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**Irish Wildlife Trust submission to the Pre-Legislative Scrutiny of the**

**GENERAL SCHEME OF MARINE PROTECTED AREAS BILL 2022**

To whom it may concern,

The Irish Wildlife Trust (IWT) is a non-governmental organisation with charitable status that was established in 1979 to speak out for wildlife and its benefit for people. We have been campaigning for the protection of our oceans, including through the creation of Marine Protected Areas (MPAs) for at least a decade and so are happy to see the General Scheme of the MPA Bill 2022 finally published.

The need for the protection of ocean and coastal areas in MPAs was recognised internationally in 2010 with the Aichi targets of Convention on Biological Diversity calling for:

*By 2020, at least 17 per cent of terrestrial and inland water,* ***and 10 per cent of coastal and marine areas****, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascapes.'*

At the 2014 IUCN World Parks Congress and the 2016 IUCN World Conservation Congress the goal was set even higher – it has been recommended that at least 30% of each marine habitat is protected with the ultimate aim to have a fully sustainable ocean with at least 30% coverage of no-take-zones by 2030[1].

[1] Classen, R (2018). Marine Protected Areas – Restoring Ireland's Ocean Wildlife. Irish Wildlife Trust.

In 2022, the Kunming-Montreal Global Biodiversity Framework agreed to protect *at least* 30% of land and 30% of sea by 2030. Ireland, which is disproportionately marine in terms of its territorial surface area, has a disproportionate responsibility for meeting, and indeed exceeding, this target.

While many countries have designated MPAs covering extensive areas, only 8.1% of the global ocean falls into these designated areas while a mere 2.4% is "fully or highly protected from fishing impacts" according to www.mpatlas.org. Ireland has one of the lowest levels of MPA coverage for any maritime nations, at 2.1%, but the reality is that 0% is protected from fishing impacts. This is important because fishing has the largest impact on marine ecosystems[2].

The IUCN, the leading global authority on nature conservation, agreed that "industrial activities and infrastructural developments (e.g. mining, industrial fishing, oil and gas extraction) are not compatible with MPAs"[3]. It defines industrial fishing as:

*…(>12 m long x 6 m wide) motorised vessels, with a capacity of >50 kg catch/voyage, requiring substantial sums for their construction, maintenance, and operation and mostly sold commercially, and that all fishing using trawling gears that are dragged or towed across the seafloor or through the water column, and fishing using purse seines and large longlines, is defined as industrial fishing*

And that,

*when there is fishing activity in marine protected areas, it must be well managed, sized and adapted to the specific environment of the marine protected area to ensure the sustainability of resources, the environment and the coastal community*

In short, the proper regulation of fishing, including the exclusion of all industrial fishing, is a pre-requisite for the successful establishment of MPAs.

We would also like to emphasise that following the public consultation on MPAs in 2021, an overwhelming 99% of respondents supported their creation. This has been reflected more recently in the report on biodiversity from the Oireachtas committee on Environment and Climate Action[4] which called for the designation and management of MPAs "without delay". The Committee also recommended that "MPAs include highly protected marine areas, HPMAs, as part of that designation". This can also be referred to as 'strict protection' or 'no take zones' where no extractive or harmful activities at all are permitted, especially fishing, and including recreational fishing. The EU Biodiversity Strategy has committed to achieving 'strict protection' for 10% of EU waters and **Ireland needs to be committing to this as a minimum target in our own territorial waters**.

[2] IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 1148 pages. https://doi.org/10.5281/zenodo.3831673
[3] https://www.iucncongress2020.org/motion/066
[4] Joint Committee on Environment and Climate Action Report on Biodiversity November 2022

Specifically with regard to the Heads of the MPA Bill, we would like to make the following points:

"Other Effective Means of Conservation" is given in the Bill as 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.

The internationally accepted term for these areas is 'Other Effective Area-based Conservation Measures' (OECM) and to avoid confusion we would urge that the Bill reflects this. The definition provided complies with the IUCN accepted definition of an OECM.

For MPAs to be effective they need to conform to the internationally-accepted definitions provided for by the IUCN, including that MPAs should not contain environmentally damaging infrastructure developments, including offshore renewable installations. Renewable energy infrastructure are not de-facto MPAs. Infrastructure projects such as wind farms may qualify as OECMs where their operation provides clear, measurable and long-term benefits to biodiversity but should not count towards MPA targets because biodiversity conservation is not their principle aim.

- **HEAD 6 (4)** states:

*..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*

We suggest removing the words 'up to' so as to ensure that there is a legal requirement to meet a minimum of 30% by 2030.

There is also a need in this Head to recognise the requirement for highly/strictly protected 'no take zones' and a target of reaching <u>at least</u> 10% of maritime area should be given.

- **HEAD 7 (5)** states that MPAs will be identified "based on best available scientific information" which is welcome. However it also states that this should:

  *vii) seek to minimise negative economic impacts / costs;*
  *viii) seek to maximise positive economic impacts / benefits*

This implies that economic considerations should override the need for MPA designation which is inappropriate in our view and contrary to the principle of using the best available scientific information. These clauses are repeated under **HEAD 16 (3)** in relation to the role of the Expert Body. We suggest that these provisions be removed.

- **HEAD 11 (10)** states that the "designation of a Marine Protected Area shall not preclude appropriate development in that area". However, there is no mechanism defined for deciding what constitutes 'appropriate development'.
  **Head 14 (4)** states that "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 [our emphasis]** that the proposed activity would, based on the best available scientific information, **comply with [our emphasis]** 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.

  Indeed 5(a) states that:

  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.**

  Point (ii) grants excessive leeway to the granting authority to override the aims of any given MPA and would represent a *carte blanche* for any development to be permitted in an MPA regardless of the impact.

The language for granting authorisations is particularly weak and does not constitute a mechanism for ensuring that damage to MPAs does not arise from new developments. For example, the European Communities (Birds and Natural Habitats) Regulations 2011 contains an entire section on "Activities, Plans or Projects Affecting European Sites" (Part 4) and which stipule a clear requirement for the competent authority to carry out an 'appropriate assessment' (AA) so that activities within a designated site have no 'adverse effects' in the integrity of that site, and that screening for AA is required to determine whether a proposal for an activity is likely to have a "significant effect" on that site in light of its conservation objectives. Without such a mechanism, we could see harmful activities taking place inside MPAs with no assessment of the potential for negative effects to arise.

Given that the language around 'significant effects' is well developed and understood, and given that elsewhere in the Bill the language of the Habitats Directive is used (e.g. 'conservation objectives', 'imperative reasons of overriding public interest), then a similar system of 'appropriate assessment' should be adopted for developments inside MPAs.

- **HEAD 16 (3)** lists some of the criteria under which the Expert Body can provide advice to the minister. This should expressly include 'carbon-rich habitats', the protection of which are

critical in the storage and sequestration of carbon and the avoidance of greenhouse gas emissions. This will include seagrass meadows, kelp forests, salt marshes and carbon-rich sediments. For instance, a 2021 study found that bottom-trawling releases as much carbon dioxide into the environment as the aviation industry[5].

- There is a critical need to assign clear lines of responsibility for the designation, monitoring and enforcement of MPAs. There are a number of agencies which have responsibility for aspects of existing conservation laws in the marine environment including the National Parks and Wildlife Service, the Marine Institute, Inland Fisheries Ireland, the Aquaculture Licences Appeals Board and others. It is essential that clear lines of responsibility are assigned in the legislation to allow for successful implementation. For example, HEAD 19 refers to 'the duties of the management authorities' but does not specific who these are.

- **HEAD 17 (2)** provides for:

  *(x) An assessment report on the performance of the MPAs*

  while **HEAD 19 (c)** states that:

  *The Management Authorities shall… review and monitor and report on such plans to the Minister at such times as he may request*

  **HEAD 26** states that;

  *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.*

  However, there is no requirement to monitor an evaluate the status of conservation objectives within individual MPAs. This is a serious flaw. There must be a requirement for baseline monitoring and reporting, at periodic intervals (we suggest every seven years) so that the effectiveness of designation and management can be assessed. This is a critical element in order to adapt management as necessary.

- **HEAD 20** deals with potential conflicts and or/synergies with EU law. This is of critical importance as the current wording of the Common Fisheries Policy (CFP) Article 11 has been shown to be dysfunctional. We therefore strongly support the intervention of our national government to make robust proposals at EU level for the designation and management of MPAs. Under Article 20 of the CFP member states can unilaterally implement conservation measures within 12nm of the coast.

Thank you for taking the time to consider our observations.

[5] https://www.nature.com/articles/s41586-021-03371-z