

External Affairs and Additional Legislation Committee: Environment and Marine

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Implications of Brexit for the Marine Environment

The decision by the UK to leave the EU has important implications for the future management of the UK's marine environment.

Two reports^{1,2} from the Institute for European Environmental Policy (IEEP) explore the possible implications for UK environmental policy and regulation following Brexit. IEEP notes that the implications would vary depending on the nature of the future relationship between the UK and the EU. In particular there is a key distinction in the UK's obligations depending on whether the UK finds itself inside or outside of the Single Market, which is currently uncertain. It is also important to note that the timing of any changes is uncertain and could take a number of years to complete. For example, HM Government³ suggests the process could take a decade or more to complete.

If the UK negotiates membership of the European Economic Area (EEA) and thus remains part of the Single Market (Inside Single Market option), such membership is likely to require that the UK continues to comply with the great majority of environmental legislation as set out in Annex XX to the EEA Agreement⁴. Two important exceptions to this would be the Bathing Waters Directive and Birds and Habitats Directives. Nor would the Common Fisheries Policy (CFP) continue to apply.

Under circumstances where there was no special bilateral agreement with the EU and no preferential access to the Single Market (Outside Single Market option), EU environmental laws would no longer apply. However, UK companies wishing to export into the EU would continue to need to comply with requirements of that market (including environmental requirements)⁵.

Should it be decided that the Birds and Habitats Directive provisions were to be repealed in the UK, it is possible that the designation and management of SPAs and SACs and the management of Ramsar sites overlapping with the marine environment could be maintained under the Marine & Coastal Access Act (MCAA) (and equivalent devolved administration) MPA provisions. This could also extend to the designation and management of terrestrial portions of such sites in accordance with s118(4) of MCAA.

¹ http://www.ieep.eu/assets/2000/IEEP_Brexit_2016.pdf

² http://www.ieep.eu/assets/2016/IEEP_2016_Brexit_-_Implications_for_UK_Environmental_Policy_and_Regulations.pdf

³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf

⁴ <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf>

⁵ <http://www.abpmer.co.uk/media/1491/white-paper-brexit-implications-for-marine-environment.pdf>

Wider Marine Context

Brexit is occurring against a backdrop of ongoing change affecting the marine environment. This includes implementing EU directives such as the Water Framework Directive, Marine Strategy Framework Directive and the reformed Common Fisheries Policy as well as implementing the marine planning and marine protected area provisions of the MCAA 2009. However, notwithstanding the plethora of EU environmental directives and the MCAA, progress in achieving the government's vision of clean, healthy, safe, productive and biologically diverse oceans and seas⁶ is mixed. Significant progress has been made in achieving reductions in marine pollution from point source discharges but diffuse pollution still adversely affects some parts of Welsh coastal waters⁷. Limited progress has been made in recovering fish stocks⁸ and there are many examples of continuing decline in marine biodiversity⁹.

The Natural Capital Committee's (NCC) third report¹⁰ sets out recommendations to achieve the UK government's vision, expressed in the 2011 White Paper 'The Natural Choice'¹¹ to be '*the first generation to leave the natural environment in a better state than it inherited*'. In particular, the NCC's report called for a 25 year plan to enhance natural capital. The Government's response to the NCC report¹² accepted the need for a 25 year plan, the production of which is being led by Defra. However, while the importance of the concept of natural capital is widely recognised, it currently has little weight in marine decision-making, in large part because the specific requirements of environmental directives take precedence in decision-making processes. For example, in its first report the NCC called for greater consideration of the ecosystem approach in decision-making under the Wild Birds and Habitats Directives but this has not progressed because current (prescriptive) interpretations of those directives do not allow such consideration.

There are different perspectives on the benefits of EU environmental directives, with UK Environment Minister George Eustice MP suggesting that Brexit would free the UK from '*spirit-crushing*' green directives¹³. In contrast conservation bodies and environmental NGOs have regularly expressed concerns about the potential consequences of any relaxation of environmental directives, for example during the UK review of the implementation of the Birds and Habitats Directives¹⁴ and the EU Fitness Check¹⁵.

Boyes & Elliott (2014)¹⁶ note that there are over 200 pieces of EU legislation that have direct repercussions for marine environmental policy and management. Their paper presents a 'horrendogram' representing the relationships between national, UK, EU and international legislation

⁶ <https://www.gov.uk/government/news/uk-marine-policy-statement-published>

⁷ <https://naturalresources.wales/water/quality/river-basin-management-plans-published/?lang=en>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69632/pb13860-marine-strategy-part1-20121220.pdf

⁹ <http://www.eea.europa.eu/soer>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516725/ncc-state-natural-capital-third-report.pdf

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462472/ncc-natural-capital-gov-response-2015.pdf

¹³ <http://www.theguardian.com/politics/2016/may/30/brexit-spirit-crushing-green-directives-minister-george-eustice>

¹⁴ http://www.rspb.org.uk/forprofessionals/policy/planning/habitats_regulations.aspx

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http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/public%20consultation_FINAL.pdf

¹⁶ Boyes, S.J. & Elliott, M., 2014. Marine legislation – The ultimate 'horrendogram': International law, European directives & national implementation. Volume 86, Issues 1–2, Pages 39–47.

relevant to the marine environment and notes the complexity and amount of legislation. If we were starting again, we would not start here.

Brexit as an opportunity?

While many commentators consider that the environmental directives have served us well in driving environmental improvement, it is also clear that environmental objectives for the marine environment are not being consistently met.

Depending on the form that Brexit takes, it could provide an opportunity for fresh thinking about how the current legal and policy framework could be adapted to better support achievement of environmental objectives.

In particular, a radical option might be to place maintenance and enhancement of natural capital at the centre of any system of the marine environmental legal and policy framework to ensure that all marine environmental decision-making contributed to this objective. Such a system could work on the basis of marine developers and activities contributing to a regional fund that would then be used to deliver projects to enhance natural capital within a regional sea area. The fund could be used to deliver strategic scale projects that make a demonstrable contribution to natural capital rather than the current piecemeal approach.

Such a system would still need environmental standards (such as WFD standards) and continued monitoring of the health of our seas but the current issues associated with '*death by a thousand cuts*' could be addressed, with exciting potential to make a significant positive contribution to enhancing natural capital.