

POLICY NOTE

THE PROTECTION OF SEALS (DESIGNATION OF SEAL HAUL-OUT SITES) (SCOTLAND) ORDER 2014

SSI 2014/185

The Protection of Seals (Designation of Seal Haul-out Sites) (Scotland) Order 2014 (“the Order”) is made in exercise of the power conferred by section 117 of the Marine (Scotland) Act 2010 (“the Act”).

Policy Objectives

1. The purpose of the Order is to designate a total of 194 seal haul-out sites around Scotland, where harassing a seal (intentionally or recklessly) will be an offence. The Natural Environment Research Council (NERC), which has a statutory duty to provide scientific advice on seal management, developed the scientific methodology that identified these sites.
2. A haul-out site is a location on land where seals come ashore at times to rest, breed, have pups or moult. Section 117 of the Act, in conjunction with this Order, is designed to offer protection to seals on land, when they are at their most vulnerable.

Legislative Context

3. Section 117 of the Act provides for Scottish Ministers, after consulting NERC, to designate by order haul-out sites, where harassing a seal (intentionally or recklessly) will be an offence.
4. The provisions contained in section 117 of the Act are designed to assist in protecting seals at haul-out sites on land, when they are at their most vulnerable. The Scottish Government considers the designation of specific key haul-out sites to protect seals at their most vulnerable a suitable and proportionate measure. Section 117 is not designed to protect all seals at all times because this would entail risks of preventing the use of non-lethal deterrent measures as an alternative to shooting and of potentially unintended restrictions on wildlife tourism, public access and leisure activities.

Policy Background

5. Scotland has more seals than the rest of the European Union – 100,000 grey seals and a minimum of 21,300 common seals. The story of seal management in Scotland therefore represents a significant example of conservation success and provides the basis for much wildlife tourism around our coasts. Such large numbers of seals, however, inevitably mean that there are some local conflicts between individual seals and fisheries or fish farms which are equally important to our coastal communities.
6. The Scottish Government has already given seals increased protection under the Act by making it an offence to kill or take any seal at any time, except under specific licence or for animal welfare reasons. It is now completing the process of implementation of the Act by introducing this Order.

Consultation

7. As required by section 117 of the Act, the NERC was consulted and its advice has informed the basis for identification of the sites. In addition there was extensive consultation and discussion with a wide range of stakeholders during passage of the Act. This included representatives from a range of marine industries, conservation and welfare non-governmental organisations (“NGOs”) and scientists. In these discussions and the responses received there were no objections from industry to the provisions in section 117 and considerable support from NGOs and scientists.

Nevertheless, a specific consultation on a draft list of 146 haul-out sites resulted in a number of requests mainly from industry for guidance, in particular on definitions of “haul-out”, “harassment” and activity which is considered intentional and reckless. In response, Marine Scotland produced *Guidance on the Offence of Harassment at Seal Haul-out Sites* in consultation with Scottish Natural Heritage, Sea Mammal Research Unit (SMRU) (on behalf of NERC), MS Compliance and the Crown Office. The guidance can be found at: www.scotland.gov.uk/sealhaulouts It also resulted in requests from NGOs for a review of the list and additional sites, particularly grey seal breeding sites. In response, Marine Scotland asked SMRU to review the original list of sites and to further develop their scientific methodology to identify grey seal breeding sites. This resulted in the revised list of 194 seal haul-outs included in the order.

Impact Assessments

8. The effects on equal opportunities, human rights, island communities, local government and sustainable development were considered in relation to the Act. The designated haul-out sites are selected by seals for their isolation from human activity. Of the 194 sites designated, 177 are on isolated and uninhabited islands or coastline and only 17 are nearer some kind of habitation but even then relatively inaccessible below cliffs or just offshore. In addition, the nature of the offence of harassment means that breaches are unlikely except in the most extreme circumstances. The provisions are expected to have a largely positive effect on sustainable development, as they seek to offer an optimum balance between maximising protection for the largest number of seals while minimising possible impacts on other sustainable activities around the coast, such as fisheries, aquaculture and the wildlife tourism, which are equally important for coastal and island communities.

Financial Effects

9. A Business and Regulatory Impact Assessment (BRIA) was produced in relation to the Act. A separate BRIA has not been carried out for this Order since it does not introduce a new policy but rather completes the implementation of section 117 of the Act. The Order has no financial effects on the Scottish Government or the public purse and the instrument is not expected to have any financial impact upon existing businesses. Therefore Scottish Government does not consider a BRIA is required.

Scottish Government
Marine Scotland Directorate

June 2014