

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL TARGETS (MARINE PROTECTED AREAS)
REGULATIONS 2023

2023 No. 94

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to create a legally binding target in the area of biodiversity. The target requires not less than 70% of protected features in marine protected areas (MPAs) to be in favourable condition before the end of 31st December 2042, with the remaining protected features to be in a recovering condition. ‘Protected features’ are the marine habitats and species, geological and geomorphological features and assemblage which are specified for protection in each of the MPAs
- 2.2 This instrument sets a long-term legally binding target environmental target under section 1 of the Environment Act 2021 (“the Environment Act”)

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, along with the other 5 environmental target instruments, sets legally binding targets on the Secretary of State. The instrument does not, in itself, set specific policies or new legislation that sectors must follow nor does it directly impose or require immediate changes of behaviour by others. Given the importance of setting targets without delay, the instrument will come into force at the earliest date after approval (one day after the day it is made).
- 3.2 Under the Environment Act 2021 the statutory deadline to lay this instrument was 31 October 2022. As stated by Dr Thérèse Coffey MP Secretary of State for Environment, Food and Rural Affairs in a [Written Ministerial Statement on 28 October 2022](#): “We received over 180,000 responses [to the environmental targets consultation], which all needed to be analysed and carefully considered. In light of the volume of material and the significant public response we will not be able to publish targets by 31st October, as required by the Act.”

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only. In this instrument, “England” includes the English inshore region and the English offshore region (as defined in regulation 2).

5. European Convention on Human Rights

- 5.1 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Environmental Targets (Marine Protected Areas) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 1 of the Environment Act enables the Secretary of State to set long-term targets with respect to the natural environment and people’s enjoyment of the natural environment.
- 6.2 This instrument utilises this power and is part of a group of instruments that will set targets in air quality, water, resource efficiency and waste reduction, tree and woodland cover and biodiversity
- 6.3 It complements the existing regulatory obligations of public authorities with functions relevant to the protection of MPAs and marine conservation, including the relevant obligations of public authorities under the Marine and Coastal Access Act 2009, the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Habitats and Species Regulations 2017.
- 6.4 The Statutory Nature Conservation Bodies, Natural England and the Joint Nature Conservation Committee (JNCC), advise on the conservation objectives for MPAs and provide the advice on activities occurring in MPAs and in their vicinity that may impact on protected features. The JNCC leads on offshore sites while Natural England leads on the inshore sites.

7. Policy background

What is being done and why?

- 7.1 This instrument supports the marine environment as part of the Environment Act commitment to improve biodiversity by setting a time-bound target for at least 70% of protected features in MPAs to achieve favourable condition before the end of December 2042, with the remainder of protected features to be in recovering condition.
- 7.2 Currently 44% of protected features in MPAs are assessed as being in a favourable condition on the date this instrument is made. Favourable condition means that protected features are in a good and healthy state and aligns with the conservation objectives of the relevant MPAs. Appropriate management of MPAs in line with their conservation objectives will secure achievement of the target.
- 7.3 Regulation 3 of the SI sets the target for the condition of protected features in relevant MPAs, as follows, that: before the end of 31st December 2042 the number of protected features which are in favourable condition within all relevant MPAs is not less than 70% of the total number of all protected features within relevant MPAs, and all other protected features within relevant MPAs are in recovering condition.
- 7.4 Regulation 4 imposes a requirement on Natural England and JNCC to provide, at the request of the Secretary of State for Environment, Food and Rural Affairs, advice needed to enable the Secretary of State to perform functions in relation to the target.

This will include advice in relation to monitoring and assessing progress towards reaching the target and reporting on it.

- 7.5 An assessment of whether features are in recovering condition will be based on whether the necessary measures have been put in place for the removal or management of the site-specific pressures caused by human activities carried out in or in the vicinity of relevant MPAs which have an adverse impact on protected features. It will not include non-site-specific pressures. It will also not include invasive non-native species which are present in or near an MPA to such an extent that it is not reasonably practicable to implement management measures.
- 7.6 Assessing ‘recovering condition’ by checking if damaging activities have been removed or not will identify exactly what rapid remedial action is required by regulators to ensure our MPAs are being properly protected.
- 7.7 Advice will be obtained as necessary from Natural England and JNCC to monitor the target and assess and report on the progress features are making toward favourable condition as required under the Environment Act.
- 7.8 Setting this MPA target reinforces the existing legal obligations of public authorities in relation to MPAs by specifying a time limit by which a specified minimum percentage of protected features in MPAs must achieve favourable condition, with the remaining percentage of protected features being in recovering condition.
- 7.9 The MPA target will be measured through direct condition assessments to measure feature condition. This can either be through direct surveys or vulnerability assessments. Most assessments are currently done through vulnerability assessments that predict the state of a feature based on a mix of evidence including whether activities occurring on it are damaging or not.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This SI does not amend another instrument, so no consolidation is necessary.

10. Consultation outcome

- 10.1 In the consultation, which opened on 16 March 2022 and closed on 27 June 2022, we asked two questions in relation to the proposed target of: 70% of the designated features in the MPA network to be in favourable condition by 2042, with the remainder in recovering condition, and additional reporting on changes in individual feature condition. We received responses that supported greater action to restore the marine environment. Setting a target will ensure our regulators are monitoring protected features and intervening to remove pressures. Over 12,000 responses to our public consultation were received.
- 10.2 We have also removed the reference to ‘additional reporting on changes in individual feature condition’ from the target that we consulted on. Instead, our 5-year interim targets will report on the extent to which pressures such as damaging fishing or recreational activity are removed from MPAs, and therefore the percentage of features in recovering condition.

10.3 The target to achieve favourable condition by 2042 is predicated on implementing management measures to halt or manage damaging activities by 2024. We will report on whether this has been and continues to be achieved through the 5-yearly interim targets.

10.4 A complete summary of how consultation feedback has been considered is available in the Government Response document.

11. Guidance

11.1 As this legislation will be a requirement of government only, there is no need for guidance to be provided. The instrument does not, in itself, set specific policies or new legislation that sectors must follow.

12. Impact

12.1 The impact on public sector, business, charities or voluntary bodies is dependent on policy pathways not prescribed by this instrument but illustrative pathways are set out in the Impact Assessment.

12.2 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Progress towards meeting the MPA target will be monitored through the statutory cycle of monitoring, planning and reporting set out in the Environmental Act.

14.2 The instrument does not include a statutory review clause as the legal obligations in this regard under the Small Business, Enterprise and Employment Act 2015 do not apply.

14.3 HM Government will monitor the progress of protected features towards favourable condition.

14.4 The outcome will be subject to assessments carried out by Natural England and the JNCC every five years. These assessments will typically be based on the removal of pressures in or in the vicinity of the site.

15. Contact

15.1 Ali Ibrahim at the Department for Environment, Food and Rural Affairs. Telephone: 07971110304 or email: ali.ibrahim@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Joly Macleod, Deputy Director for Domestic Marine, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard