



Foreign &
Commonwealth
Office

FCO CONSULTATION DOCUMENT

CONSULTATION ON WHETHER TO ESTABLISH A MARINE PROTECTED AREA IN THE BRITISH INDIAN OCEAN TERRITORY

A consultation produced by the Foreign and Commonwealth Office.

This information is also available on the FCO website: www.fco.gov.uk, British High Commission Port Louis website: www.ukinmauritius.fco.gov.uk and British High Commission Victoria website: www.ukinseychelles.fco.gov.uk



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Foreword



In March 2009, the Chagos Environment Network* presented their vision of “The Chagos Archipelago: its Nature and the Future” which advocates the creation of one of the world’s greatest natural conservation areas. This is a remarkable opportunity for the UK to create one of the world’s largest marine protected areas and double the global coverage of the world’s oceans benefiting from full protection.

We want to use this consultation to help us assess whether a marine protected area is the right option for the future environmental protection of the British Indian Ocean Territory. This document explains the issue on which we would like your views, and the ways in which you can send them to us. I strongly encourage you to participate in this consultation.

David Miliband
Foreign Secretary

(*includes: Chagos Conservation Trust, The Linnean Society of London, Pew Environment Group, The Royal Society, The Royal Society for the Protection of Birds (RSPB), The Zoological Society of London (ZSL) and the Marine Conservation Society (MCS), Royal Botanic Gardens Kew, Professor Charles Sheppard and many visiting scientists.)

Body Responsible for consultation: Overseas Territories Directorate, FCO

Who should read this document? Anyone with an interest in the British Indian Ocean Territory or the Overseas Territories in general. Anyone with an interest in protection of the environment.

Making your views heard: we are keen to gather all views on environmental protection in the British Indian Ocean Territory and any supporting evidence. You should not feel constrained by the specific question(s) or feel obliged to offer responses to all of them. Concentrate on those in which you have most interest. It would be helpful if you could describe your views, suggestions and experiences when responding, rather than giving “yes” or “no” answers.

How to respond

1. This section outlines the ways in which you can make your views heard.
2. The consultation period will begin on 10 November 2009. It will run until 12 February 2010. There will be meetings in Port Louis, Mauritius and Victoria, Seychelles between 21 January and 9 February (exact dates to be advised later). There will also be a meeting in the UK. These meetings will be organised by an independent facilitator who will record all the views expressed.
3. Alternatively, you are welcome to respond by post or e-mail. Please ensure that your response reaches us by 12 February. If you live overseas and intend to respond by post, please ensure that your response reaches us no later than 12 February. You may respond to this consultation in the following ways:
 - (i) Write to:

BIOT marine protected area consultation
Overseas Territories Directorate
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH
 - (ii) E-mail your response to: biotmpaconsultation@fco.gov.uk
4. Copies of this consultation document can be found at www.fco.gov.uk, the British High Commission Port Louis website: www.ukinmauritius.fco.gov.uk and the British High Commission Victoria website: www.ukinseychelles.fco.gov.uk. This consultation document and the impact assessment will also be available in Creole on the Port Louis website.
5. If you have any general queries about this consultation, please contact: biotmpaconsultation@fco.gov.uk.
6. We have made every effort to bring this consultation to the attention of those with an interest in the British Indian Ocean Territory. The document has been disseminated to a wider audience through website, representative groups, directly to representatives of interested parties/governments/organisations with a known interest. However, if you

think there are other ways that we can increase awareness of the consultation, please do let us know.

Consultation Questions

It would be helpful if you could structure your response to address the question(s) below, but you should not be restricted to these questions. Please send us any information that you feel is relevant to your response.

- 1. Do you believe we should create a marine protected area in the British Indian Ocean Territory?*

If yes, from consultations with scientific/environmental and fishery experts, there appear to us to be 3 broad options for a possible framework:

- (i) Declare a full no-take marine reserve for the whole of the territorial waters and Environmental Preservation and Protection Zone (EPPZ)/Fisheries Conservation and Management Zone (FCMZ); or*
 - (ii) Declare a no-take marine reserve for the whole of the territorial waters and EPPZ/FCMZ with exceptions for certain forms of pelagic fishery (e.g., tuna) in certain zones at certain times of the year.*
 - (iii) Declare a no-take marine reserve for the vulnerable reef systems only.*
- 2. Which do you consider the best way ahead? Can you identify other options?*
 - 3. Do you have any views on the benefits listed at page 11? What importance do you attach to them?*
 - 4. Finally, beyond marine protection, should other measures be taken to protect the environment in BIOT?*

When you are responding, please state whether you are an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please state the name of the organisation, your role within it and how the views of members were assembled.

What will happen next?

We will not be able to consider any responses received after 12 February. We will then assess the evidence and opinions received, and we will publish a summary report soon after that. We expect to announce a decision on whether to establish a Marine Protected Area in early April 2010.

Confidentiality

The information you send us may be passed to colleagues within the Foreign and Commonwealth Office or the facilitator appointed by FCO to analyse responses to this consultation, and published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by

your organisation's IT system, unless you specifically include a reference to the contrary in the main text of your submission to us.

If you want your name and address to be kept confidential, please mark this clearly at the top of your response. (*Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.*)



SCOPE

Any declaration of a Marine Protected Area in the British Indian Ocean Territory would be made by the BIOT Commissioner and not by the UK Government. Although the BIOT Commissioner is not bound by UK Government guidelines on public consultation, the Foreign Secretary has decided that there is sufficient international and public interest related to this proposal to merit such a consultation.

This consultation is in response to the proposal of the Chagos Environment Network: “The Chagos Archipelago: its Nature and Future” (www.chagos-trust.org) which recommends the establishment of a conservation area in the British Indian Ocean Territory. The purpose of this consultation is to seek views from stakeholders and interested parties on this proposal.

Any decision to establish a marine protected area would be taken in the context of the Government’s current policy on the Territory, following the decision of the House of Lords in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61 that the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004 are lawful; i.e., there is no right of abode in the Territory and all visitors need a permit before entering the Territory. Access to a part of the Territory is also restricted under our Treaty obligations with the US. It is the Government’s provisional view, therefore, that we would not establish a permanent research facility in any part of the Territory. Any decision to establish a marine protected area would not affect the UK Government’s commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes.

This consultation and any decision that may follow for the establishment of a marine protected area are, of course, without prejudice to the outcome of the current, pending proceedings before the European Court of Human Rights (ECtHR). This means that should circumstances change, all the options for a marine protected area may need to be reconsidered.

An Impact Assessment has been written for this proposal and can be found at Annex A.

SUMMARY OF QUESTIONS

1. *Do you believe we should create a marine protected area in the British Indian Ocean Territory?*

If yes, from consultations with scientific/environmental and fishery experts, there appear to be 3 broad options for a possible framework:

- (iv) Declare a full no-take marine reserve for the whole of the territorial waters and Environmental Preservation and Protection Zone (EPPZ)/Fisheries Conservation and Management Zone (FCMZ); or*
 - (v) Declare a no-take marine reserve for the whole of the territorial waters and EPPZ/FCMZ with exceptions for certain forms of pelagic fishery (e.g., tuna) in certain zones at certain times of the year.*
 - (vi) Declare a no-take marine reserve for the vulnerable reef systems only.*
2. *Which do you consider the best way ahead? Can you identify other options?*
 3. *Do you have any views on the benefits listed at page 11? What importance do you attach to them?*
 4. *Finally, beyond marine protection, should other measures be taken to protect the environment in BIOT?*

BACKGROUND

“One of the most precious, unpolluted, tropical ocean environments left on Earth” – Chagos Conservation Trust.

The British Indian Ocean Territory (BIOT - also known as the Chagos Archipelago) is situated in the middle of the Indian Ocean and is made up of about 55 tiny islands in over half a million square kilometres of ocean. The Great Chagos Bank is the world’s largest atoll. The islands, reef systems and waters of BIOT in terms of preservation and biodiversity are among the richest on the planet and it contains about half of all the reefs of this ocean which remain in good condition. There are about 10 Important Bird Areas (IBAs). It has the Indian Ocean’s most dense populations of several seabird species. It also has remnants of Indian Ocean island hardwoods. It also contains exceptional numbers of coconut crabs and undisturbed and recovering populations of Hawksbill and Green Turtles.

This massive area has already been declared an Environmental (Preservation and Protection) Zone with legislation in place to protect these natural resources which include strict controls over fishing, pollution (air, land and water), damage to the environment, and the killing, harming or collecting of animals. Some of the most important land and sea areas have already been set aside for additional protection. Most of the lagoon areas and a large part of the land area of Diego Garcia are protected as Restricted Areas, four Special Conservation Areas and a Nature Reserve. Strict Nature Reserves cover the land and surrounding reefs and waters of the islands of the Great Chagos Bank and a large part of Peros Banhos Atoll.

The Territory is also subject to further levels of internationally binding legal protection. This includes the designation of part of Diego Garcia as a Wetland of International Importance under the Ramsar Convention; the Whaling Convention (including an Indian Ocean Whale Sanctuary); the Law of the Sea Convention (with provisions to protect fish stocks); the Indian Ocean Tuna Commission; CITES (regulating trade in wildlife, including corals); and the Bonn Convention (with provisions to protect marine turtles and cetaceans).

So with all this protection already in place, what would be the added value of creating a marine protected area? Taking into account the findings of the workshop “Marine conservation in the British Indian Ocean Territory (BIOT): science issues and opportunities” held 5-6 August 2009 at the National Oceanography Centre Southampton and supported by the NERC Strategic Ocean Funding Initiative (SOFI) www.oceans2025.org the FCO’s view is that:

- There is sufficient scientific information to make a convincing case for designating most of the Territory as a marine protected area (MPA), to include not only protection for fish-stocks but also to strengthen conservation of the reefs and land areas.
- The justification for MPA designation is based primarily on the size, location, biodiversity, near-pristine nature and health of the coral reefs, likely to make a significant contribution to the wider biological productivity of the Indian Ocean. It would have a wide diversity of unstudied deepwater habitats.
- There is high value to scientific/environmental experts in having a minimally perturbed scientific reference site, both for Earth system science studies and for regional conservation management.

- MPA designation would be consistent with existing BIOT conservation policies, providing a very cost-effective demonstration of the UK Government's commitment to environmental stewardship and halting biodiversity loss.
- There is growing scientific support for establishing large scale marine reserves to protect fish stocks (which has already led the United States of America to create two Marine National Monuments) and there is growing scientific evidence of the global significance of BIOT as a pelagic/archipelagic eco system.
- MPA designation for BIOT would safeguard around half the high quality coral reefs in the Indian Ocean whilst substantially increasing the total global coverage of MPAs. If all the BIOT area were a no-take MPA, it would be the world's largest site with that status, more than doubling global coverage with full protection.
- In addition, the fisheries in the BIOT are currently a loss-making business for the British Indian Ocean Territory Administration. The average yearly income from the purse-sein/long line fishery is usually between £700,000 to £1 million. Only one company presently fishes on the reefs (inshore fishery) and this brings in only a very small income to BIOT Administration. The income from fishing is ploughed back into the running costs of the BIOT Patrol Vessel, the Pacific Marlin. But the income does not meet the entire costs of running the vessel. Consequently the Administration's costs have to be subsidised from the FCO's Overseas Territories Project Fund.

We have the opportunity here to preserve BIOT's unique environment. While the main focus of this consultation is whether to create a marine protected area in the first instance, we would also like your views on a possible framework for the fisheries. We have identified 3 options:

1. Declare a full no-take marine reserve for the whole of the territorial waters and EPPZ/FCMZ; or
2. Declare a no-take marine reserve for the whole of the territorial waters and EPPZ/FCMZ with exceptions for certain forms of pelagic fishery (e.g., tuna) in certain zones at certain times of the year.
3. Declare a no-take marine reserve for the highest value waters (i.e., the reef systems) only.

You may have other ideas and we would be interested to hear them.

We are aware that some marine parks are established and some end up being "paper parks" that is the area is declared as a marine protected area but nothing more happens. If the decision is taken to go ahead with the marine protected area in BIOT, we would need to develop an administrative framework from within the British Indian Ocean Territory Administration to oversee the Management of the MPA.

IMPACT/COSTS & BENEFITS

Costs

The cost of actually declaring a marine protected area in BIOT is nil.

However, if a decision is taken to move to a no-take fishery, then additional cost to the public purse of around £1 million per annum will be incurred. This is because of the need to maintain the BIOT patrol vessel which currently performs surveillance duties in the FCMZ. The annual cost of running the vessel is about £1.7 million (including fuel costs). This is at present offset by a fishing licence income varying between £700,000 and £1 million per year. Costs not offset by income are met by a subsidy from the Overseas Territories Programme Fund.

Global studies of the economic benefits of coral reefs estimate their value to be about \$100,000 - \$600,000 per square km per year. This should be compared with current protection costs in BIOT of \$5 per sq km per year.

Benefits

The benefits of a marine protected area were considered by the Chagos Environment Network in their brochure: www.chagos-trust.org and by the National Oceanography Centre workshop: www.oceans2025.org and include:

Conservation benefits: in recent years scientists and environmentalists have stressed the value of a large-scale ecosystem approach to conservation. For geographical, economic and political reasons there are few places where this is possible. BIOT is a place where it is possible. While recognising that it is a contentious subject, the fact is that the absence of a settled human population, the strict environmental regime and the minimal footprint of the military base have enabled a high level of environmental preservation to have occurred.

Climate Change benefits: BIOT has a special and growing significance in climate change science as a “control” against which to measure changes in the marine environment elsewhere. This could be guaranteed by extra protection under a marine protected area. Its location would also fill the large gap in global coverage for automated measurements of various important atmospheric and ocean parameters.

Scientific benefits: BIOT offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change. These are core research issues for UK science.

Development benefits: although at early stages of research at present, scientists advise us that BIOT is likely to be key, both in research and geographical terms, to many issues of:

- Providing an unpolluted reference site, and one which is almost entirely unaffected by man’s direct impacts;
- As a source site, or reserve, for many species heavily exploited in most other areas of the Indian Ocean, especially those down current (which is the Western Ocean and African coast);

- For examination of the effects of climate change which, in most other places, is confounded by man's direct impacts and pollution;
- Provision of an "environmental insurance policy" whose size would ensure integrity in the way that smaller reserves cannot;
- Address a shortcoming in the global network of properly protected marine reserves (most being too small, damaged or far apart to function effectively);
- Provide a scientific benchmark and natural laboratory which will contribute to our understanding of the processes that collectively create climate change and to our ability to manage the threats it poses; and
- To increase our ability to manage degradation in other locations of the Indian Ocean.

Enshrining these characteristics of BIOT in a legal framework will ensure the area can continue to provide its vital functions and services.

Impact

As well as the international fishing community, there are some groups who will be directly or indirectly affected by the establishment of a marine protected area and any resulting restrictions or a ban on fishing.

US

The US has a military base on Diego Garcia. The use of that facility is governed by a series of Exchange of Notes between the UK and US and imposes Treaty obligations on both parties. Because of our Treaty obligations, we have been discussing the possible creation of a marine protected area with the US. Neither we nor the US would want the creation of a marine protected area to have any impact on the operational capability of the base on Diego Garcia. For this reason, it may be necessary to consider the exclusion of Diego Garcia and its 3 mile territorial waters from any marine protected area. This would be a total of 470 km sq out of the total proposed MPA area of 544,000 sq km. The existing environmental protection on Diego Garcia which includes a large Ramsar site and several Strict Nature Reserves and other conservation regulations such as those that affect turtles will not be affected by this exclusion.

Mauritius

We have discussed the establishment of a marine protected area with the Mauritian government in bilateral talks on the British Indian Ocean Territory - the most recent being in July 2009 (see communiqué of the meeting held in Port Louis at Annex C). The Mauritian government has in principle welcomed the concept of environmental protection in the area. The UK government has confirmed to the Mauritians that the establishment of a marine protected area will have no impact on the UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes. We will continue to discuss the protection of the environment with the Mauritians.

Chagossian community

Following the decision of the House of Lords in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61 on 22 October 2008 (for full judgment see www.publications.parliament.uk), the current position under the law of BIOT is that there is no right of abode in the Territory and all visitors need a permit. Under these current circumstances, the creation of a marine protected area would have no direct immediate impact on the Chagossian community. However, we recognise that these circumstances may change following any ruling that might be given in the proceedings currently pending before the European Court of Human Rights in Strasbourg in the case of *Chagos Islanders v UK*. Circumstances may also change when the Territory is ceded to Mauritius. In the meantime, the environment will be protected and preserved.



CODE OF PRACTICE ON CONSULTATION

The Seven Consultation Criteria

1. When to consult: formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises: consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact: consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercises: consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation: keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises: consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult: officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.
8. The full text of the Government Code of Practice on Consultation can be found at: www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html.
9. If you consider that this consultation does not comply with the criteria or have comments about the consultation process, please contact:

Consultation Coordinator
Overseas Territories Department
Foreign & Commonwealth Office
King Charles Street
London
SW1A 2AH

Or

E-mail address : biotmpacoordinator@fco.gov.uk

JOINT COMMUNIQUÉ

Delegations of the Mauritian and British Governments met in Port Louis on Tuesday 21 July 2009 for the second round of talks on Chagos Archipelago/British Indian Ocean Territory. The Mauritian delegation was led by Mr S C Seeballuck, Secretary to Cabinet and Head of the Civil Service. The British delegation was led by Mr Colin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office. The purpose of the meeting was to resume dialogue between Mauritius and the United Kingdom on the Chagos Archipelago/British Indian Ocean Territory.

Both delegations reiterated their respective positions on sovereignty and resettlement as expressed at the first round of talks held in London on 14 January 2009.

The British side provided an update on developments regarding the proceedings before the European Court of Human Rights.

Both delegations were of the view that it would be desirable to have a coordinated submission for an extended continental shelf in the Chagos Archipelago/British Indian Ocean Territory region to the UN Commission on the Limits of the Continental Shelf, in order not to prejudice the interest of Mauritius in that area and to facilitate its consideration by the Commission. It was agreed that a joint technical team would be set up with officials from both sides to look into possibilities and modalities of such a coordinated approach, with a view to informing the next round of talks.

The British delegation proposed that consideration be given to preserving the marine biodiversity in the waters surrounding the Chagos Archipelago/British Indian Ocean Territory by establishing a marine protected area in the region. The Mauritian side welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The UK delegation made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the proceedings at the European Court of Human Rights.

The Mauritian side reiterated the proposal it made in the first round of the talks for the setting up of a mechanism to look into the joint issuing of fishing licences in the region of the Chagos Archipelago/British Indian Ocean Territory. The UK delegation agreed to examine this proposal and stated that such examination would also include consideration of the implications of the proposed marine protected area.

Both sides agreed to meet in London on a date to be mutually agreed upon during the first fortnight of October 2009.

Both Governments agreed that nothing in the conduct or content of the present meeting shall be interpreted as:

- (a) a change in the position of Mauritius with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

- (b) a change in the position of the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;
- (c) recognition of or support for the position of Mauritius or the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;
- (d) no act or activity carried out by Mauritius, United Kingdom or third parties as a consequence and in the implementation of anything agreed to, in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of Mauritius or the United Kingdom regarding sovereignty of the Chagos Archipelago/British Indian Ocean Territory.

Port Louis
Mauritius

21 July 2009

UK POLICY ON MARINE PROTECTED AREAS

The UK Administrations intend to establish an ecologically-coherent network of marine protected areas (MPAs) within the whole of UK waters in order to fulfil its international obligations, and to contribute to its policy intentions for the sustainable management of the marine environment.

The MPA network will play a key part in delivering our vision of clean, safe, healthy, productive and biologically diverse oceans and seas.

The MPA network will primarily consist of Marine Conservation Zones (MCZs) designated under the Marine and Coastal Access Bill and European marine sites designated under the EC Wild Birds and Habitats Directives (Natura 2000 sites). European marine sites include two types of designated areas: Special Areas of Conservation (SAC) and Special Protection Areas (SPA). SACs are designated under the EC Habitats Directive and SPAs are classified under the EC Wild Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds).

Natural England (NE), Joint Nature Conservation Committee (JNCC) and Department for Environment Food and Rural Affairs (Defra) are working in partnership to implement the selection and designation of MCZs across the Defra marine area (English territorial waters and offshore waters adjacent to England, Wales and Northern Ireland).

NE and JNCC have established four regional MCZ projects that will bring stakeholders (including regional, national and relevant international) into the MCZ decision-making process from an early stage.

Finding Sanctuary has been a flagship project set up to identify Marine Conservation Zones in the South West. Based on the Finding Sanctuary model, we have asked Natural England and the JNCC to establish similar stakeholder-led MCZ projects for 3 other project areas around our coast which are now underway.

The UK remains committed to an MPA network that delivers our conservation needs while also minimising socio-economic impacts and maximising the benefits. Sites will have different levels of protection depending on conservation objectives and the sensitivity of features being protected. In some cases this will mean that there will be sites which will require high levels of protection.

OSPAR is the mechanism by which fifteen Governments of the western coasts and catchments of Europe, together with the European Community, cooperate to protect the marine environment of the North-East Atlantic.

In 2003 the OSPAR Commission agreed a work programme on Marine Protected Areas with the purpose of ensuring that by 2010 there is an ecologically coherent network of well managed marine protected areas for the maritime areas of the OSPAR network. This required each Contracting Party to:

- a) Consider whether any areas within its jurisdiction justify selection as marine protected areas under the criteria set out in the identification and selection guidelines and, if so,
- b) Report to the OSPAR Commission the areas that it has selected as components of the OSPAR Network of Marine Protected Areas.

A Marine Protected Area (MPA) as defined by OSPAR is “an area within the [OSPAR] maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment” (OSPAR 2003 Annex 9 A-4.44a).

The UK is committed to the OSPAR work programme on Marine Protected Areas with the purpose of ensuring that by 2010 there is an ecologically coherent network of well managed marine protected areas for the maritime areas of the OSPAR network.

