

# Joint marine NGO position paper on the Nature Restoration Law

November 2022

The European Commission's landmark proposal for a Nature Restoration Law (NRL) comes at a time of rapidly progressing and mutually reinforcing **triple crises of climate change, biodiversity loss and environmental degradation**. We have pushed the planetary boundaries to the point of **irreversible negative changes to the ecological conditions** in which humanity has thrived for thousands of years and that are key to our survival. European seas must become resilient again if we are to face the challenge of climate change.

The ocean is the largest planetary carbon sink. It stores equivalent amounts of carbon to terrestrial ecosystems and removes around one-third of CO<sub>2</sub> emitted by human activity<sup>1</sup>. Healthy marine ecosystems capture and lock-in carbon, acting as nature-based solutions to climate change. Our marine ecosystems are far from healthy, however. In 2020, the European Environment Agency (EEA) reported a high loss of biodiversity in more than 80% of Europe's seas<sup>2</sup>. Ocean restoration and conservation are key to recovering marine biodiversity and halting the degradation of marine ecosystems. **Restoring EU seas can bring back the sea's abundant web of life, allowing marine and coastal ecosystems to perform their natural functions and support life on Earth. This is a nature-based solution to the climate breakdown**, enhancing ecosystems' resilience and ability to mitigate the effects of droughts, floods, sea-level rises and other extreme weather events.





The **European Green Deal** and the **EU Biodiversity Strategy 2030** clearly **set out the need to harness the high potential of the ocean** through restoration targets. Despite this promising start, **clear, effective and binding targets** are still **lacking**. The proposed **NRL** not only provides European Union (EU) decision-makers with the chance to stand by their commitments and make the EU a leader in achieving global nature conservation targets, but **it can also bring ocean life back to Europe**, benefiting biodiversity, climate and people alike. The NRL is the **most important** nature conservation legislation of the past 30 years, and **one of the last regulatory opportunities to act** in response to the current crises. It marks an urgently needed political shift away from past unsuccessful voluntary approaches towards a legally binding instrument that delivers clear, effective and binding environmental conservation and restoration targets.

### **This political shift requires:**

1. Guarantees that the implementation of other, existing EU laws (e.g. the Common Fisheries Policy (CFP), on which the NRL is reliant to regulate fisheries) will not prevent the delivery of restoration targets in the marine environment. Without such guarantees, ocean restoration will be minimal.
2. Restoration measures in place that will cover at least 20% of European seas by 2030, including significant areas of all marine and coastal habitat types assessed to be not in good condition in Annex II; areas where these habitats have disappeared and must be recreated; and habitats of marine species.
3. Restoration primarily in the form of passive restoration, complemented by active restoration only where passive restoration alone is not sufficient for marine ecosystems to recover in the medium-term; the necessary long-term protections to ensure no deterioration of restored areas.
4. Consistent inclusion of the public in decision-making processes, as a cornerstone of democracy and an essential part of social acceptance and success in implementing restoration measures, especially in and around rural coastal communities.
5. Allocation of sufficient financing and resources to implement the NRL.

Non-governmental organisations (NGOs) specialised in marine conservation have several specific suggestions to address each of these requirements and strengthen the Commission's proposal.

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[1] Friedlingstein, P., Jones, M.W., O'Sullivan, M., Andrew, R.M., Bakker, D.C.E., Hauck, J., Le Quéré, C., Peters, G.P., et al., 'Global Carbon Budget 2021', Earth System Science Data, 2021, 10.5194/essd-2021-386.

[2] European Environment Agency, Marine messages II, EEA Report, 2020.



## 1. OCEAN RESTORATION REQUIRES BETTER CFP IMPLEMENTATION

Commercial fishing is the main threat to marine biodiversity<sup>3</sup>. Where restrictions on fishing activities are required to achieve restoration targets, the proposed NRL relies on the rules set out in the CFP. This ignores the fact that the current process (Joint Recommendations (JRs) under Article 11 of the CFP Regulation) has largely failed to regulate destructive fishing gear inside Marine Protected Areas (MPAs). If ocean restoration is to succeed, effective safeguards must be adopted to harmonise the CFP with the NRL objective to deliver effective fisheries restrictions in restoration areas.



### To improve:

- Where marine restoration requires fisheries management measures through the CFP, Article 12(3) of the NRL must oblige Member States to include completed and agreed JRs in their national restoration plans instead of just their intention to initiate JRs.
- The NRL must provide for situations where JRs are not agreed by the deadlines for submitting national restoration plans. It should require the initiating Member State(s) to unilaterally submit their proposed JRs for restoration purposes to the Commission so as to avoid blockages and delays by other Member States.
- For all areas for which JRs are not adopted by the deadline for national restoration plans, or which are not ambitious enough, the European Commission should adopt straightforward emergency measures for these areas to be restored (i.e., establish a passive restoration area) (pursuant to Article 11(4) and (5) CFP) in order to incentivise Member States to act swiftly. Such measures shall remain in place until the necessary JRs are adopted.

## 2. MORE AMBITIOUS TARGETS TO ENSURE THAT RESTORATION COVERS 20% OF EU SEAS BY 2030

The overall ambition of the NRL to implement effective restoration measures in 20% of EU seas by 2030 is a strong starting point. Similarly positive is that these restoration measures should follow different restoration strategies and target habitats not in good condition, habitats of species, and the re-establishment of habitats that have been lost. Notwithstanding these positives, the specific targets for each of these restoration strategies need to be improved to ensure that they contribute meaningfully to achieving the overall target of 20% of EU seas covered.



### To keep:

- Article 1(2) of the NRL sets overarching objectives that apply to the entire EU to implement restoration measures in 20% of EU land and sea areas by 2030, and for all ecosystems in need of restoration by 2050.
- In addition to the obligation to restore habitats to good condition, the NRL contains targets for the re-establishment of habitats (Article 5(2)); improved connectivity of restoration measures (Article 5(5)); and a non-deterioration obligation (Article 5(6)).
- The NRL includes a set of time-bound targets for specific ecosystems to ensure that they are restored through national restoration plans that each Member State must develop and implement, including a monitoring and reporting system.

[3] [https://ipbes.net/sites/default/files/inline/files/ipbes\\_global\\_assessment\\_report\\_summary\\_for\\_policymakers.pdf](https://ipbes.net/sites/default/files/inline/files/ipbes_global_assessment_report_summary_for_policymakers.pdf)

- Article 5, Annex II and III of the NRL sets a good marine scope for both habitats and species to be restored, going beyond the Birds and Habitats Directives, even if some species are still missing (see below). This will restore several additional key marine habitats, such as blue carbon and soft sediments, central for climate mitigation and adaptation. It will also restore marine species whose population numbers have dramatically fallen because of fisheries (e.g., sharks, rays).



### To improve:

- The overarching restoration target must be understood to cover EU land and sea areas respectively, rather than in combination (i.e. at least 20% of EU land and 20% of EU sea areas by 2030).
- While the overarching objective is set at EU level, each Member State shall contribute in a fair, equitable and proportional manner by putting measures in place on 20% of its national marine territory by 2030 in addition to measures on land.
- Ensure that the target of 20% of EU seas covered by effective restoration measures by 2030 is met and comprises significant and sufficient areas of each marine habitat type identified in Annex II as being not in good condition (Article (5(1)) or as having disappeared (Article (5(2))), as well as the marine habitats of species to restore (Article 5(3)). It is essential to bring the timeline forward and to increase the percentage of restoration targets of Articles 5 (1), (2), and (3).
- Shorten timeline for the finalisation of national restoration plans to two years to ensure sufficient time for the proper implementation of plans to meet the 2030 targets.
- Extend the scope of the marine species and habitats covered in the NRL Annexes to improve the diversity and richness of marine ecosystems, notably by including vulnerable and endangered marine species currently protected under EU laws, Regional Sea conventions (e.g. Barcelona Convention, HELCOM, OSPAR) and international conventions (e.g., Convention on Migratory Species, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) – like European eel, porbeagle, spiny dogfish, thornback ray, common skate or seahorses.
- The provisions on freshwater, coastal and marine ecosystems (Articles 4 and 5) are addressed individually, without explicitly interlinking them nor recognizing the Maritime Spatial Planning Directive to ensure land-sea interactions. The need for functioning migration corridors linking surface water, coastal and marine ecosystems – prerequisites for successful restoration of adjoining ecosystems and for the survival of important migratory species (in particular sturgeon, salmon, or eel) -- are not addressed adequately.

### 3. CONDITIONS OF SUCCESS: LARGE AREAS OF PASSIVE RESTORATION AND EFFECTIVE PROTECTION

Leaving nature undisturbed without any anthropogenic exploitation (passive restoration) is the most beneficial and cost-effective method to restore damaged marine habitats, particularly over large areas. However, some degraded marine ecosystems will not recover in the short or medium-term from the stress of human activities without some form of complementary active restoration. To ensure that restoration results are sustained in the longer term, all restoration measures at sea must be accompanied by effective long-term conservation measures, such as spatial protection. The timeframe for the implementation of the restoration measures should be advanced to meet the EU biodiversity and climate objectives.



#### To keep:

- The non-deterioration obligation (Article 5(6)) as an essential element to ensure the restoration benefits are sustained and that habitats are maintained in good condition in the long term.



#### To improve:

- Specify that all restoration at sea should be primarily achieved by establishing passive restoration areas, including strictly protected areas and other types of management measures that effectively remove human pressures likely to undermine nature restoration – particularly industrial, extractive, destructive and polluting activities – so that ecological processes are left undisturbed and ecosystems can recover naturally. Active restoration should only be used for ecosystems where passive restoration is considered insufficient to restore wildlife.
- Sustain restoration areas and restored ecosystems with effective spatial conservation measures, such as MPAs, which should be surrounded by buffer zones where only low-impact activities are allowed, to ensure non-deterioration and lasting effects of restoration measures.
- Spatial protection measures must include fisheries regulations to avoid destructive fishing (e.g., mobile bottom-contacting gears) inside restoration areas or areas already restored. Failure to do so would be counter-productive to the NRL and simply waste public resources.
- Introduce a specific NRL preventive assessment for any human activity likely to harm restoration areas in order to ensure effective non-deterioration (Article 5(6) NRL).
- Introduce the concept of “whole-site approach” to restoration areas, instead of the typically insufficient “feature-based approach” used to manage protected areas, where only specific features such as rocky reefs or key species are protected. By excluding destructive human activities from the whole restoration site, associated species in the different habitats (e.g. mobile species dependent on healthy bottom features) can colonise and rewild the entire area. This approach has multiple advantages, from increasing climate resilience of marine ecosystems to simplifying management and monitoring.



## 4. EFFECTIVE EU CITIZEN'S INVOLVEMENT IN DECISION-MAKING PROCESSES

The ocean is critically important and we are all responsible for it, as our and future generations depend on its good health. If we are to strengthen our democracy and find a way out of this triple crisis, the role of the public in the decision-making process needs urgent improvement through better and transparent citizen involvement. We demand effective public participation procedures on the development of national restoration plans, including through the already required Maritime Spatial Planning process as well as access to justice to challenge these plans where necessary. To ensure a transparent and successful implementation, the NRL needs to lay down timely and effective reporting requirements.



### To keep:

- The NRL proposal requires Member States to report annually to the Commission on the areas subject to restoration measures, and to report every three years on progress in implementing national restoration plans. This reporting obligation of Member States enhances transparency.
- The NRL proposes to grant EU citizens access to justice by requiring that those with a sufficient interest can challenge the legality of the national restoration plans through a review procedure that is fair, equitable, timely and free of charge (or not prohibitively expensive).



### To improve:

- Routinely publish all reporting information on the website of the European Commission in line with the Aarhus Convention's obligations on transparency and participation of civil society in the decision-making process.
- Introduce a simple early warning report (EWR) to be carried out by the Commission before the deadline for each target. This will assess Member States' progress towards reaching their targets, identify Member States at risk of not attaining the targets by the deadline, and formulate appropriate recommendations to get those Member States back on track.
- Ensure effective public participation procedures for the development of national restoration plans, including a public right to access supporting information (Articles 11(1)-(10) NRL), such as the quantification of areas to be restored. These are essential prerequisites for effective public participation in the development of restoration plans, as well as for potential challenges to restoration plans, thus helping to implement Directive 2003/4 and the Aarhus Convention.



## 5. SOLID FINANCING FOR THE IMPLEMENTATION NRL

Nature restoration plans will fail without suitable and sufficient financing and resources, including for monitoring and enforcement. Member States often fall short of delivering on their budget promises in respect to effectively managing MPAs or implementing their Marine Strategy Framework Directive Programme of Measures, due to a lack of sufficient financing.



### To keep:

- The obligation to include estimated financing needs and resources for restoration measures in national restoration plans helps to ensure that the plans can be fully implemented. This will also prompt Member States to assess the budget implications of their own plans. The information on subsidies negatively affecting the achievement of the targets of the NRL will provide welcome transparency and clear indications on the phasing-out of harmful subsidies.



### To improve:

- To ensure the seamless and effective implementation of the NRL, the legislative proposal should include an obligation for the Commission to assess existing EU funding support available for nature restoration and to explore options to expand these opportunities, for example through the establishment of dedicated funding for nature restoration, pursuant to the mid-term review of the Multiannual Financial Framework.

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