaneously excluded from the Inner Sound. This would reduce gear conflict for creel fishers and enable them to relocate their gear outside of the flapper skate nursery area.

SCFF suggest that the interim management boundary is split into two smaller areas to incorporate the known egg locations only (with reduced buffers, not including unsurveyed habitat). This would retain access to the deep channel for static gear and thereby minimise industry impacts. MS requested SCFF annotate maps to ensure their proposals are clearly captured.

MS reiterated that the existing proposals are for interim management only and encompass unsurveyed habitat that NatureScot recommend is likely to contain flapper skate eggs. MS clarified that further survey work would be undertaken to enable the boundary to be better defined around the location of the flapper skate eggs when considering proposals for permanent protection. A full public consultation and stakeholder engagement would be undertaken when permanent protection is considered.

SCFF recommend that recreational sea anglers should also be excluded from the site if a No Take Zone were recommended to Scottish Ministers, as their weighted gear may have an impact on the skate eggs when contacting the sea bed.

SCFF recommend that some creel fishers will not be supportive of measures as there are few alternative fishing locations, and queried whether it might be possible to have depth dependant restrictions to enable areas ~50m to be opened up to prawn pots.

It is SCFFs experience that flapper skate eggs are not found below 30m, though they acknowledged that divers are unable to survey at this depth. It is possible that existing fishing practices may have already impacted upon eggs in the deeper muddy habitat.

SCFF suggest vessel tracking is accelerated to ensure that measures can be effectively enforced in the area, and highlighted that fishers in the Inner Sound participated in MS's vessel monitoring trials and so are comfortable with the technology.

MS invited SCFF to outline areas that are felt to be of particular economic significance in the area. MS highlighted that a complex management boundary would be practically challenging to enforce.

SCFF queried whether it may be possible to have a voluntary agreement to avoid the area where the eggs are. MS highlighted that although we are aware that the area is of national importance, further surveys need to be undertaken to better understand the distribution of the eggs. Therefore we are likely to take a precautionary approach to management.

SCFF suggested that a permanent management boundary could include a refined No Take Zone within the region of the existing proposal (over known eggs records) and a secondary management boundary that extends to the shore of Scalpay to restrict only mobile gear outside of the existing proposal (but permit static gear). Thereby encompassing existing PMF management proposals. MS recommended that we would be unlikely to extend the area to prohibit mobile gear more broadly, as this emergency process is in place for flapper skate eggs and not other PMFs.

SCFF recommend that the area is not currently trawled, but that scallop dredgers encroach upon the proposed interim management area.

SCFF highlighted that there would not be a significant quantity of static gear displaced by the existing proposals, but that it would affect a few vessels.

Crab and lobster fishing is seasonal, there are likely to be a few hundred crab & lobster creels set in the area during the season.

Prawn fishing is year round, 600-800 creels are likely to be set in the area, around 30% capacity of 2 local boats.

SCFF highlighted that creels tend to be laid in valleys rather than on the rocky peaks where flapper skate eggs have been identified so far.

SCFF queried how much time will be available for them to provide input. MS highlighted that advice will go to Ministers next week, although key stakeholders may continue to provide evidence that feeds into boundary considerations until the Order is laid in Parliament.

If marine Scotland are inclined to opt for the exclusion of creels throughout the larger area illustrated on the map, we would politely request a socio economic impact assessment as the area in question supplies a significant component of income for several local fishermen whom will most likely be significantly adversely impacted by an exclusion of such a scale.

SCFF summarised that they are supportive of conservation measures to protect the flapper skate eggs. Their main concern is the scale of the proposed interim management area due to existing gear competition in the Inner Sound. They would like to see deeper areas opened up to prawn creels.

**Scottish Creel
Fishermen's
Federation -
Commercial Scallop
Divers**

Highlighted that scallop diving is not necessarily a pressure on Flapper skate eggs.

The proposed site is used a great deal by scallop divers in the winter months to take shelter when conditions are poor. The scallops at this site are not of great quality but better than not fishing at all when whether conditions prohibit other areas. No take zone would cost one firm approximately 12 fishing days a year which is a loss of £15,000-£20,000 for a single firm. SCFF believe that in total there are four companies that dive for scallops in this area.

SCFF divers are concerned about their activities being put in the same category as static gear.

Scallop divers rarely encounter skate eggs while fishing for scallops. They would tend to notice these eggs as they return to the surface.

Scallop divers are bitterly upset I the notion that their activities would be prohibited due to the environmental pressures exerted by other fishing methods.

The scallop divers regret that they do not have any evidence on how their activities affect the seabed

The scalloped divers feel that there is an arrangement that could be reached with regards to avoiding the main aggregation of eggs on a voluntary basis.

Highlight that they often report findings of interest to NatureScot to inform future survey effort, and that this avenue for gathering information will be lost within the site if divers are prohibited.

The area is of value through the winter during period of adverse weather as it provides a sheltered area for diving.

Environmental

**Scottish Environment
LINK's marine group**

Supportive of emergency orders.

Although this is a welcome measure, it is nonetheless reactive. Consistent with our engagement on the PMF work package and with our response to the Future of Fisheries Management discussion paper, we support going forward a more proactive approach to inshore fisheries management

Feel this supports the need for broader protection across Scotland's inshore environment, to provide protection for all unsurveyed features of interest that we may not be aware of yet.

A precautionary approach determines that in the absence of evidence that an activity does not cause damage, it should not take place in any given area until such time as it can be proven that it will not cause damage.

Query if extent of proposed management boundary could be increased to cover a greater area of potential skate egg habitat (currently unsurveyed).

They were supportive of proposed interim management boundary as a minimum, though highlighted that this support should not be taken as an informed endorsement of the boundary as they were unsighted on survey and modelling data. They queried whether a larger boundary may be more appropriate in order to provide precautionary protection for nearby unsurveyed similar habitat.

They felt that these egg-case findings were possible as they are in an area of boulder-field over which it is not possible to tow mobile fishing gear. They therefore felt it was not possible to know what the extent of this egg-laying site may be in the absence of towed gear from sediments that may be suitable egg-laying ground but which have a lower rugosity enabling the towing of mobile bottom-contact fishing gear.

**Recreational divers
(who recorded the
eggs)**

Object to the interim management boundary proposal on the grounds that the area suggested is inadequate to protect the nursery area.

Expressed discontent at the lack of stakeholder engagement and public consultation, citing the Aarhus principles which require this (*Note - urgent powers within the Marine (Scotland) Act 2010 bypass this*).

Suggested a larger boundary area to capture a broader extent of unsurveyed habitat that they feel could contain flapper skate eggs, and also to encompass a number of deep channels to support movement of adult flapper skate into the nursery area.

Questioned how the area will be managed, highlighting concern that Marine Scotland Compliance does not effectively enforce existing MPA management.

Highlighted concern for wilful damage that may be encountered by vessels using mobile gear, suspecting that they will seek to damage the nursery area to reduce the extend of any permanent proposals.

Suggested spatial differences in management should be considered, e.g. with a larger management area for mobile gear.

We object to the Marine Scotland/Nature Scot boundary proposal (copy attached) on the grounds that the area suggested is inadequate to protect the critically endangered flapper skate; adults, juveniles and eggs.

we submit that the process has not been correctly carried out and the lack of consultation breaches the Aarhus principles on public participation

Size of the proposed boundary – provided map is a small enough area that it effectively shows the exact location of the eggs meaning the area is opened up to 'accidental' wilful damage.

Government is under obligation to replicate the flapper protection of the Sound of Jura - this small 'dot on the map' is not fit for that.

We feel it is prudent to protect these areas as a precautionary measure from damage rather than leaving them open to damage for the, likely significant, time it takes to investigate fully - we are all aware of occasions in the past where things have been damaged during 'scientific research' phase.

Questioned buffer areas, citing a scientific study which demonstrates that finer sediment particles (e.g. silt, mud) remain suspended in the water column for a long period after it is disturbed (e.g. by dredger). Feel that significantly larger buffers should be used to account for this.

Suggested area should be increased in incorporate nearby PMFs for which management is being considered in a separate project.

We suggest dredging and trawling, aquaculture and marine construction be banned within the area, but see no benefit to stopping creeling, scallop diving or recreational diving. Having spoken with the SCFF, they are more than willing to agree to a smaller 'no take zone' type area directly around the eggs themselves which would alleviate any possible damage from creeling. Can NS and/or MS provide scientific research to support the 'blanket' ban?

Other sectors

Scottish salmon producer organisation (SSPO)

SSPO said that they have 100% coverage of the salmon producer industry and their members are keen for Marine Scotland to engage with them in the first instance.

SSPO stated that they had no concerns in regards to this site however if the protection was to extend to a significantly larger area (for interim or permanent protection) then they would be concerned.

SSPO asserted that they were comfortable with the current proposals and that they would engage further with the full consultation in relation to permanent protection measures.

Ministry of Defence

Content that their activities will be unaffected by the proposals.

Did not believe that their activities in the nearby BUTEC range had the potential to negatively impact on the flapper skate eggs based on NatureScot's advice.

Highlighted that BUTEC range is primarily used for testing underwater sensors (no explosives), and therefore the greatest impact that their activities may have would be related to underwater noise. Marine Scotland agreed to discuss this with NatureScot but highlighted that underwater noise had not been identified as a threat within their advice.

Potential for occasional anchorage by vessels waiting to use the BUTEC range, but didn't foresee any issues in anchorage restrictions within the proposed interim management area due to the high number of alternative sheltered anchorages in the area.

Regulators

**Scottish
Environmental
Protection Agency**

Scottish Environment Protection Agency (SEPA) – SEPA agreed that exclusion of all marine activities with the potential to adversely impact the eggs would be preferable, as it would reduce ongoing administrative burden when considering future planning applications.

They were unable to access their systems to check historic applications for the region due to ongoing issues arising from a recent cyber-attack.

Highland Council

Agreed that exclusion of all marine activities with the potential to adversely impact the eggs would be preferable, as it would reduce ongoing administrative burden when considering future planning applications.

Confirmed that they have never received an aquaculture planning application within or in the immediate vicinity of the proposed interim management area.

**Marine Scotland
Licensing Operations
Team**

Agreed that exclusion of all marine activities with the potential to adversely impact the eggs would be preferable, as it would reduce ongoing administrative burden when considering future licence application.

Confirmed that they have never received an licencing application for laying of marine infrastructure within or in the immediate vicinity of the proposed interim management area.
