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Policy

*Legal Frameworks For
The Establishment And
Implementation Of UK
And European Marine
Protected Areas*

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1. Introduction and Overview



In its 25th report to Parliament in December 2004, the Royal Commission on Environmental Pollution described the impact of fishing on the marine environment as ‘the greatest individual threat to the environment in the seas around the UK’ (RCEP, 2004:21) and called for a network of no-take Marine Protected Areas (MPAs) amounting to 30% of the UK’s Exclusive Fishing Zone (EFZ).¹ When the RCEP report was released, Ben Bradshaw (then Minister for Nature Conservation and Fisheries) stated in the press that preserving marine life was ‘the second biggest environmental challenge the world faces after climate change’.²

In recent years, there has been growing impetus at the international level for the establishment of networks of MPAs in order to address this threat (see Table 1, below). The Plan of Implementation put forward by the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg called for a representative network of MPAs to be established by 2012,³ a goal reiterated in 2003 at the IUCN World Parks Congress with a further commitment to strictly protect at least 20-30% of each habitat type, i.e. closed to all forms of extractive use.⁴ Given that only 0.04% of the world’s oceans are currently designated as MPAs and an even smaller fraction, 0.01%, are no-take MPAs, such an expansion poses a substantial challenge (Jones, 2006a; Pauly et al., 2002).

Table 1 Recent international initiatives for networks of Marine Protected Areas applicable in the North East Atlantic

CONFERENCE	GOAL	SCOPE	YEAR
World Summit on Sustainable Development (Rio +10), Johannesburg	Network by 2012	Global	2002
IUCN World Parks Congress, Durban	Network by 2012, 20-30% strictly protected	Global	2003
OSPAR/HELCOM Bremen Statement	Network by 2010	Regional	2003
CBD 7 th Conference of Parties, Kuala Lumpur	Network by 2012	Global	2004

(From De Santo and Jones, 2007a:2)

Also in 2003, a joint Ministerial meeting of the Helsinki and OSPAR Commissions held in Bremen resulted in a work programme aimed at designating a network of inshore and offshore MPAs by 2010.⁵ In 2004, the WSSD commitment was reinforced at the seventh Conference of Parties to the Convention on Biological Diversity (CBD) in Kuala Lumpur, with a target to establish by 2012 (in the marine realm, and by 2010 terrestrially) a global network of ‘comprehensive, representative and effectively managed national and regional protected areas’.⁶

Although it has yet to pass a moratorium on deep-sea trawling, the United Nations General Assembly (UNGA) issued Oceans and the Law of the Sea Resolutions⁷ in 2003-2007 urging the international community to take immediate action towards the conservation and sustainable use of marine resources in areas beyond national jurisdiction. At the November 2004 World Conservation Congress in Bangkok, the IUCN called on the UNGA to place an interim ban on bottom trawling on the high seas in 2005 until a legally binding management regime is established to conserve deep-sea biodiversity from fishing impacts. The IUCN also recommended that the UN call for a similar interim ban in 2006 in areas covered by Regional Fisheries Management Organizations (RFMOs) until management frameworks are in place. These efforts have been undermined by nations with strong fishing interests and unwilling to place restrictions on high seas activities, such as Iceland, and the UN trawling moratorium is at present considered to be ‘dead in the water’.⁸

In the European Community (EC)⁹, following three years of consultation, the European Commission tabled a draft Marine Strategy Directive¹⁰ in 2005, aimed at achieving a 'good environmental status' for European marine waters by 2021. The Directive has since been adopted by the EC institutions and will come into force during the first half of 2008. The European Commission also recently published an EU Maritime Policy, in 10 October 2007, and a detailed Action Plan¹¹ which contains 30 actions, most of which should be implemented in 2008 and 2009. As regards the Marine Strategy Directive, a coalition of non-governmental organizations (NGOs) had pointed out that the proposed Directive fell short of the ambitious targets set out in earlier drafts and the definition of 'good environmental status' remains unclear. If the Marine Strategy Directive is to serve as a pillar in support of the EU Maritime Policy, this definition needs to be uniform across Member States to prevent duplication and promote synergy between the two European initiatives.¹²

The primary legal instruments available to the EC to address fisheries management and marine nature conservation are, respectively, the Common Fisheries Policy (CFP) and the Habitats, Birds, Water Framework and now Marine Strategy Directives.¹³ While the CFP is managed under the Directorate General for Fisheries and Maritime Affairs (now called DG Mare), the nature conservation Directives are under the responsibility of the Directorate General for the Environment (DG Environment). This bifurcation has its roots in the Treaty on European Union, where fisheries management is addressed under the Agriculture Title (Articles 32-38, formerly 38-46), and environmental management lies within the Environment Title (Articles 174-5). Both the CFP and the nature conservation Directives impose binding obligations on Member States, the CFP in the form of Regulations and Decisions, and the nature conservation Directives via the requirement on Member States to transpose the Directives into their national legislation. From a legal standpoint, a key issue arises from this situation: given the jurisdictional

separation between fisheries management issues controlled by DG Mare on the one hand and nature conservation under the auspices of DG Environment on the other, how can a Member State of the EC address overlapping nature conservation issues that occur as a result of the activities of EC fishing vessels?¹⁴

This paper examines existing global, regional and EC legislation relevant to the application of MPAs in European waters. On the domestic level, the UK is examined as a case study, having implemented the first MPA in offshore European waters surrounding the Darwin Mounds cold-water coral area 100 nautical miles (nm) northwest of Scotland, within the UK's EFZ. Following a Greenpeace campaign to halt oil and gas industry activity in UK offshore waters, in November 1999 an English High Court ruling commonly referred to as the 'Greenpeace Judgment'¹⁵ interpreted the EC Habitats Directive to apply out to the limit of the UK's 200nm EFZ. Consequently the UK is now required to protect species and habitats in this area, and has since been revising its national implementation legislation, the 1994 Conservation (Natural Habitats, etc.) Regulations, to include not only its EFZ but the entire continental shelf over which the UK exercises sovereign rights.¹⁶ It is worth noting that further interpretation at EU level has resulted in the Directive being applied to the EEZs and continental shelf areas, where they fall within the jurisdiction of EU Member States.¹⁷

The UK has put forward proposals to the European Commission for designating the Darwin Mounds and a few other offshore marine sites as candidate Special Areas of Conservation (SACs) under the Habitats Directive. However this process and the revision of the UK's Conservation (Natural Habitats, etc.) Regulations has been delayed and the European Commission recently took the UK to court for, *inter alia*, not having properly implemented its Regulations in the offshore zone.¹⁸

2. Global Conventions and Initiatives



On global environmental issues, the most common form of legal instrument are treaties (also referred to as conventions, accords, agreements and protocols), which may either contain all the binding obligations expected to be negotiated or may be followed by a more detailed legal instrument elaborating on its norms and rules. If a convention is negotiated in anticipation of further elaborating texts (i.e. protocols), it is termed a framework convention (Chasek *et al.*, 2006:19). Framework conventions usually establish a set of general principles, norms and goals for cooperation on an issue (including a regular Conference of Parties (COP)) rather than imposing binding obligations. Instead, the protocols subsequently negotiated under the framework convention set out specific obligations of parties (e.g. the Kyoto Protocol of the United Nations Framework Convention on Climate Change).

Non-binding agreements such as codes of conduct and plans of action, are termed 'soft law' and can also be viewed as regimes, though with varying degrees of effectiveness in attaining their goals. Non-binding agreements do influence state behavior to some extent, however legally-binding obligations related to environmental protection tend to be more effective.

The international legal regime for protecting marine species and habitats involves both global and regional rules. These regimes can be further broken down into those that address species protection versus those that focus on habitat protection, and/or a combination of the two.¹⁹ With regard to habitat conservation, protected area conventions fall into two types: those that provide for geographic areas to be defined where activities may be prohibited or restricted, and those that prohibit or regulate a narrow range of activities and provide for the identification of areas particularly sensitive to these activities where more stringent protection applies (Kimball, 2001).

On the global level, there are three conventions/programs that define geographical areas for special protection. Two of these cover a wide range of areas, the 1972 World Heritage Convention²⁰ and the 1971 Man and the Biosphere Program.²¹ The third focuses on wetlands, the 1971 Ramsar Convention.²² Three global framework conventions directly applicable to the conservation of biodiversity in the European marine offshore environment are the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1983 United Nations Law of the Sea Convention (UNCLOS), and the 1992 Convention on Biodiversity (CBD). In addition, relevant international forums that addressed offshore MPAs worth mentioning in this section include the 2002 Johannesburg World Summit on Sustainable Development (WSSD) and the 2003 IUCN World Parks Congress held in Durban, South Africa. The following section goes into more detail on some of these global framework conventions and initiatives.

Table 2 lists European parties to the global and regional conventions, some of which are discussed in the next two sections of this paper. The table was compiled from Convention membership lists as of 2007.

Table 2 European parties to global/regional conventions

EC Members 2007	CITES	UNCLOS	CBD	CMS	Bern	OSPAR	NEAFC	HELCOM	Barcelona
<i>Austria</i>	Acc	X,I,S	X	X	X	--	--	--	--
<i>Belgium</i>	X	X,I,S	X	X	X	X	--	--	--
<i>Bulgaria</i>	Acc	X,I,S	X	X	X	--	--	--	--
<i>Cyprus</i>	X	X,I,S	X	X	X	--	--	--	X
<i>Czech Republic</i>	Succ	X,I	Apv	X	X	--	--	--	--
<i>Denmark</i>	X	X,I,S	X	X	X	X	X	X	--
<i>Estonia</i>	Acc	X,I,S	X	--	X	--	--	X	--
<i>Finland</i>	Acc	X,I,S	Acp	X	X	X	--	X	--
<i>France</i>	App	X,I,S	X	X	X	X	--	--	X
<i>Germany</i>	X	X,I,S	X	X	X	X	--	X	--
<i>Greece</i>	Acc	X,I,S	X	X	X	--	--	--	X
<i>Hungary</i>	Acc	X,I	X	X	X	--	--	--	--
<i>Ireland</i>	X	X,I,S	X	X	X	X	--	--	--
<i>Italy</i>	X	X,I,S	X	X	X	--	--	--	X
<i>Latvia</i>	Acc	X,I	X	X	X	--	--	X	--
<i>Lithuania</i>	Acc	X,I	X	X	X	--	--	X	--
<i>Luxembourg</i>	X	X,I,S	X	X	X	X	--	--	--
<i>Malta</i>	Acc	X,I,S	X	X	X	--	--	--	X
<i>Netherlands</i>	X	X,I,S	Acp	X	X	X	--	--	--
<i>Poland</i>	X	X,I,S	X	X	X	--	--	X	--
<i>Portugal</i>	X	X,I,S	X	X	X	X	--	--	--
<i>Romania</i>	Acc	X,I	X	X	X	--	--	--	--
<i>Slovakia</i>	Succ	X,I	Apv	X	X	--	--	--	--
<i>Slovenia</i>	Acc	X,I,S	X	X	X	--	--	--	X
<i>Spain</i>	Acc	X,I,S	X	X	X	X	--	--	X
<i>Sweden</i>	X	X,I,S	X	X	X	X	--	X	--
<i>UK</i>	X	X,I,S	X	X	X	X	--	--	--
EC	--	X,I,S	Apv	X	X	X	X	X	X
Iceland	Acc	X,I,S	X	--	X	X	X	--	--
Norway	X	X,I,S	X	X	X	X	X	--	--
Switzerland	X	--	X	X	X	X	--	--	--
Russia	Succ	X,I,S	X	--	--	--	X	X	--

(As of 2007)

KEY	
X = Ratified/Party*	Acc = Accession
I = 1994 UNCLOS Implementation Agreement	A cp = Accepted
S = 1995 UNCLOS Straddling Stock Agreement	Apv = Approved
	Succ = Succeeded predecessor signatory
*The Vienna Convention establishes a state's consent to be bound by a treaty in Articles 12-15. <u>Ratification</u> , <u>Acceptance</u> and <u>Approval</u> are legally equivalent actions but only applicable to states that sign a treaty when it is open for signature. <u>Accession</u> refers to when a state joins a treaty after it was open for signature.	

2.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) entered into force in 1975 and as of 2008 there were 172 Parties. Although the EC is not a Party, several European countries are, including the UK. The EC has however adopted legislation²³ providing for its implementation. The Convention aims to regulate the unsustainable harvesting and trade of wild plant and animal species through a permit system based on whether the species is listed in the treaty's three Appendices.²⁴ The Convention's guidelines take an ecosystem-based approach by requiring management to take into account all significant habitats throughout the range of the species. CITES provides varying degrees of protection to roughly 5,000 species of animals and 28,000 species of plants. Its three Appendices include several species of cetaceans, marine turtles and corals, however efforts to designate certain depleted marine fish species (such as Atlantic bluefin tuna) for protection under the Convention have been unsuccessful (Kimball, 2001).

In October 2006, CITES and the Food and Agricultural Organisation (FAO) of the United Nations signed a Memorandum of Understanding, formalizing a working relationship to cooperate in the management and conservation of fish species. While CITES has not been very successful to date in addressing offshore marine conservation issues, it has relevance in this geographic area given the inclusion of fish species found offshore within its Annexes. A growing number of commercially exploited fish species have come under CITES controls in recent years, including the basking and whale sharks (included in Appendix II in 2002) and the great white shark and humphead wrasse in 2004. At the latest Conference of Parties (COP) to CITES in June 2007, proposals for the inclusion of more species included the spiny dogfish, porbeagle shark, European eel, pink coral, sawfishes, Banggai cardinelfish, Caribbean spiny lobster and smoothtail spiny lobster. However,

following extensive discussions only two of these made it onto the CITES Appendices, the European eel and sawfishes. Nonetheless, this is a positive development given the European eel is a popular food in many countries, and the further inclusion of valuable marine species in the CITES regime reflects growing concern about the accelerating decline of the world's oceans and fisheries.²⁵

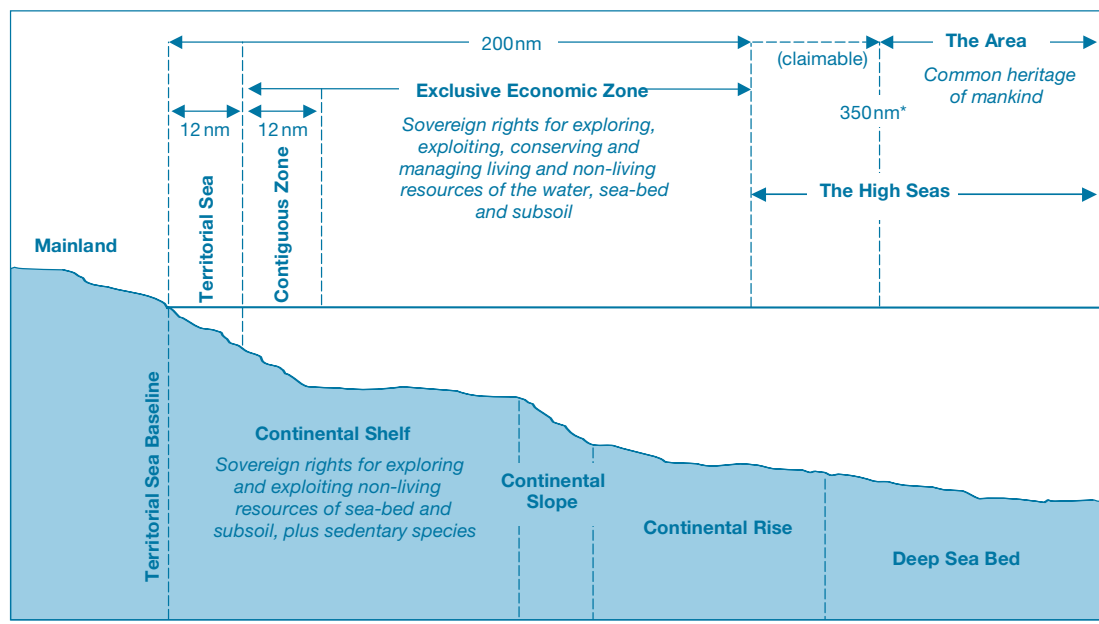
2.2 United Nations Convention on the Law of the Sea (UNCLOS), 1982/1994

The United Nations Law of the Sea Convention (UNCLOS) provides a comprehensive framework for addressing marine issues and provides strong and binding obligations to protect and preserve the marine environment. Its principles and mechanisms have been realized through specialized legal instruments to support an ecosystem-based and precautionary approach to sustainable ocean use. The linkages among these agreements are helping to construct a web of international commitments that increasingly include all sources of ocean stress (Kimball, 2001). The Convention briefly addresses the issue of protected areas/species in Article 194(5), which provides that measures taken under Part XII (on the protection and preservation of the marine environment) 'shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life'.

Of direct importance to the offshore MPA regime, the Law of the Sea Convention (LOSC) established maritime zones including a 12nm territorial sea and 200nm Exclusive Economic Zone (EEZ)²⁶, both under the sovereign jurisdiction of a coastal State. Figure 1 gives an illustration of these zones. Within the 12nm territorial sea, states are sovereign over the seabed, subsoil, and the air space above the sea.²⁷ The innocent passage of foreign vessels is permitted within the 12nm zone, and coastal states are allowed to adopt laws regarding navigation, protection of cables and pipelines, fisheries, pollution, scientific research, and customs, fiscal, immigration and sanitary regulations.²⁸

The EEZ extends up to 200nm from the baseline²⁹, within which coastal states have ‘sovereign rights for the purpose of exploring and exploiting, conserving and managing’ the fish stocks therein.³⁰ These rights are subject to several duties. Coastal states must take the necessary management measures to ensure that their fish stocks are not endangered by over-exploitation. Stocks are to be maintained at or restored to ‘levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors [...] and taking into account fishing patterns, the interdependence of stocks and any generally recommended’³¹ sub-regional, regional or global minimum standards (Churchill and Lowe, 1999:289). These duties are broadly formulated and leave room for coastal states to set any level of total allowable catch, as long as it does not lead to over-exploitation. The EEZ regime agreed during the UNCLOS III negotiations addresses the problems of sustainable exploitation of open access resources by designating living resources under the jurisdiction of coastal states. The rights and duties of other states in the EEZ include freedom of navigation, over-flight and the laying of submarine cables and pipelines (with some limitations subject to the coastal State’s powers of consent and pollution control).

Nearly 99% of the world’s fisheries now fall under some nation’s jurisdiction and a large percentage of the world’s reserves of oil and gas are found in EEZs. Consequently there is a need for rational, well-managed exploitation of these resources. If all coastal states were to establish 200nm EEZs, roughly 36% of the sea would fall under this jurisdiction (Churchill and Lowe, 1999). Though not a large percentage of the oceans, this phytoplankton-rich area encompasses over 90% of commercially viable fish stocks and approximately 87% of the world’s known submarine oil deposits (Churchill and Lowe, 1999). Nationals of other states fishing in an EEZ must comply with the measures, laws and regulations adopted by the State that holds jurisdiction in that zone, including conservation laws.³²



* or 100nm from the 2500nm isobath

(Adapted from Churchill and Lowe, 1999:30)

Figure 1 Maritime Zones Established by the UN Convention on the Law of the Sea

Whereas a coastal State holds full sovereign rights over the seabed and its resources as well as the overlying water in its EEZ, the continental shelf (CS) regime agreed under the LOSC is more limited. A coastal State is entitled to a CS consisting of (i) the sea bed reaching 200nm from the baseline of the territorial sea and (ii) subject to the 'Irish Formula',³³ any area of physical continental margin (referred to as the 'outer' CS) beyond it (Churchill and Lowe 1999:149). The minimum breadth of the CS is set as 200nm (*i.e.* not less than the EEZ), a legal definition that differs from its geological classification. The maximum seaward limit of the CS is set as either within 350nm of the baseline or within 100nm of the 2,500 meter isobath.³⁴ Given this dual definition of the maximum extent of the CS, *i.e.* 200nm or up to 350nm, it is not surprising that many nations have focused their national legislation towards the larger definition where possible. The rights of the coastal State are limited to the exploration and exploitation of the seabed and sub-soil of its CS. Consequently, sedentary species (such as coral) are considered to be under the exclusive control of the coastal State, while non-sedentary species (such as fish) are open to exploitation as one of the freedoms of the high seas.

The LOSC entered into force in 1994, despite the non-involvement of key states with reservations about the Treaty's provisions on the deep sea bed (such as the United States and, initially, the UK³⁵). As of January 2007, the Convention had 152 Parties.³⁶ Two subsequent legal instruments, the 1994 Implementation Agreement and 1995 Straddling Stocks Agreement³⁷ have served as implementation vehicles for the Convention with significant implications for the offshore zone. The Straddling Stock Agreement focuses primarily on the management of fish stocks in the high seas (*i.e.* beyond 200nm), however it also addresses areas under national jurisdiction in its Articles 5 (general principles), 6 (the precautionary approach) and 7 (management and conservation). Concurrent with the Straddling Stocks Agreement, the Food and Agriculture Organization of the United

Nations sponsored a voluntary Code of Conduct on Responsible Fisheries in 1995. Though this code is an example of soft law, *i.e.* not legally binding, it sets out principles and international standards of behavior for responsible practices with the aim of conserving ecosystems and using the precautionary approach. It also recommends the development and application of selective and environmentally safe fishing gear and practices.³⁸

In its preamble, the LOSC states as its goal the establishment of 'a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful use of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment'. In addition to its achievement of having finally codified states' maritime zones, it attempts for the first time to provide a global framework for the rational exploitation and conservation of the sea's resources and the protection of the environment (Birnie and Boyle, 2002:348). UNCLOS is consequently one of the most far-reaching and influential of global environmental regimes, and its provisions on the protection and preservation of the marine environment are considered by many states to reflect generally applicable principles or rules of customary law (Sands, 2003:396).

2.3 Convention on Biological Diversity (CBD), 1992

Negotiated under the auspices of UNEP, the 1992 Convention on Biological Diversity (CBD) entered into force in 1993 and as of May 2008 it had 191 parties including the EC and the UK. The CBD established objectives for the comprehensive preservation of biological diversity, reflecting aims of the 1980 IUCN World Conservation Strategy (Sands, 2003:516). As a framework convention, it does not obligate signatories to any measurable conservation objectives, though it requires development of national strategies for the conservation of biodiversity. The CBD only covers marine water under the jurisdiction

of its Parties, but may also provide scientific and technical advice in relation to the protection of marine biodiversity in areas beyond national jurisdiction.

Article 8 of the CBD requires parties to (i) establish a system of protected areas where special measures need to be taken to protect biological diversity and (ii) to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings. In 1995, the second Conference of the Parties (COP II) focused on marine and coastal biodiversity, resulting in the non-binding Jakarta Mandate on Marine and Coastal Biodiversity.³⁹ This mandate aims to increase understanding of the value and effects of marine and coastal protected areas on sustainable use and to develop criteria for their establishment and management. It encourages the integration of protected areas into wider strategies so that external activities do not adversely impact marine and coastal ecosystems. The marine living resources program element (one of five established under the mandate) includes action to identify key habitats on a regional basis, and to prevent their physical alteration and destruction as well as protecting and restoring spawning and nursery areas and other important habitat (Kimball, 2001).

The UK published a Biodiversity Action Plan (BAP) in 1994 in response to Article 6 of the CBD, to develop national strategies for biodiversity conservation and the sustainable use of biological resources. The BAP committed the UK government and its agencies to 59 programs aimed at conserving species and habitats, developing public awareness and understanding, and contributing to biodiversity work in Europe and internationally. A Biodiversity Steering Group was subsequently established to advise the government on implementation of the BAP, involving several levels of membership such as central and local government, statutory nature conservation agencies, industry, the scientific community, agricultural representatives and conservation NGOs. Following the

Biodiversity Steering Group's 1996 recommendations to the UK Government, a framework of Groups was established to further the process. The UK BAP produced a report on the first five years of its work in 2001, 'Sustaining the Variety of Life'. Throughout the development of the UK BAP work it was evident that its successful implementation would depend on ensuring effective action at the local level. Consequently there are now over 160 local biodiversity action plans in some stage of development in the UK.

With regard to marine BAPs, following the establishment of a UK Marine BAP Coordinating Group (comprised of statutory agencies) in May 2000, a report detailing the UK BAPs for maritime species and habitats was published in October 2000.⁴⁰ The CBD supports existing arrangements for habitat protection by calling on states to establish a network of protected areas at the national level where special conservation measures are needed. In January 2004, the CBD's *ad hoc* technical expert group on marine and coastal protected areas published 'Technical Advice on the Establishment and Management of a National System of Marine and Coastal Protected Areas'.⁴¹ At the seventh Conference of the Parties (COP VII) in February 2004, decision VII/S was taken on marine and coastal biodiversity, implementing the World Summit on Sustainable Development commitment to establishing a global network of MPAs by 2012 (see next section).

The CBD's comprehensive approach to species, ecosystem and genetic diversity and its endorsement of an ecosystem approach⁴² to biodiversity conservation strengthen the impetus for an ecosystem-based approach to marine conservation (Kimball, 2001). This Convention's strongest contribution may lie in promoting a more systematic approach to the use of the large number of international agreements promoting coastal/marine protected area designations.

2.4 World Summit on Sustainable Development (WSSD), 2002 / IUCN World Parks Congress, 2003

Two recent global environmental initiatives are worth mentioning in the context of offshore MPAs. Ten years after the Rio Summit, the World Summit on Sustainable Development (WSSD) was held in Johannesburg in the autumn of 2002. In its Plan of Implementation, the WSSD addressed the marine environment in a section on ‘protecting and managing the natural resource base of economic and social development’.⁴³ The Summit agreed, *inter alia*, (i) to encourage the application of the ecosystem approach to the world’s oceans by 2010; (ii) to maintain or restore fish stocks to maximum sustainable yields by 2015 where possible, with the aim of achieving these goals for depleted stocks on an urgent basis; (iii) to implement the Food and Agriculture Organisation (FAO) plan for managing fishing capacity⁴⁴ by 2005; (iv) to implement the FAO plan to prevent illegal fishing⁴⁵ by 2004; and (v) to establish a regular UN process for assessing the state of the marine environment by 2004. The Johannesburg text says little about how these aims will be realized or who will be responsible for their implementation. At its eleventh session in May 2003, the UN Commission on Sustainable Development negotiated a work program for implementing the outcomes of the WSSD over the next 15 years. One of its seven themes was ‘Oceans and seas, marine resources, small island developing states, disaster management and vulnerability’.

A year after the WSSD, in 2003 the fifth IUCN⁴⁶ World Parks Congress held in Durban, South Africa, produced specific recommendations for the development of MPAs in its commitments and policy guidelines for protected areas world wide.⁴⁷ In particular, the Congress called on international bodies and all nations to establish a global system of effectively managed, representative networks of marine and coastal protected areas by 2012 (including strictly protected areas that amount to at least 20-30% of each habitat, see Table 1 above). The Congress also called for the restoration of depleted fish stocks by 2015, the application of the ecosystem approach to ocean and fisheries management by 2010 and the establishment of at least five ecologically significant and globally representative High Seas MPAs by 2008. While the objectives set out by the IUCN are more detailed than the 2002 WSSD Plan of Implementation, neither is legally binding. Nonetheless, they may still contribute to the development of future binding commitments.⁴⁸

The IUCN World Commission on Protected Areas (WCPA) is involved in a partnership with the WWF on a MPA Management Effectiveness Initiative, and presented a guidebook⁴⁹ on the topic at the Durban Congress. These guidelines are designed to provide tools to MPA practitioners and facilitate a learning network to improve management effectiveness.

3. Regional Conventions and Commissions



Regarding offshore marine conservation in the North-East Atlantic, relevant regional regimes include the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), the 1979 Bern Convention on the Conservation of European Wildlife and their Habitats, the 1992 OSPAR Convention on the Protection of the Environment of the North East Atlantic and the North-East Atlantic Fisheries Commission (NEAFC). The following section goes into more depth on these treaties and their relevance in the context of offshore marine conservation.

3.1 Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), 1979

The CMS entered into force in 1983 and focuses on the conservation of migratory species throughout their range. Its two Appendices list species at two levels of risk, those requiring immediate action and those with an unfavorable conservation status. As a framework convention, it provides guidelines for subsequent Agreements protecting particular species/regions (such as the 1992 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS).⁵⁰ As of November 2006, the CMS had 98 Parties (from Africa, Central and South America, Asia, Europe and Oceania), which are required to conclude Agreements benefiting migratory species, with the aim of restoring or maintaining their favorable conservation status. Both of the Convention's Appendices include marine species and migratory seabirds and several relevant Agreements have been concluded. The CMS is considered to be particularly interesting for three reasons: (i) it covers an unusually broad range of threats to listed species, (ii) its provisions are unusually rigorous in their restrictions and (iii) it establishes a precedent in international wildlife law for providing subsidiarity agreements which focus attention and efforts on particular species (Lyster, 2000).

The Bonn Convention stresses that states are the protectors of species within national boundaries, while recognizing that the conservation and effective management of migratory species require the concerted action of all states within whose boundaries they spend a part of their lifecycle (Birnie and Boyle, 2002:606). Its preamble has been cited as the clearest articulation yet in a wildlife convention in force of the Brown Weiss doctrine of intergenerational equity⁵¹, in stating that 'each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, when utilized, is used wisely' (Birnie and Boyle, 2002:606).

3.2 Bern Convention on the Conservation of European Wildlife and their Natural Habitats, 1979

The Bern Convention was negotiated under the Council of Europe and came into force in 1982. Although the Convention initially had mostly economically developed countries of Northern Europe as Parties, including the EC, it has since expanded its membership to Central and Eastern European countries. As of 2006, it had 45 Parties, including 39 Member States of the Council of Europe, as well as the EC, Monaco and four African States. The Bern Convention's objectives are (i) to conserve wild fauna, flora and their habitats; (ii) to promote cooperation between states; and (iii) to give particular emphasis to endangered and vulnerable species, including endangered and vulnerable migratory species. It applies to all species and their habitats, regardless of their scarcity, and is applicable to visiting migratory species as well as European species found outside of Europe (Sands, 2003). The Convention lists species in three Appendices and imposes explicit mandatory obligations. Parties are obliged to take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of wild fauna and flora (Reid, 2002). Implementation of the Bern Convention falls under the jurisdiction of a Standing

Committee composed of representatives, one from each Party. The Committee produces recommendations and proposals for improving the effectiveness of the Convention and may adopt amendments to the Appendices.⁵² Parties to the Bern Convention are required to nominate protected sites, which make up the 'Emerald Network'. In EU Member States, those sites that are part of Natura 2000 (see below) and are included in the Emerald Network.

In December 1999 at its 19th meeting, the Bern Convention specifically addressed the conservation of marine habitats and species in Europe, reviewing a preliminary report,⁵³ which also emphasized the need for protection in offshore and deep sea areas. The consensus of this meeting however was to delay creating a working group on marine biodiversity until a more complete assessment of the work of other related organizations had been compiled. There was however general agreement on the need to look for synergies with all conventions in the regional seas and other appropriate organizations under the Bonn Convention. In its subsequent meetings in 2000 and 2001, the Bern Convention Standing Committee has addressed marine turtle conservation, but not habitat protection in general.

The origins of the EC Birds and Habitats Directives can be found in the provisions of the Bern Convention. As the Directives are legally binding and impose more detailed obligations than the Convention, they can be seen as having a more practical impact on the conservation of wildlife and habitats. However, the Convention still contributes to nature conservation in Europe by extending commitment and co-operation among its Parties (*i.e.* to its non-EC members as well) and it also provides further legal recognition for the needs of certain endangered species (Reid, 2002).

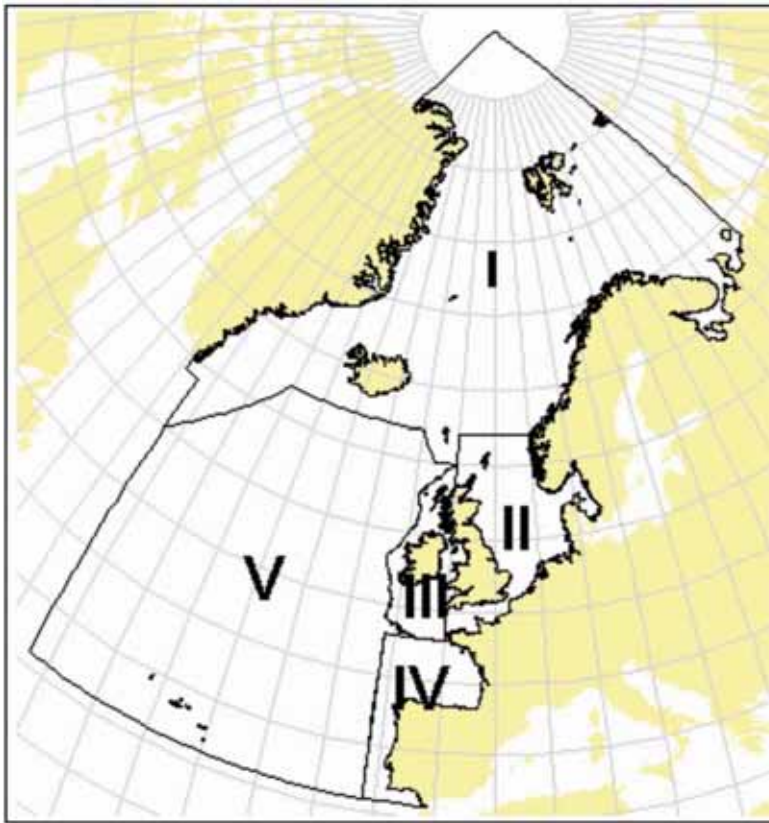
3.3 OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic, 1992

The OSPAR Convention came into force in

1998, replacing the 1972 Oslo Dumping Convention and 1974 Paris Convention, and it has sixteen Parties⁵⁴ including the EC and the UK. Its coverage⁵⁵ includes the North East Atlantic and Arctic, including the North Sea and comprising internal waters, territorial seas and EEZ (or equivalents), as well as applying to high seas and the seabed and subsoil. A map of the area covered under the OSPAR Convention is given in Figure 2. Historically, OSPAR was primarily focused on addressing marine pollution in the regions covered, in a comprehensive and simplified approach, *i.e.* regulating all pollution sources in a single instrument. It now also deals with the protection of marine species and habitats.

Annex V on the protection and conservation of marine ecosystems and biodiversity contains the main provisions on the protection of marine biodiversity. In early 1998, it was unclear whether OSPAR had precedence over the EC with regard to the protection of species and habitats in the EEZ, given the Member States' full competence within territorial waters. As a result, Annex V (on the Protection and Conservation of the Ecosystems and Biological Diversity of the North East Atlantic) was added to the Convention at the 1998 Ministerial Meeting of the Commissions in order to cover the area beyond territorial waters in the North East Atlantic.⁵⁶ Regarding fishery issues, OSPAR stipulates that their management is referred to the authority or international body competent for such issues. Thus questions of fishing rights for Member States of the EC must be taken under the EC's Common Fisheries Policy or the North East Atlantic Fisheries Commission, where they relate to the high seas.

In addition to an expanded use of Annexes, other significant legal developments under OSPAR include a commitment to 'sustainable management' (rather than development, hence an endorsement of sustainability as an emerging international legal concept); an incorporation of the precautionary principle and polluter pays principle in the Convention; a commitment to increased public participation; and the



(From the OSPAR website: www.ospar.org)

Figure 2 Map of OSPAR Area

creation of a new Commission with the power to take legally binding decisions and participate in compliance (Sands, 2003). The OSPAR Commission, comprised of one representative from each Party, may adopt legally-binding decisions as well as non-binding recommendations. The Commission is also required to assess compliance and call for steps to improve it, including new measures of assisting Parties in carrying out their obligations.⁵⁷ OSPAR is also unique in containing rules on the right of access to environmental information, a first for an international treaty. Preceding OSPAR, International Conferences on the Protection of the North Sea have been held since 1984, providing an opportunity for Ministers to make commitments to protecting the environment. In March 2002, the fifth International Conference on the North Sea was held in Bergen, Norway. The resulting Bergen Declaration addresses the use of an ecosystem approach and the establishment of a network of MPAs in the North Sea by

2010, among other issues. In its section on the Conservation, Restoration and Protection of Species and Habitats, the Bergen Declaration invited the ‘competent authorities to study the practicability of the application of the EC Wild Birds and Habitats Directives beyond the territorial seas of EC Member States to the limits of their offshore jurisdiction’. A Committee of North Sea Senior Officials (CONSSO) has begun work on following up to the Bergen commitments, preparing for the forthcoming 2006 special North Sea Ministerial meeting on the environmental impacts of shipping and fisheries.

In June 2003, the first joint Ministerial Meeting of the Helsinki⁵⁸ and OSPAR Commissions was held in Bremen, Germany, resulting in the establishment of a joint HELCOM/OSPAR Work Programme on MPAs. This Programme aims to ensure that by 2010 there is a network of ecologically-coherent and well managed MPAs for the maritime areas of both

HELCOM and OSPAR. In addition to specifically addressing MPAs and an ecosystem approach in the Annexes to the resulting Bremen Declaration, the Commissions also declared an intention to take forward and broaden the approach of the EC Birds and Habitats Directives 'in order to ensure the conservation of the full range of habitats and species in the marine environment within the jurisdiction of the EC Member States in accordance with the objectives of those directives, and suggest to the EC initiatives for these purposes'. OSPAR MPAs are to be designated throughout the North East Atlantic, including the high seas, based on criteria for site selection agreed on by OSPAR Ministers (using management guidance prepared by the OSPAR Biodiversity Committee) and legal mechanisms for their protection and management are to be determined by the member Parties (Johnston, 2004).

The JNCC released a report (JNCC, 2004) on this initiative, exploring the concept of an 'ecologically coherent network' of MPAs as this concept is not formally defined⁵⁹ and the report includes several recommendations regarding the design of such a network, reflecting the biogeographic variation that is present across the OSPAR area. In 2006, OSPAR released its first report⁶⁰ on the status of the OSPAR network of MPAs. As of 2006, six of the twelve coastal Contracting Parties had proposed 81 MPAs for the network, most of which lie within territorial waters; only Norway and Germany proposed sites within their EEZs (3 Norway, 1 Germany). All of the sites proposed by EU Member States were either wholly or partially Natura 2000 sites, and there were no proposals for MPAs in areas beyond national jurisdiction. Table 3 overleaf, gives the OSPAR MPA nominations to date, comprising a total area of 25,093 km² (the total OSPAR Area comprises 14,167,037 km² but that figure includes waters with significant ice cover in the Arctic). There are prospects for further OSPAR MPA nominations but their potential varies. The development of OSPAR's MPA Programme in parallel with the current process of designation for inshore and

offshore marine SACs under the Habitats Directive presents an overlap in jurisdiction that is likely to lead to inherent institutional tensions.

Regarding regional approaches to marine conservation, it should be noted that OSPAR is a partner program⁶¹ of the UNEP Regional Seas Programme, a multilateral effort to manage coastal and ocean areas cooperatively in a regional framework. The UNEP Regional Seas Programme was established in 1974, shortly after the 1972 U.N. Conference on the Human Environment (UNCHE, or 'Stockholm Conference') and establishment of UNEP, and of the fourteen areas it has addressed, thirteen Regional Seas have adopted their own regional action plans, beginning with the Mediterranean Action Plan (MAP)⁶² of 1975.⁶³ The MAP is the most advanced regime in the Programme, comprising the Barcelona Convention⁶⁴ and eight subsequent Protocols (seven of which address different types of pollution, while one focuses on biodiversity). The UNEP Regional Seas Programme has continued working on marine conservation since, and is currently developing an Action Plan for the Upper South West Atlantic.

As the UNEP Regional Seas Programme does not have a plan for the North-East Atlantic, consequently OSPAR is the only regional convention dealing directly with the region, however it does not directly address conservation issues resulting from fishing activities. Rather, the main regional tools for implementing conservation measures that target fishing activities are within European legislation and the North-East Atlantic Fisheries Commission (NEAFC).

3.4 North-East Atlantic Fisheries Commission (NEAFC), 1982

The North-East Atlantic Fisheries Commission (NEAFC) is a Regional Fisheries Management Organization (RFMO) established through the Convention on Future Multilateral Cooperation in the North East Atlantic Fisheries, which entered into force on 17 March 1982. As is the case with other RFMOs, NEAFC falls under the UN Fish Stocks Agreement. The earliest

Table 3 OSPAR MPA nominations (2005-2006)

Party (# of sites)	Sites	Type (where given)
Portugal (1) 525 km ²	Formigas/Dollabarat bank (Azores)	Nature reserve, 3,628 ha is also a Natura 2000 site
Norway (6) 1,905 km ²	Selligrunnen	All except Selligrunnen have fisheries closures to bottom-trawling gear
	Røstrevet	
	Sularevet	
	Iverryggen	
	Tisler	
	Fjelknausene	
Germany (4) 11,923 km ²	Helgoland Seabird Protected Area	Natura 2000 SPA
	Schleswig-Holstein Wadden Sea	National Park and Natura 2000 SCI
	SPA-Eastern German Bight	Natura 2000 SPA
	Lower Saxony Wadden Sea National Park	Natura 2000 SPA and SAC
Sweden (6) 639 km ² (all sites overlap Natura 2000 sites)	Koster-Väderö archipelago	Some enhanced protections including fisheries restrictions
	Gullmarn fjord	Some enhanced protections
	Norde älv estuary	Fisheries closures
	Kungsbacka fjord	Nature reserve
	Fladen	
	Lilla Middlegrund	
UK (56) 9,858 km ²	<i>Full reporting requirements not yet completed</i>	
France (8) 243 km ²	Réserve Naturelle Nationale de la Baie de Somme Réserve Naturelle de l'Estuarie de la Seine Réserve Naturelle Nationale du Domaine de Beauguillot Réserve Naturelle de la Baie de l'Aiguillon, Réserve Naturelle de la baie de Saint Brieuc Archipel des Sept îles Réserve Naturelle de Moëze-Oléron Réserve Naturelle du Banc d'Arguin	All are Natura 2000 sites

Source : OSPAR,2007

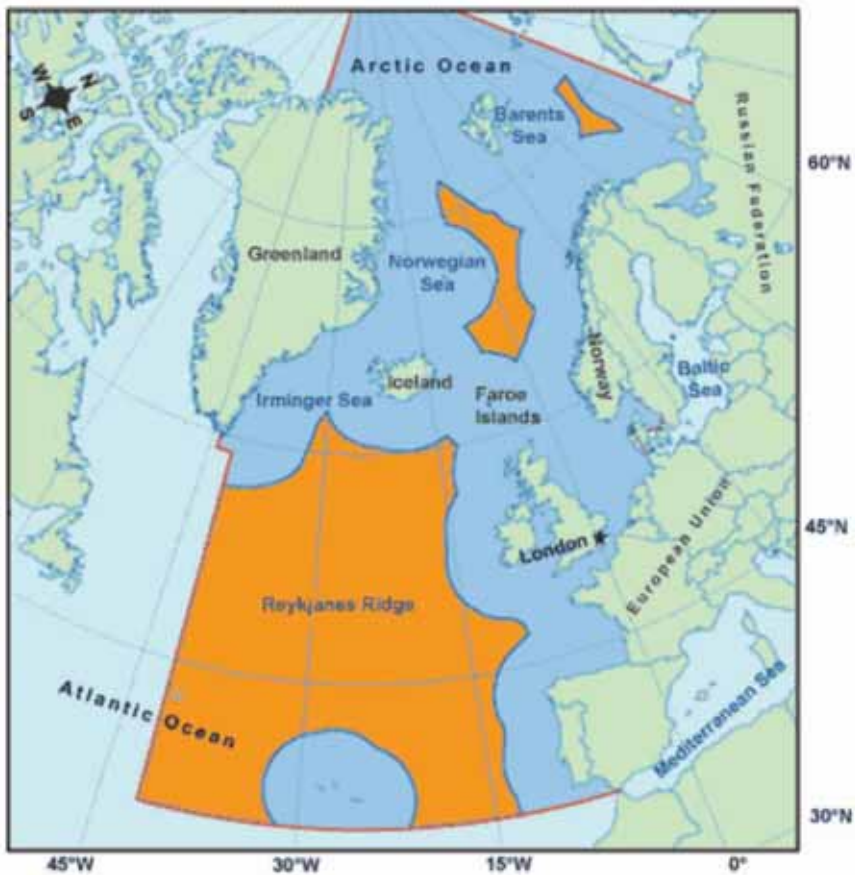
comprehensive international agreement concerning rules of conduct in the North-East Atlantic was the 1882 North Sea Fisheries Convention, which remained the only comprehensive regulation for North Sea fisheries for more than 50 years (Underdal, 1980:47). In the period between the World Wars, several conferences were held to address the rational exploitation of fish resources in the North-East Atlantic. The recovery of several commercially-exploited fish stocks during World War I seems to have called more attention to the possibility of over-fishing and stimulated interest in conservation (Underdal, 1980:48).

The first attempt at developing a comprehensive conservation scheme in the region was an International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, signed in London in 1937. This convention never entered into force, primarily because of World War II, but several of the parties unilaterally practiced the new regulations (Underdal, 1980:49). A new conference was called in 1943 at the initiative of the UK government, to consider questions of policing as well as conservation, resulting in a Convention Relating to the Policing of Fisheries and Measures for the Protection of Immature Fish. Several countries feared its measures would not prove sufficient in peace time, however, and as a result the UK called for a new 'over fishing' conference in 1945, which resulted in the 1946 Convention for the Regulation of Meshes and Fishing Nets and the Size Limits of Fish. This convention established a permanent commission in 1953, the forerunner of NEAFC. In 1959, the North East Atlantic Fisheries Convention was established, which succeeded the 1953 commission and served as a framework for most international fishery regulations in the area until the establishment of EEZs in 1977.

With the accession of the European Economic Community to the convention in 1980, a new NEAFC commission was established in 1982. The modern NEAFC emerged following the withdrawal of EC member states as individual members of

the 1959 Convention (which had operated from 1963) and the general extension of national fishery limits to 200nm in the 1970s. The contracting parties to NEAFC are currently the EC, Iceland, Norway, Russia and Denmark (on behalf of the Faeroe Islands and Greenland, and the only EC member state⁶⁵ that participates in the Commission). A map of the convention's regulatory area is given in Figure 3. NEAFC's principal objective is 'to promote the long-term conservation and optimum utilisation of the fishery resources of the North-East Atlantic area, and in doing so to safeguard the marine ecosystems in which the resources occur, and accordingly to encourage international cooperation and consultation with respect to these resources'.⁶⁶

NEAFC recommends management measures to its parties concerning fisheries beyond the areas under their jurisdiction (or that of the CFP, for EU Member States). It also recommends measures for areas under the jurisdiction of its parties, for those who request it. There are presently four co-operating non-contracting parties to NEAFC as well, *i.e.* states that have a fishing interest in the North-East Atlantic and who operate under NEAFC rules, namely Belize, Canada, Japan and New Zealand. NEAFC works closely with other RFMOs in the North Atlantic, namely the Northwest Atlantic Fisheries Organisation (NAFO), and the International Baltic Sea Fishery Commission (IBSFC) as well as the scientific advisory body ICES (the International Council on the Exploration of the Sea).⁶⁷ Within NEAFC, there are two schemes currently operating with regard to controlling fishing activity in the area, the Scheme of Control and Enforcement (an electronic surveillance scheme to control the fishing activities of vessels in the regulatory area, outside the fishing zones of parties) and a non-Contracting Party Scheme to address the problem of fishing activity by non-parties.



(From the NEAFC website: www.neafc.org)

Figure 3 NEAFC Regulatory Area

In November 2006, NEAFC closed the following areas to fishing from January 2007-December 2009: parts of the Hatton and Rockall Banks, the Logachev Mounds and the West-Rockall Mounds. These and additional areas had been proposed by the EC in 2005, based on recommendations from ICES. These closures, while a positive step forward for offshore marine conservation, were viewed as exemplifying the short-term fishing interests of some of the convention's parties by NGOs soon after they were designated.

4 European Legislation



On the European level, the EC's Common Fisheries Policy, the 1997 Birds Directive, 1992 Habitats Directive and the Water Framework Directive (2000) are the key legal instruments for addressing marine conservation issues related to fisheries activities. A recent addition is the EU Maritime Policy and EU Marine Strategy Directive. The rest of this paper examines EC and UK legislation in more depth, focusing on the legislation that is most applicable to the designation of offshore MPAs (i.e. not, for instance, the Birds and Water Framework Directives).

The application and enforcement of international environmental conventions is a shared responsibility of the EC and its Member States. However, though recommendations and opinions are not legally binding, much of the secondary legislation (Regulations, Directives and Decisions) creates rights and obligations which can be relied upon before the courts of Member States, a phenomenon known as 'direct effect' (Sands 2003: 737).⁶⁸ With regard to the Bern Convention and other relevant international treaties, therefore, the most effective means by which the EC can improve its implementation on the Member State level is by enacting a Directive on species and habitat protection.⁶⁹ In requiring binding national legislation, the Habitats Directive is one of the most influential instruments affecting wildlife and habitat protection in the European Community. The Habitats Directive also established broad marine conservation aims and is discussed in more detail below.

4.1 EC Directive 92/43/EEC (1992 EC Habitats Directive)

The origins of the EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (1992 EC Habitats Directive⁷⁰) lie in the EC's 3rd and 4th Environmental Action Programmes as well as in its predecessor, the 1979 EC Wild Birds Directive⁷¹, which required the establishment of a network of Special Protected Areas (SPAs) throughout the EC. The Habitats Directive follows this model, requiring Member States to prepare and propose national lists of Sites of Community

Importance (SCIs) for submission to and evaluation by the EC. Approved SCIs are to be designated by Member States as Special Areas of Conservation (SACs) and combined with SPAs to form the Natura 2000 network. The Habitats Directive is the first international instrument to address the protection of all habitats, with regard to both geographical location and type (Sands, 2003). It is worth mentioning that although the drafting of the Habitats Directive began several years before the United Nations Conference on Environment and Development (UNCED, Rio de Janeiro 1992), it was negotiated in the same time frame as the 1992 CBD and can be viewed as a means of implementing the CBD in the EC, as well as the 1979 Bern Convention on the Conservation of European Wildlife and their Natural Habitats.

4.1.1 Implementation

Member States were required to implement the Directive by May 1994⁷² and to provide the Commission with a list of sites indicating the natural habitat types and species native to its territory listed in Annexes I and II by May 1995. A Commission Decision concerning the information format for proposed Natura 2000 sites was produced in 1996.⁷³ According to Article 4 of the Habitats Directive, Member States were required to submit their national lists by June 1995 and three years later (June 1998) the EC was to have adopted a list of Sites of Community Importance (SCIs) drawn from the Member States' lists. If the original schedule had been kept, SACs would have been designated by 2004. Although this process was delayed, following the adoption of the first list of SCIs for the Mediterranean in July 2006, there are now initial lists of SCIs for all six biogeographical regions⁷⁴ for the original 15 EC Member States.

In addition, Member States were advised to ensure that sites on their national lists of proposed SCIs were not allowed to deteriorate before the Community list of SCIs was adopted. Where national lists remained incomplete, they were advised to also ensure the non-deterioration of sites

that, according to scientific evidence based on the criteria of Annex II of the Directive, should be listed. The EC guide on interpreting Article 6 of the Directive suggests using environmental impact assessment under Directive 85/337/EEC⁷⁵ in relation to potentially damaging projects (EC, 2000).⁷⁶ Directive 85/337/EEC requires the environmental assessment of 'public and private projects which are likely to have significant effects⁷⁷ on the environment', excluding projects related to national defense or projects whose details are adopted by a specific act of national legislation, as these were expected to go through an appropriate assessment during the legislative process (Sands, 2003). One problem with implementation of the Habitats Directive that has been discussed by Jans (2000) is territorial scope. This is directly relevant to the designation of offshore MPAs as discussed in the Greenpeace judgment.

In July 2003 the EC published a progress report⁷⁸ on the implementation of the Directive among Member States, detailing the legislative and legal frameworks in place for site designation and current problems, but with no mention of mechanisms for the offshore area (beyond 12nm). With regard to progress in protecting this zone, a study conducted by WWF in June 2003 interviewed OSPAR members affiliated with WWF and its partner organizations. According to this study (Anderson *et al.*, 2003) progress has been limited but recognizable. National legislation for designating MPAs beyond territorial waters exists in Belgium, Denmark, Germany, Ireland, Iceland, Spain and Sweden. In addition the UK and the Netherlands had to revise or are in the process of revising their existing legislation to cover the offshore maritime area (Anderson *et al.*, 2003).

Denmark designated Natura 2000 sites across and beyond its territorial sea from the beginning of the implementation process, but its early progress has been stalled by the conservative government's decision to cut funds for nature conservation (WWF press release 16/3/2003).

The UK, Germany and (partially) Ireland initiated their offshore conservation activities with a systematic scientific assessment of the EEZ under the criteria of the Habitats Directive. Germany has since completed its designation of offshore sites. The Netherlands and Sweden are considering the importance of designating marine protected areas in the offshore zone, but do not have a strategic system in place.

The Azores, an autonomous region of Portugal, has designated sites beyond 12nm as Natura 2000 areas under the Habitats Directive and has sought legal protection for other deep sea and open ocean habitats from the Portuguese government and parliament. In 2002 the Azores designated two hydrothermal vents (the Lucky Strike and Menez Gwen vents) within its EEZ as MPAs. In 2006 the process for designating these sites under Portuguese law was completed, and they will be nominated as Natura 2000 and/or OSPAR MPAs. As the initial designation occurred in 2002 (pre-dating the Darwin Mounds emergency closure by a year), these sites represent the first deep-sea offshore MPAs established in the OSPAR area (Anderson *et al.*, 2003). In 2005, the region also implemented a ban⁷⁹ on deep-water trawling the seabed around Madeira, the Azores and the Canary Islands through the Common Fisheries Policy.

In May 2004, Germany nominated a set of ten offshore sites in its EEZs in the Baltic and North Seas to the European Commission to become part of the Natura 2000 network.⁸⁰ This represents 38% of Germany's total marine area (including current nominations) or 31% of its EEZ. These MPAs will also become parts of the MPA networks being established under OSPAR, HELCOM and the CBD. This development was due to an April 2002 amendment to the German Federal Nature Conservation Act, which established a statutory basis for the implementation of Natura 2000 in the German EEZ. Under Article 38 of the Act, the German Federal Agency for Nature Conservation and the German Environment Ministry are now responsible for selecting, designating and managing offshore MPAs.

In the UK, the JNCC has proposed seven offshore sites to DEFRA for consideration as potential Marine SACs. In addition to (i) the Darwin Mounds, these include the (ii) North Norfolk Sandbanks including Saturn Sabellaria spinulosa site (reef); (iii) Haig Fras (reef); (iv) Wyville Thomson Ridge (reef); (v) Scanner Pockmark; (vi) Braemer Pockmark and (vii) Stanton Banks. (see Table 4 in the discussion on UK commitments, section 5, for a listing of the proposed offshore marine SACs).

4.1.2 Article 6

Despite what can be perceived as flaws in its drafting and limitations in its coverage, the Habitats Directive does provide an important mechanism for the protection of species and habitats. Article 6 contains three main sets of provisions. Article 6(1) provides for the establishment of 'necessary conservation measures' and is focused on positive and proactive methods. Article 6(2) has a more preventative emphasis, providing for the avoidance of habitat deterioration and significant species disturbance. Articles 6(3) and 6(4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on Natura 2000 sites and are the means by which Article 6(2) is achieved (EC, 2000).

The interpretation of Article 6 has led to significant debate and some interesting cases in the European Court of Justice (ECJ), especially in relation to paragraph 4, whereby 'imperative reasons of overriding public interest, including those of a social or economic nature' can be cited to allow Member States to authorize plans or projects with a deleterious effect on a SAC.⁸¹ This is in contrast to what had been previously decided in the well-known *Leybucht* case,⁸² under the Birds Directive in 1991, where the Commission had stated that the destruction of a protected habitat was only acceptable 'in the case of a threat to human life'. This overturn has been described as a slap in the face for the European Court (Scott, 1998). In 1995, the Commission adopted two Opinions⁸³ that to some extent clarify Article 6(4), *i.e.* the 'exemption clause'. These Opinions have

also been referred to as being among the few authoritative decisions of EC institutions that elucidate how Community law aims to unite the objectives of habitat protection and infrastructure expansion (Nollkaemper, 1997). They addressed a German A20 motorway project which intersected two Natura 2000 sites, the Trebel and Recknitz Valley and the Peene River Valley. Despite these areas' having been protected under both the Birds and Habitats Directives, the Court concluded that a less damaging crossing of these valleys did not exist, and considering the high unemployment in the region, 'imperative reasons of overriding public interest' justified the project's going ahead.

Subsequent cases on this subject include two that focused on the site selection process under the Birds and Habitats Directives, the *Lappel Bank* case⁸⁴ of 1996 and the *Severn Estuary* case⁸⁵ of 2000. A year later, in 2001 Airbus Industrie gained permission to expand its A380 production factory in the Mühlenberger Loch area near Hamburg, the largest freshwater/tidal flat in the EC at the time and a critical habitat for migratory birds which had been designated a protected area under the Ramsar Convention as well as a priority site for the Natura 2000 network. The German Federal Constitutional Court declined to grant an injunction to stop the filling of 20% of the Loch. A complete overview of the issue of overriding public interest is beyond the scope of this paper; however the recent Wadden Sea judgment (see below) has some interesting implications that are relevant to implementation of the Habitats Directive in the marine realm.

4.2 EC Common Fisheries Policy

It is worth noting that unlike the Common Agricultural Policy, there is no specific mention of a Common Fisheries Policy (CFP) in the Treaty on European Union.⁸⁶ This is not to say that the EU Treaty lacks provision for fisheries legislation however. Instead, fisheries were, and still are, grouped with agricultural products in the Agriculture Title, Articles 32-48 (formerly Articles 38-46), which establishes

guidelines for the establishment of a common market in agricultural products, including fisheries. This will however change once the Lisbon Treaty enters into force.

A common policy towards fisheries in the EC began in 1970 with the establishment of the Structural Regulation 2141/70⁸⁷ defining rules on access to fishing grounds, markets and structures. At this time it was apparently envisaged that fishing would continue to be regulated primarily by international fisheries commissions and Member States' national authorities (Churchill, 1987) but this did not remain the case.

4.2.1 Reform of the CFP

The principal instrument governing the use of fisheries resources from 1983 to 1993 was Council Regulation 170/83 establishing a Community system for the conservation and management of fisheries resources,⁸⁸ which included Total Allowable Catches and quotas, conservation measures and regulations on access to coastal waters. The first review of the CFP took place in 1992, when it was evident that technical measures alone would not be sufficient to prevent over-fishing, as there were simply too many vessels for the available resources. Between 1970 and 1985, the total number of European vessels had increased by 75% and decommissioning efforts from 1985 onwards had only reduced the fleet by 7% (Boude *et al.*, 2001). Reforms to the CFP were undertaken and the 1983 Regulation was replaced in 1992 by Council Regulation 3760/92 establishing a Community system for fisheries and aquaculture,⁸⁹ designed to extend and consolidate the preceding legal regime. Following the latest CFP reform process that began in 1998, this Regulation has now been replaced by Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the CFP.⁹⁰

The EC has been operating under the revised CFP (Regulation 2371/2002 herein referred to as the Basic Regulation) as of January 2003. The Basic Regulation

encompasses four key changes to the CFP. First, a long-term approach has been implemented, aimed at attaining and/or maintaining safe levels of adult fish in EU stocks (previously, measures concerning fishing opportunities and related measures had been taken on an annual basis). Second, the overcapacity of the EU fleet was addressed by providing two sets of measures, (i) a simpler fleet policy placing responsibility for matching fishing capacity to fishing possibilities with the Member States, and (ii) phasing out public aid to private investors to help them renew or modernize fishing vessels. The third improvement to the CFP involved developing cooperation among authorities vis-à-vis enforcement, strengthening the uniformity of control and sanctions throughout the EU and extending the powers of Commission inspectors. And fourth, the involvement of stakeholders in the management process was prioritized by the introduction of Regional Advisory Councils (RACs).

In addition, the Basic Regulation strengthened the CFP's environmental aspect by introducing the precautionary approach. Article 2(1) stipulates that 'the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimize the impact of fishing activities on marine eco-systems' with the aim of ensuring 'exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions'. The predecessor to the Basic Regulation, Regulation 3760/92, referred to 'taking into account [fisheries exploitation activities] implications for the marine eco-system' (Article 2(1)) however, the Basic Regulation goes a step further by providing an emergency closure mechanism for nature conservation, rather than just fish stock recovery.

4.2.2 Emergency measures

In addition to the precautionary approach outlined above, the Basic Regulation emphasizes that: '[The Community]... shall aim at a progressive implementation of an

ecosystem-based approach to fisheries management' (Article 2 para. 1). In order to implement these approaches, Chapter II of the Basic Regulation entitled 'Conservation and Sustainability' outlines specific technical measures including recovery and management plans and the establishment of emergency closures. In particular, Article 7 allows for the Commission to apply emergency measures 'if there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing activities and requiring immediate action'.

Under the three subsequent Articles (8-10), some powers of legislative jurisdiction concerning fisheries conservation and management have been returned to Member States, namely in Articles 8 on Member State emergency measures, Article 9 on Member State measures within the 12nm zone and Article 10 on Member State measures applicable solely to fishing vessels flying their flag. However these powers are limited, in that all measures under Article 8 and some under Article 9 are subject to a complicated EC consultation process (Owen, 2004). It is also worth noting that unlike Articles 8 and 9, Article 10 fails to refer to a power to adopt measures to minimize the effect of fishing on the conservation of marine ecosystems (Owen, 2004). Nevertheless, the emergency measures mechanism for closing an area for nature, rather than fish stock, conservation objectives represents an important shift in the legislative approach to European marine environmental protection. The 2003 Darwin Mounds closure mentioned earlier represented the first use of the emergency closure provisions (De Santo and Jones, 2007b).

4.3 Recent developments on EC marine legislation

4.3.1 EU Maritime Policy

The European Commission's Strategic Objectives for 2005-2009 focus on delivering prosperity, solidarity and security for all Europeans. With regard to the marine environment, the Objectives state that 'in view of the environmental and economic

value of the oceans and seas, there is a particular need for an all-embracing maritime policy aimed at developing a thriving maritime economy and the full potential of sea-based activity in an environmentally sustainable manner'.⁹¹ This commitment materialized in the development of a Maritime Green Paper 'Towards a future Maritime Policy', which was published by the European Commission in June 2006 and formed the basis of an open consultation which ended in June 2007. In line with the Lisbon Agenda,⁹² the Green Paper focused on stimulating growth and jobs in the wider maritime sector in a sustainable manner, ensuring the protection of the marine environment. This commitment to economic growth and jobs represents the first pillar on which the Commission envisaged its new Maritime Policy would rest. The second, environmental pillar is comprised of a European Marine Thematic Strategy and related Marine Strategy Directive.

The EU Maritime Policy was adopted by the European Commission on 10 October 2007, also known as the Blue Book⁹³. Unlike the Marine Strategy Directive, this document does not contain legally binding provisions, but simply constitutes a description of the intended "soft" policy for the EU. It was accompanied by a detailed Action Plan⁹⁴ which contains 30 actions, most of which should be implemented in 2008 and 2009. Some have already materialised in the form of communications, consultations or working documents. The EU Maritime Policy not only aims to ensure integration of sectoral policies relating to Maritime issues but aims to give the European Union new decision-making and management tools.

In the context of fisheries, the new Maritime Policy is supportive of the ecosystem approach to fisheries which reflects an intersectoral approach as well as allows for the expansion of the role of fishermen as 'guardians of the sea'. Related to fishing, but within and beyond EU waters, the Commission hopes to use the Maritime Policy to step up the EU's commitment to protecting the environment and biodiversity

in international waters. The Commission is already in discussion with the UN CBD to establish an international framework for protection, for example, by creating protected areas.

In the new Maritime policy, the Commission identifies three horizontal tools which to enable them to coordinate their strategies and even to carry joint actions in the short term. These are a network of maritime surveillance; maritime spatial planning and a marine observation and data network. In order to progress on marine spatial planning, the Commission is planning to draw up a roadmap to steer the Member States efforts to establish maritime spatial planning and will draw on the experience already gained by some Member States.

4.3.2 European Marine Thematic Strategy / Marine Strategy Directive

The EC's Marine Thematic Strategy for the Protection and Conservation of the

European Marine Environment is one of seven thematic strategies proposed by the European Commission in 2005-2006 to address various environmental issues.⁹⁵ These strategies are intended to be the key mechanisms for delivering the objectives set out in the 6th Environmental Action Programme adopted by the Council and Parliament for the period from 2002-2012. The Marine Thematic Strategy was released on 24 October 2005⁹⁶ as a package, including also a Proposal for a Marine Strategy Directive⁹⁷ and an impact assessment⁹⁸. Figure 4 outlines the relationship between the Green Paper and the Marine Thematic Strategy and Directive with relation to the developing EU Maritime Policy.

The development of the Marine Strategy package began in 2002 with the release of a Commission Communication entitled 'Towards a strategy to protect and conserve the marine environment' which was open to an extensive consultation process from

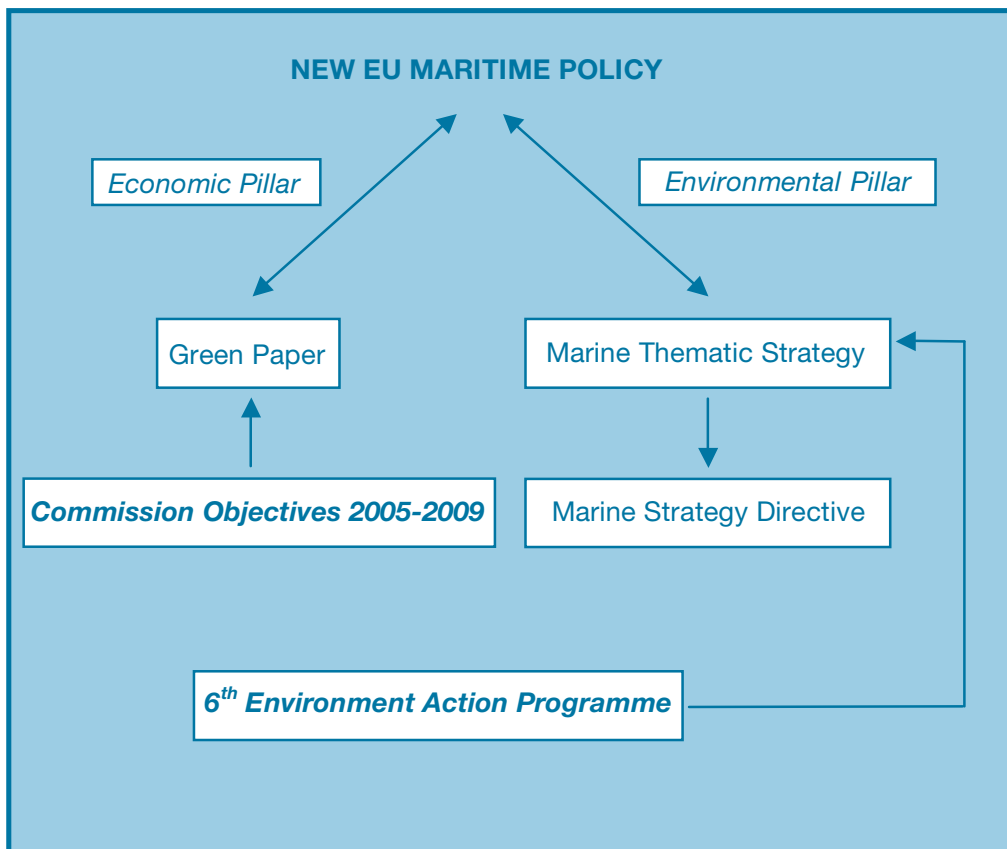


Figure 4. Current Development of EU Maritime Policy

2002-2004. The main objective of the draft Directive is to achieve 'Good Environmental Status' of the marine environment by 2021. The Directive has since been adopted and will enter into force during the first half of 2008. The Directive will establish European Marine Regions.⁹⁹

Following the draft Directive's release in October 2005, the UK held a consultation on the document until April 2006. Three key issues were raised by this process, first that there was a lack of certainty regarding what 'Good Environmental Status' will imply, and a need for better understanding of likely requirements up-front. The second concern focused on the need for integration between the proposed Directive and other EU legislation, particularly the Water Framework Directive¹⁰⁰ and the Common Fisheries Policy. Third, the consultation raised the issue of how the Directive will be implemented, including arrangements for coordination between Member States and the role of the Commission in approving strategies and programmes.

4.4 Recent ECJ cases

The following three recent cases provide some insights and clarifications for the legislation and conventions discussed in this paper, especially with regard to EC Member State obligations under international environmental conventions. As a result, these rulings may have interesting implications in the future when the OSPAR network of marine protected areas comes into effect in 2010.

4.4.1 *Wadden Sea judgment (Habitats Directive)*

Two issues relevant to the interpretation of the Habitats Directive were recently highlighted in a 2004 ECJ case¹⁰¹ involving mechanical fishing for cockles in the Wadden Sea SPA, in the Netherlands. In this judgment, the Court went into detail explaining the meaning of Article 6, in particular what kinds of activities amount to 'plans or projects' under paragraph 3, concluding that fisheries activities undertaken under an annual license can be

considered as falling in this category. Consequently, if such activities are likely to have an effect on a Natura 2000 site, they can only proceed after an 'appropriate assessment' of their impacts in keeping with Article 6 (Verschuuren, 2005). This decision can be seen as a positive development in terms of linking the CFP and the Habitats Directive. While it does not mean that a detrimental activity will be prevented for certain, given the overriding public interest 'exemption clause' mentioned earlier, it is debatable whether fishing would be considered of 'overriding' regional economic and strategic development importance.

A second outcome of the Wadden Sea judgment of relevance to the implementation of the Habitats Directive in offshore waters involves the principle of 'direct effect', *i.e.* whether an individual can rely on a Directive to claim rights in a national court when the Directive has not been transposed (or has been improperly transposed) into national law. For European Directives, such transposition is subject to an implementation deadline, and for the Habitats Directive this deadline expired in 1995. In the Wadden Sea judgment, the Court focused its consideration of this principle on Article 6(3) on 'plans or projects', which the Netherlands had not transposed into national legislation, but it did not refer to the principle of direct effect by name. It is debatable whether the Court was explicit enough (Verschuuren, 2005) or not (Lowther, 2004). At the minimum, however, it can be agreed that the judgment clarified that Article 6(3) was indeed held to be directly effective, despite the Netherlands not having transposed it into national legislation (Stokes, 2005). Given that the UK is still in the process of revising its Conservation (Natural Habitats, etc.) Regulations (1994) over its continental shelf, it can be inferred that Article 6(3) is applicable in the offshore, and 'plans or projects', including licensed fishing activities, should be subject to an 'appropriate assessment' by national authorities to assess whether they may affect the integrity of any potential Natura 2000 sites.

4.4.2 de Berre Case (Barcelona Convention)

A recent (2004) ECJ case¹⁰² on the pollution of a French saltwater marsh connected to the Mediterranean Sea, is worth noting with regard to the 'direct effect' of international environmental agreements on European Member States. In *Syndicat professionnel coordination des pêcheurs de l'Étang de Berre et de la région v Électricité de France*, the ECJ's Second Chamber gave direct effect to two provisions of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (Barcelona Convention). It can be inferred from this ruling that Member States are obliged to treat Conventions to which the EC is a Party as Community law.

This case also highlights the ECJ's apparent willingness both to ensure the enforcement of international environmental agreements, and to permit their enforcement at the domestic level (Cardwell and French, 2007). A subsequent judgment¹⁰³ by the European Court of First Instance (CFI) concerning France's obligations under the Barcelona Convention reiterated that 'In accordance with case-law, mixed agreements concluded by the Community, its Member States and non-member countries have the same status in the Community legal order as purely Community agreements' (paragraph 25) and consequently France had an obligation to comply with the Convention given its membership in the EC (in addition to its own obligation as a signatory to the Barcelona Convention). Consequently, under certain circumstances, a provision in an international agreement concluded by the EC may be directly applicable in the member state, and the provision of an international agreement can become part of the member state's domestic law.

4.4.3 MOX Case (UNCLOS)

In May 2006 the ECJ issued its judgment¹⁰⁴ on a longstanding dispute between Ireland and the UK regarding a nuclear reprocessing plant in Sellafield. This dispute began with the 1993 decision by the UK to authorize the construction of a Mixed

Oxide Fuel (MOX) reprocessing plant situated on the east coast of the Irish Sea.¹⁰⁵ The plant was made operational in 2001 following nearly a decade of studies on its environmental impacts, economic justifications for the plant, and an extensive public consultation (Scott, 2007). Ireland alleged that the UK failed to respond adequately to its concerns and consequently was in breach of its obligations under OSPAR and UNCLOS. In 2001 Ireland initiated dispute settlement proceedings under the auspices of both conventions, the OSPAR component of which was dismissed in a majority decision by the arbitral tribunal in 2003.¹⁰⁶ The International Tribunal on the Law of the Sea (ITLOS) proceedings were more lengthy, and suspended between June and December 2003 in order to seek further information on the potential impact of EC law on the dispute.

In the meantime, the European Commission sent a letter of formal notice to Ireland in May 2003 complaining that by instituting proceedings against the UK under the LOSC, Ireland had failed to comply with its obligations under the EC Treaty (Articles 10 and 192) and Euratom (Articles 192 and 193). Ireland then requested ITLOS to suspend its hearing until the ECJ delivered judgment in the case brought by the Commission, and as of 2007 the proceedings remain suspended (Scott, 2007).

The resulting ECJ judgment clarified that the whole of UNCLOS is EC law and forms 'an integral part of the Community's legal order' (paragraph 82). This clarification is especially important in a situation, such as this, where both the EC and its individual Member States are parties to the same convention.

5. UK National Commitments



5.1 UK Legislation

The UK ratified the Bern Convention in 1982, which was implemented into UK legislation via the Wildlife and Countryside Act (1981 and as amended). This Act is considered to be the single most important instrument relating to the protection of wildlife in the UK, having created numerous offences relating to the killing and taking of birds, other animals and plants, but it has also been widely criticized as being weak (Reid, 2002). A new system of Sites of Special Scientific Interest (SSSIs)¹⁰⁷ was established, which has been judged a success in tackling the main threats that the Act was designed to address, however there has also been dissatisfaction at their failure to prevent damage to protected sites (Reid, 2002:201). In addition, SSSIs only apply to the low-water mark, below which no property rights or land planning provisions exist (Jones, 1999) and hence enforcement policies necessary for conservation cannot be applied as they are on land.

Weaknesses in the 1981 Wildlife and Countryside Act were addressed by the establishment in 2000 of the Countryside and Rights of Way Act (CRoW), intended to improve the protection of species and habitats in three ways. Under the CRoW amendments, the Act now (i) includes as crimes actions taken recklessly as well as intentionally; (ii) increases the penalties for offences and (for the first time) enables custodial sentences to be imposed under the legislation implementing the Habitats Directive (the Conservation (Natural Habitats, etc.) Regulations) and CITES,¹⁰⁸ and (iii) it enables the Secretary of State to designate 'wildlife inspectors' with the authority to enter and inspect premises (Reid, 2002). CRoW also introduced fundamental changes to the system of SSSIs, imposing stricter controls, with the power to prohibit damaging operations and to adjust the scope of the controls over time (Reid, 2002:201).¹⁰⁹

5.2 Conservation (Natural Habitats, etc.) Regulations, 1994

The Conservation (Natural Habitats, etc.) Regulations came into force on 30 October 1994 and were amended in 1997 and (in England only) in 2000.¹¹⁰ The Regulations were drafted to implement parts of the Habitats Directive not already included in national legislation. This move to create new legislation rather than integrating the Directive's provisions with the 1981 Wildlife and Countryside Act removed any possibility of maintaining the key laws on species protection in a single instrument. Although this approach allows for consistency and transparency from the perspective of Brussels, it also provides confusion in that two overlapping sets of rules exist in UK law with regard to species and habitat conservation with similar provisions (Reid, 2002). The Conservation Regulations do differ from the 1981 Act in terms of scope of application, including non-intentional activities that destroy breeding habitats as offences. There are also differences in permissible exceptions and in the language of the two laws that complicate their interpretation.

The Regulations are comprised of five Parts and four Schedules, providing for the designation and protection of 'European sites' and 'European protected species'. As it stands, the Regulations only apply to the territorial sea of the UK. However, as mentioned earlier, in 2003 the Regulations underwent a consultation (DEFRA, 2003) and revision process to extend its applicability out to the UK Continental Shelf.¹¹¹ A draft of the revised Regulations was opened to consultation in 2006 and they are now due to come into effect in 2007.

Concurrent with this review, the UK Government commissioned the Joint Nature Conservation Committee (JNCC) to provide information enabling the designation of offshore SACs. This project was conducted under a joint steering committee including representatives from the Department for Environment, Food and Rural Affairs (DEFRA), the Department of Trade and Industry (DTI) and other government departments and country conservation agencies. The JNCC recommendations have been published as 'Natura 2000 in UK Offshore Waters: Advice to support the implementation of the EC Habitats and Birds Directives in UK offshore waters' (Johnston *et al.*, 2001). As of March 2008, there are seven sites proposed by JNCC to the UK government and under consultation (see Table 4).

5.3 Marine Nature Reserves / Marine SACs / Marine Natural Areas

Though a basis for terrestrial conservation in the UK was established with the National Parks & Access to the Countryside Act of 1949, marine sites were not directly addressed until the 1981 Wildlife and Countryside Act, and even then coverage was extremely limited, leading to the establishment of only three¹¹² statutory Marine Nature Reserves (MNRs) (Jones, 1999). An *ad hoc* network of voluntary MNRs was subsequently developed, which promoted cooperation among users of the marine environment and allowed for participatory management, albeit in a cautious manner. This network lacked a systematic approach, however, and sites were selected opportunistically with a bias towards rocky reef areas in south-west

Table 4 Offshore marine SAC sites proposed by JNCC to the government or under consideration

SITES PROPOSED and UNDER CONSULTATION	HABITAT TYPE	GENERAL LOCATION
Darwin Mounds	Reef (<i>Lophelia pertusa</i>)	Scottish Continental Shelf
Haig Fras	Reef	Celtic Sea
Wyville Thomson Ridge	Reef	Scottish Continental Shelf
Scanner pockmark	Submarine structure made by leaking gases	Northern North Sea
Braemar pockmarks	Submarine structure made by leaking gases	Northern North Sea
North Norfolk Sandbanks including Saturn reef	Subtidal sandbanks and reef (<i>Sabellaria spinulosa</i>)	Southern North Sea
Stanton Banks	Reef	Scottish Continental Shelf

Source: <http://www.jncc.gov.uk/page-3995>

England. In addition, as these reserves were based on a voluntary approach, there was no requirement for statutory support if and when needed (Jones, 1999). The development and implementation of the Habitats Directive thus provided an opportunity for stricter enforcement and protection of the UK marine environment. Regarding the implementation of the Habitats Directive in the (inshore) marine environment, the Conservation (Natural Habitats, etc.) Regulations require relevant authorities to work together to establish management schemes, but there is no overriding power or coordinating function designated to any particular authority (Jones and Burgess, 2005). Consequently, the protection of marine sites depends upon cooperation among the relevant authorities, who are encouraged to form management groups to oversee the process (subject to a call-in by the Secretary of State) while allowing for consultation from other groups such as riparian parties, marine users, industry and interest groups. It will be interesting to follow how this scheme changes when applied to the offshore area once the revised Regulations have been published. Given that inshore and offshore MPAs are to be selected and managed under different frameworks, coordinating them as a coherent network will pose significant challenges.

Another scheme for marine protection in the UK is the English Nature Marine Natural Areas initiative. This program covers six geographic areas: the (i) Western Approaches; (ii) South-western Peninsula; (iii) Eastern Channel; (iv) Southern North Sea; (v) Mid-North Sea; and (vi) the Irish Sea and is currently limited to English territory, with their outer extent set at the 200nm limit (see Figure 5). These Marine Natural Areas have been designated and described by English Nature in cooperation with the JNCC and in consultation with other organizations and the program is designed to provide a more comprehensive, ecosystem-based approach in a similar manner to terrestrial Natural Areas. As the remit for providing advice on nature conservation shifts from English Nature to

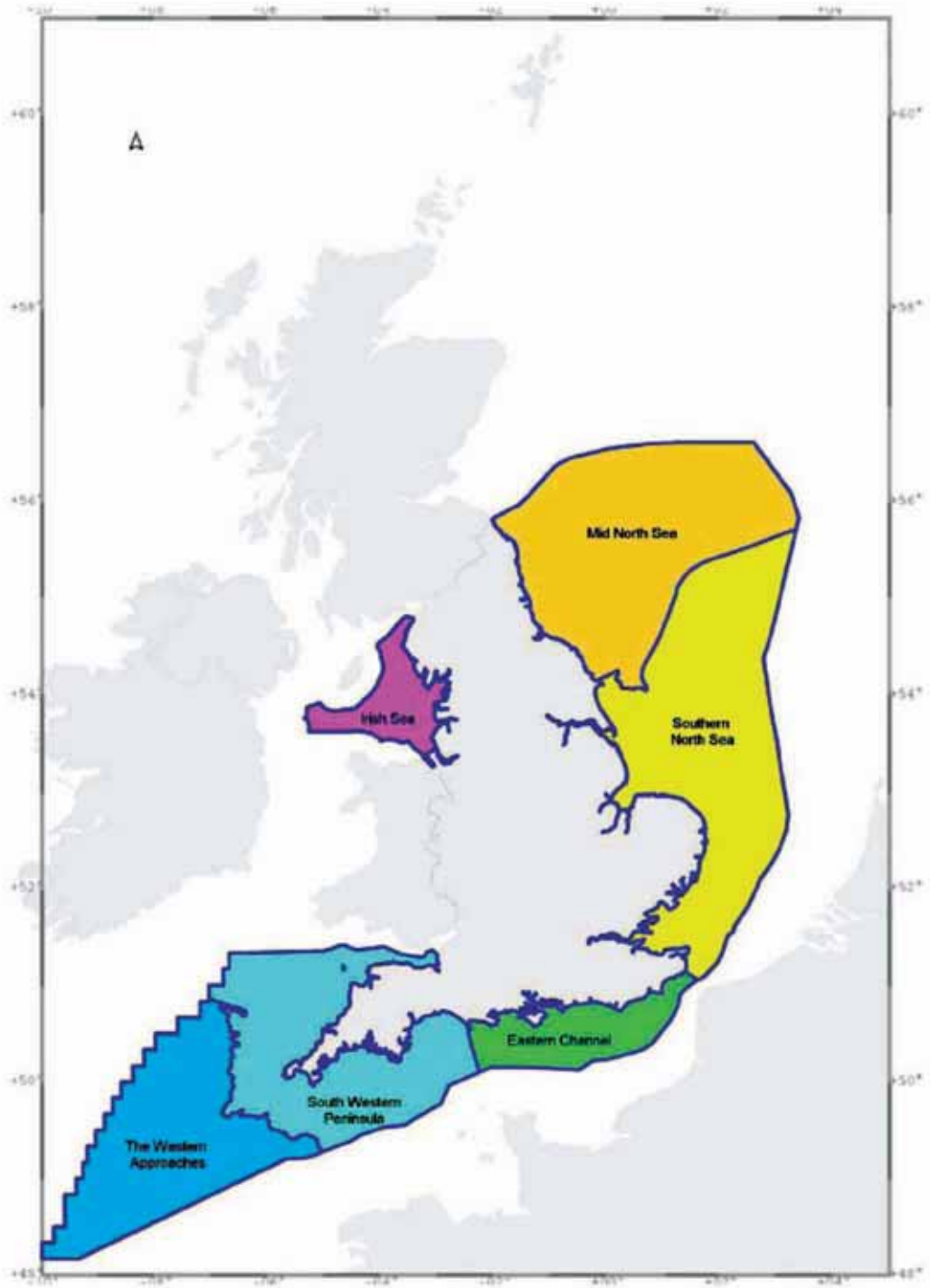
the JNCC beyond the 12nm limit, the program identifies the need for these two bodies to work together on transboundary issues of common concern. The Areas were identified according to oceanographic processes, bathymetry and biogeographic characteristics to define broad natural divisions, *i.e.* ecologically-relevant boundaries, and emphasize the importance of natural processes, the interaction between these, geology and wildlife. English Nature has designed this initiative to work in a complementary fashion with other programs, including the regional seas approach set out under DEFRA's Review of Marine Nature Conservation (2004).

5.4 Marine Bill

The draft UK Marine Bill currently under open for pre-legislative scrutiny represents the culmination of several Government-commissioned reports released since the 2002 First Marine Stewardship Report, 'Safeguarding Our Seas'. These reviews examined various aspects of management of the UK's seas and coasts and are listed in Table 5. The UK Government's commitment to a developing domestic legislation to specifically address its marine environment appeared in the Labour Party Manifesto in April 2005 as follows:

'Through a Marine Act, we will introduce a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. To obtain best value from different uses of our valuable marine resources, we must maintain and protect the ecosystems on which they depend'.

The UK government Marine Bill initially focused on around five themes: (i) managing marine fisheries; (ii) planning in the marine area; (iii) licensing marine activities; (iv) improving marine nature conservation and (v) the potential for a new Marine Management Organisation. The first consultation on the draft Marine Bill was held from March – June



(From Jones et al., 2004:7)

Figure 5 Marine Natural Areas around England

2006, during which DEFRA received over 1200 responses. A large majority of respondents (94%) were in support of the development of a new mechanism for designating MPAs to be introduced in the Marine Bill, to replace legislation on MNRs (DEFRA, 2006).¹¹³ The creation of a new system of Marine Spatial Planning (MSP) has also received strong support in the consultation process to date. There is also significant interest in developing a Marine Management Organisation (MMO), as there is a general consensus that no existing body in the UK government can undertake MSP responsibilities. DEFRA released the responses to its first consultation in October 2006.

The recent draft Marine Bill was published on 3 April 2008. This draft is open for another public consultation until 26 June 2008. The original plan was for draft Bill to be brought before Parliament before 2006 but the process has been delayed by almost two years and it is now planned that the draft Bill will go for pre-legislative scrutiny in the summer of 2008.. There has already been a great deal of debate on what a Marine Bill should contain, and how to reconcile and integrate conservation goals with the full range of demands currently placed on the marine area (Houghton, 2006:163). How the UK Marine Bill would interact with existing UK legislation relevant to the designation of offshore MPAs remains to be seen, as does the value of establishing a new MMO to replace existing authorities' jurisdiction over these issues (*i.e.* rather than strengthening existing institutions). It is also not clear whether the devolved administrations of the UK would want a UK MMO to perform functions on their behalf, or wish to create separate MMOs (Houghton, 2006). Potential functions of an MMO would be those not easily delivered by existing public bodies, and might include overseeing Marine Spatial Planning and the delivery of an integrated licensing regime, if introduced.

According to the latest draft of the Marine Bill, the UK government still intends 'to set up a new MMO to deliver many of the objectives in our marine area'. In relation specifically to marine planning, the first stage proposed would be the creation of a UK-wide marine policy statement to create a more integrated approach to marine management.

Table 5 UK government initiatives and future plans towards implementation of the Marine Bill

REVIEW	SOURCE	DATE
Safeguarding Our Seas: A strategy for the conservation and sustainable development of our marine environment (First Marine Stewardship Report)	DEFRA	May 2002
Seas of Change: The Government's consultation paper to help deliver our vision for the marine environment	DEFRA	November 2002
Marine Nature Conservation and Sustainable Development: The Irish Sea Pilot	JNCC	January 2004
Government Response to its Seas of Change Consultation	DEFRA	March 2004
The Marine Environment: Environment, Food and Rural Affairs Select Committee, Sixth Report of Session 2003-2004	DEFRA	March 2004
Review of Marine Fisheries and Environmental Enforcement	DEFRA	March 2004
Net Benefits: a sustainable and profitable future for UK Fishing	Prime Minister's Strategy Unit	March 2004
Integrated Coastal Zone Management in the UK: A Stocktake	DEFRA	April 2004
Marine Environment: Government's reply to the Committee report. Tenth Report of Session 2003-2004	DEFRA	June 2004
Review of Marine Nature Conservation. Working Group report to Government	DEFRA	July 2004
Turning the Tide: Addressing the impact of fisheries on the marine environment	RCEP	December 2004
Charting Progress: An integrated assessment of the state of UK seas	DEFRA	March 2005
The Future for UK Fishing: Environment, Food and Rural Affairs Select Committee Sixth Report of Session 2004-2005	DEFRA	March 2005
Securing the Benefits. Government response to recommendations made in Net Benefits	DEFRA	June 2005
Safeguarding Sea Life. Joint UK response to the Review of Marine Nature Conservation	DEFRA	December 2005
Marine Bill Consultation	DEFRA	March – June 2006
Government response to the RCEP's Turning the Tide report	DEFRA	May 2006
Responses to Marine Bill Consultation released	DEFRA	October 2006
Consultation on A Sea Change , a Marine Bill White Paper	DEFRA	March – June 2007
Draft Marine Bill published	DEFRA	April 2008
Deadline for public consultation on draft Marine Bill	DEFRA	June 2008
Pre-legislative scrutiny by Parliament	DEFRA	Summer 2008
Introduction of the Bill to the Parliament	DEFRA	Autumn 2008

6. Conclusion

This paper has set out the legal framework relevant to the designation of MPAs in European waters, from global commitments to regional and UK-level legislation. It has also sought to address implications of recent case law from the ECJ of relevance to marine conservation, including the applicability of the Habitats Directive within EC Member States' EFZs/EEZs.

Underlying this legal framework, however, is an inherent tension between fisheries management and marine nature conservation within European waters. For example, it is worth noting that while the CFP Basic Regulation's emergency closure mechanism worked in the case of the UK's closure of the Darwin Mounds area of cold-water coral, a subsequent attempt to use the same legal mechanism to ban pair-trawling for sea bass in the English Channel was less successful (De Santo and Jones, 2007a).

Given the recent international commitments to networks of MPAs put forward at the WSSD, IUCN World Parks Congress, OSPAR/HELCOM joint Ministerial meeting, and the 7th Conference of Parties to the CBD, it will be interesting to watch how EC Member States meet their obligations. It will also be interesting to follow the developing European Maritime Policy and Marine Strategy Directive (and the UK Marine Bill), especially in light of the bifurcation between fisheries management and marine nature conservation.

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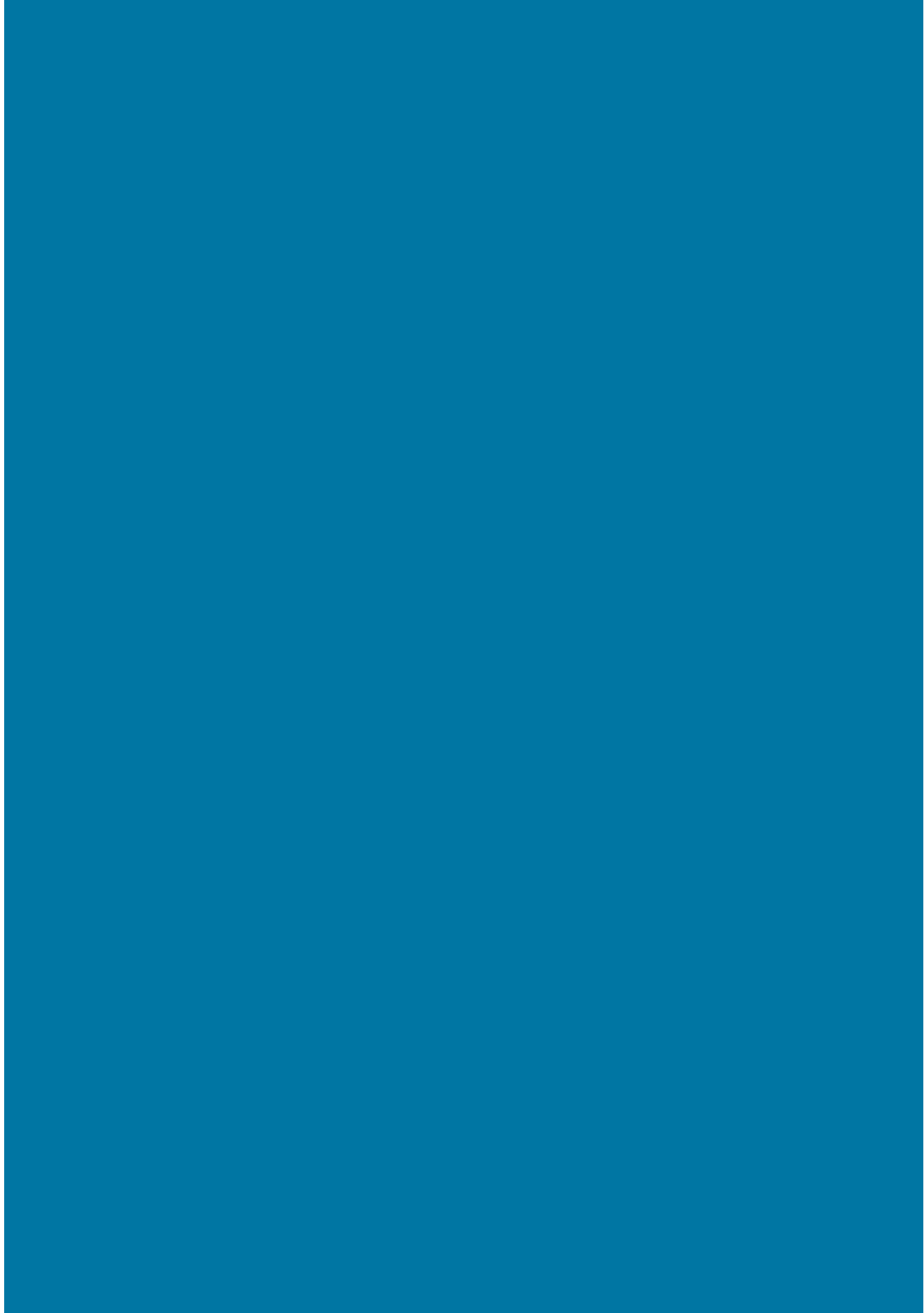
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- ⁷ UNGA Resolutions A/RES/58/240, A/RES/59/24 and, A/RES/59/25, A/RES/60/30, A/RES/60/31, A/RES/61/105, A/RES/61/222, A/RES/62/177, A/RES/62/215. Available online: (www.un.org/Depts/dhl/resguide/gares1.htm).
- ⁸ 'Trawling moratorium dead in the water' Inter Press Service article by S. Leahy, 23 November 2006. Available online: (ipsnews.net/news.asp?idnews=35585).
- ⁹ This paper refers to the European Community (EC) rather than European Union (EU), as fisheries are exclusively within the jurisdiction of the EC while the EU comprises the three 'pillars' of (i) the EC, (ii) justice and home affairs and (iii) a common Foreign and Security policy.
- ¹⁰ Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy [SEC (2005) 1290]. Available online: (europa.eu.int/comm/environment/water/marine/dir_505_en.pdf)
- ¹¹ CEC (2007) 1278/2
- ¹² This coalition includes Greenpeace, Birdlife International, Oceana, the International Fund for Animal Welfare (IFAW), the World Wide Fund for Nature (WWF), Seas at Risk, the Fisheries Secretariat, the European Coastal Union, the European Environment Bureau (EEB) and the Coastal Union. Their position statements can be found at: (eu.greenpeace.org/issues/oceans_coalition.htm).
- ¹³ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ L 206, 22.07.92, p.7.
- ¹⁴ For a more detailed analysis of the bifurcation between fisheries management and nature conservation in European offshore marine conservation, see De Santo and Jones (2007a).
- ¹⁵ *R. v. Secretary of State for Trade and Industry, ex parte Greenpeace (No. 2)* [2000] 2 CMLR 94.
- ¹⁶ For a detailed account of the policy process that led to the Darwin Mounds closure, see De Santo and Jones (2007b).
- ¹⁷ Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives http://ec.europa.eu/environment/nature/natura2000/marine/doc/s_marine_guidelines.pdf
- ¹⁸ Case C-6/04, *Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland*. Opinion of Advocate General Kokott delivered on 9 June 2005. Case C-131/05, *Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland*.
- ¹⁹ There is also a wealth of legislation addressing marine pollution, contributing indirectly to species and habitat protection, however this paper addresses more direct measures and hence omits discussion of marine pollution legislation.
- ²⁰ The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World heritage Convention). Marine and coastal areas may be designated as 'natural and cultural areas of outstanding value' but only if they lie within the territory of a contracting party (i.e. not beyond the 12nm territorial sea).
- ²¹ With respect to the marine environment, the 1971 Man the Biosphere Program's protection scheme is focused on 'integrated biodiversity strategies for islands and coastal areas' (i.e. not directly applicable to the European offshore marine area). Its Biosphere Reserves do not function under a legally-binding convention (Kimball, 2001).
- ²² The 1971 Convention on Wetlands of International Importance, Especially for Waterfowl (Wetlands or Ramsar Convention), though not applicable offshore, is an example of successful international cooperation in the realm of habitat protection.
- ²³ Council Regulation (EEC) No. 82/3626, OJ L 384, 31.12.82, p.1, as amended. In 1997, this was replaced by Council Regulation (EC) No. 338/97, OJ L 61, 03.03.97, p.1, as amended.
- ²⁴ Appendix I includes species threatened with extinction which are or may be affected by trade. Appendix II includes species not presently threatened with extinction, but which may become so if their trade is not strictly regulated. Appendix III includes species which a party to the convention identifies as being subject to regulation within its jurisdiction for the purposes of preventing or restricting exploitations, and as needing the cooperation of other parties in the control of trade.
- ²⁵ CITES press releases: (1) 'Governments to consider new CITES trade controls for high-value marine and timber species', 28 February 2007. Available online: (www.cites.org/eng/news/press/2007/070228_cop14.shtml) and (2) 'CITES updates wildlife trade rules to meet the emerging challenges of the 21st century', 15 June 2007, available online: (www.cites.org/eng/news/press_release.shtml).
- ²⁶ As mentioned earlier, the UK claims an Exclusive Fishing Zone (EFZ) rather than EEZ. Most of the other developed States that initially claimed EFZs have converted these to EEZs following the adoption of the LOSC. As the UK has not, this paper refers to its EFZ when addressing the UK situation directly, but reverts to the term EEZ when discussing the regime generally.
- ²⁷ UNCLOS, Article 2(2). The development of the concept of the territorial sea is beyond the scope of this paper, which focuses primarily on offshore waters, i.e., beyond 12nm. For a historical overview of the territorial sea, see Churchill and Lowe (1999, chapter 4).
- ²⁸ UNCLOS, Article 21.
- ²⁹ The baseline, from which the outer limit of the territorial sea and EEZ are measured, is defined as the 'low-water line along the coast as marked on large-scale charts officially recognized by the coastal State' (UNCLOS, Article 5).
- ³⁰ UNCLOS, Article 56(1).
- ³¹ UNCLOS, Article 61(3).
- ³² UNCLOS, Articles 62(4) and (5).
- ³³ Where the continental margin extends beyond 200nm, the outer limit of the legal CS is determined by the application of a complex test known as the 'Irish Formula'. The limit is either (i) a line connecting points not more than 60 miles apart, at each of which points the thickness of sedimentary rocks is at least 1% of the shortest distance from such point to the foot of the continental slope, or (ii) a line connecting points not more than 60 miles apart, which points are not more than 60 miles from the foot of the slope.
- ³⁴ UNCLOS, Articles 76(4) and (5).
- ³⁵ The UK ratified UNCLOS and its 1994 Implementation Agreement in 1997, and the Straddling Stocks Agreement in 2001. The US remains outside this Convention.
- ³⁶ As of January 2007, 126 States had ratified the 1994 Implementation Agreement and 63 had ratified the 1995 Straddling Stocks Agreement.
- ³⁷ The Implementation Agreement entered into force on 28 July 1998 and the Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks entered into force 11 December 2001. Article 6(6).
- ³⁸ See implementation document by de Fontaubert *et al.* (1996).
- ⁴⁰ *UK Biodiversity Group Tranche 2 Action Plans, Volume V – maritime species and habitats*, October 2000.
- ⁴¹ CBD Technical Series No. 13, available on the CBD website: (www.biodiv.org/doc/publications/cbd-ts-13.pdf).
- ⁴² The Ecosystem Approach is considered by the CBD to be the primary framework for achieving sustainable development, by maintaining fully functioning ecosystems. It is hoped that an Ecosystem Approach will help to reach a balance of the three objectives of the convention: conservation; sustainable use; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.
- ⁴³ Johannesburg Plan of Implementation, available on the UN Division for Sustainable Development website: (www.un.org/esa/sustdev).
- ⁴⁴ FAO International Plan of Action for the Management of Fishing Capacity, 1999.

- ⁴⁵ FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2001.
- ⁴⁶ The World Conservation Union (IUCN) is a Swiss-based organisation with members from 140 countries including 70 states, 100 government agencies, more than 750 NGOs. One of its many functions is to provide policy advice and technical support to the secretariats and Parties of international conventions. It also monitors World Heritage sites, assesses global biodiversity and convenes World Parks Congresses every four years.
- ⁴⁷ The recommendations of the fifth World Parks Congress can be found on the IUCN website: (www.iucn.org/themes/wcpa/wpc2003).
- ⁴⁸ While the 2002 WSSD Plan of Implementation (like the 1972 Stockholm Declaration and 1992 Rio Declaration) was not intended to create legal rules and obligations, it may reflect rules of international law or contribute to the development of such rules, other than by treaty law (Sands 2003:126).
- ⁴⁹ The document is available on the project website: (effectivempa.noaa.gov/guidebook/).
- ⁵⁰ Other Agreements concluded under the CMS with a marine focus include the 1990 Agreement on the Conservation of Seals in the Wadden Sea Area; the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS); and the 1999 Memorandum of Understanding Concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa.
- ⁵¹ This doctrine is threefold: (i) Conservation of Options: Each generation should conserve the diversity of the natural and cultural resource base so that the options of future generations are not unduly restricted; (ii) Conservation of Quality: Each generation should maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received; and (iii) Conservation of Access: Each generation should provide its members with equitable rights of access to the legacy of past generations and conserve this access for future generations (Brown Weiss, 1990).
- ⁵² For example, in December 1991 over 400 species were added to Appendix I, to which an additional 107 Eastern European species were added in December 1996 (Sands, 2003).
- ⁵³ Castello, M. (1999) Convention on the Conservation of European Wildlife and Natural Habitats, Draft Report 'Conservation of Marine Habitats and Species in Europe', Strasbourg, 13 October 1999, T-PVS (99) 56.
- ⁵⁴ Belgium, Denmark, the EC, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the UK.
- ⁵⁵ The OSPAR Regions are (i) *the Arctic*: the OSPAR maritime area north of latitude 62°N, but also including Iceland and the Færoes; (ii) *the Greater North Sea*: the North Sea, the English Channel, the Skagerrak and the Kattegat to the limits of the OSPAR maritime area, bounded on the north by latitude 62°N, on the west by longitude 5°W and the east coast of Great Britain, and on the south by latitude 48°N; (iii) *the Celtic Seas*: the area bounded by, on the east, longitude 5°W and the west coast of Great Britain and on the west by the 200 meter isobath (depth contour) to the west of 6°W along the west coasts of Scotland and Ireland; (iv) *the Bay of Biscay/Golfe de Gascogne and Iberian coasts*: the area south of latitude 48°N, east of 11°W and north of latitude 36°N (the southern boundary of the OSPAR maritime area); and (v) *the Wider Atlantic*: the remainder of the OSPAR maritime area.
- ⁵⁶ The UK ratified OSPAR in 1998 and Annex V and Appendix 3 (identifying human activities for the purpose of Annex V) in 2000. Implementation of Annex V is undertaken by the OSPAR Biodiversity Committee.
- ⁵⁷ Article 23.
- ⁵⁸ The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. Its Parties are Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, the Russian Federation and Sweden, together with the European Community.
- ⁵⁹ The JNCC defines an 'ecological network' of MPAs as follows: a network comprising an ecologically representative and coherent mix of land and/or sea areas that may include protected areas, corridors and buffer zones, and is characterized by interconnectivity with the landscape and existing socio-economic structures and institutions (JNCC, 2004).
- ⁶⁰ OSPAR Commission 2005/2006 Report on the Status of the OSPAR Network of Marine Protected Areas, available on the OSPAR website: (www.ospar.org/documents/).
- ⁶¹ Other partner programs exist in the Baltic, Arctic, Antarctic and Caspian Seas.
- ⁶² The 1975 Mediterranean Action Plan (MAP) was replaced in 1995 by MAP Phase II.
- ⁶³ UNEP Regional Seas Action Plans exist for the Mediterranean (1975/1995); Red Sea and Gulf of Aden (1982); ROPME Sea Area (Kuwait region, 1978); wider Caribbean (1981); East Asian Seas (1981); S.E. Pacific (1981); West and Central African (1982); South Pacific (1982); East Africa (1985); Black Sea (1996); N.W. Pacific (1994); South Asian Seas (1995); and the N.E. Pacific (2001).
- ⁶⁴ The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) was originally adopted in 1976 and replaced in 1995 with a new Convention under the same name, which entered into force in 2004. Its Parties (as of 2004) are: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, the EC, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey.
- ⁶⁵ Bulgaria, Estonia, Poland and Sweden all formerly participated in NEAFC but have withdrawn from the Convention. Bulgaria and Sweden discontinued their membership in 1995, and Bulgaria and Poland in 2006, after they joined the EC.
- ⁶⁶ Preamble to the Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries. Available on the NEAFC website (www.neafc.org/about/docs/london-declaration_and_new_convention.pdf).
- ⁶⁷ The International Council for the Exploration of the Sea (ICES), based in Copenhagen, Denmark, was founded in 1902. It provides advice on marine ecosystems and fisheries to governments and international regulatory bodies that manage the North Atlantic and adjacent seas. Its 20 member countries are: Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, the UK and the US.
- ⁶⁸ The recent ECJ Case C-213/03 *Syndicat professionnel coordination des pêcheurs de l'Etang de Berre et de la region v Electricité de France* established a 'direct effect' regarding the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources. Consequently, Member States are obliged to treat Conventions to which the EC is a Party as Community law.
- ⁶⁹ The Bonn Convention (1979), in providing networks for migratory species, is an example where nature conservation is not under the 'exclusive competence' of Member States.
- ⁷⁰ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ L 206, 22.07.92, p.7.
- ⁷¹ Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds, OJ L 103, 25.04.79, p.1.
- ⁷² Transposition of Article 6 of the Directive into national legislation was required by June 1994, except for Austria, Sweden and Finland, who were required to transpose the Directive by January 1995.
- ⁷³ Commission Decision 97/266/EC of 18 December 1996, OJ L 107, 24.04.97, p. 1-156.
- ⁷⁴ The six Natura 2000 biogeographical regions are: Atlantic, Mediterranean, Continental, Boreal, Alpine and Macaronesian.
- ⁷⁵ Council Directive 85/337/EEC of 27 June 1995 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 05.07.85, p. 40.
- ⁷⁶ A recent case involving cockle fishermen in the Wadden Sea confirmed that fishing management plans constitute a 'plan or project' and are therefore relevant to Articles 6(3) and 6(4) of the Habitats Directive. See section 4.4.1 below.
- ⁷⁷ 'Significant effects on the environment' are not defined in the Directive.
- ⁷⁸ EC (European Commission) 2003. Report from the Commission on the Implementation of the Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora. COM (2003) 845 final. Brussels, 31.07.2003.
- ⁷⁹ Council Regulation (EC) No. 1568/2005 of 20 September 2005 amending Regulation (EC) No. 850/98 as regards the protection of deep-water coral reefs from the effects of fishing in certain areas of the Atlantic Ocean, OJ L252, 28.09.2005, p.2.
- ⁸⁰ Detailed maps of the German proposals are available online: (www.habitatmarenatura2000.de).
- ⁸¹ On overriding public interest, see: Holder J. Overriding Public Interest in Planning and Conservation Law. Journal of Environmental Law 2004;16:377-407.
- ⁸² Case C-57/89, *Commission v. Germany* [1991] ECR I-883.
- ⁸³ Opinion on the Trebel and Recknitz Valley (OJ C 178, 27.04.95, p.3) and Opinion on the Peene Valley (OJ L 6, 09.01.96, p.14).
- ⁸⁴ Case 44/95, *Regina v. Secretary of State for the Environment*, ex parte *RSPB* [1996] ECR I-3805.

- ⁸⁵ Case C-371/98, *The Queen v. Secretary of State for the Environment, Transport and the Regions*, ex parte *First Corporate Shipping Ltd.* [2000] ECR I-9235.
- ⁸⁶ European Community environmental law is set out in the EU Treaty as amended in 1986 (Single European Act), 1992 (Maastricht Treaty on European Union), 1997 (Amsterdam Treaty) and 2001 (Treaty of Nice).
- ⁸⁷ Regulation (EEC) No. 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry, OJ L 236, 27.10.70, p.1 (English special edition Series 1 Chapter 1970(III) p.703, no longer in force).
- ⁸⁸ OJ L 24, 27.01.83, p.1 (no longer in force).
- ⁸⁹ OJ L 389, 31.12.92, p.1 (no longer in force).
- ⁹⁰ OJ L 358, 31.12.2002, p.59.
- ⁹¹ Communication from the President in agreement with Vice-President Walström: Strategic Objectives 2005-2009 'Europe 2010: A Partnership for European Renewal. Prosperity, Solidarity and Security', Section 2.2. Brussels, 26.1.2005, COM(2005)12 final.
- ⁹² The Lisbon Agenda was agreed in 2000, when European leaders set the European Union the goal of becoming 'the most dynamic and competitive knowledge-based economy in the world' by 2010.
- ⁹³ COM (2007) 575
- ⁹⁴ CEC (2007) 1278/2
- ⁹⁵ The other thematic strategies address: air quality; the sustainable use of resources; waste prevention and recycling; pesticides; soil quality; and the urban environment.
- ⁹⁶ Communication from the Commission to the Council and the European Parliament "Thematic Strategy on the Protection and Conservation of the Marine Environment" COM(2005)504.
- ⁹⁷ Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive) COM(2005)505.
- ⁹⁸ Impact Assessment SEC(2005)1290.
- ⁹⁹ The draft Directive lists the following three regions: the Baltic Sea; the North East Atlantic Ocean and the Mediterranean Sea with the latter two further divided into sub-regions.
- ¹⁰⁰ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p.1.
- ¹⁰¹ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, ECJ Grand Chamber [2005] Env LR 14.
- ¹⁰² Case C-213/03, *Syndicat professionnel coordination des pêcheurs de l'Étang de Berre et de la région v. Électricité de France*.
- ¹⁰³ Case C-239/03, *Commission of the European Communities v. France*.
- ¹⁰⁴ Case C-459/03, *Commission of the European Communities v. Ireland*.
- ¹⁰⁵ For a detailed analysis of the ITLOS proceedings, see Scott (2007).
- ¹⁰⁶ *Dispute Concerning Access to Information under Article 9 of the OSPAR Convention*, Ireland v. UK, Final Award (2 July 2003), 42 (2003) ILM 1118.
- ¹⁰⁷ Sites of Special Scientific Interest (SSSIs) were first introduced in the 1949 National Parks and Access to the Countryside Act (NPACA, section 23) but the original provisions were weak, only requiring special consideration within the town and country planning system, i.e. the owners and occupiers of the land were not even informed of the designation (Reid, 2002:200).
- ¹⁰⁸ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 03.03.1997, p.1.
- ¹⁰⁹ Subsequently, in 2006 the Natural Environment and Rural Communities Act (NERC) came into effect, establishing Natural England. This is the first time the responsibility for enhancing biodiversity and landscape in urban, rural and coastal (but not marine) areas have been unified with promoting access and recreation.
- ¹¹⁰ Statutory Instrument 1997 No. 3055 and Statutory Instrument 2000 No. 192. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) came into force 13 November 1995 and replicate the provisions in force in the GB Regulations, applying them to the separate legal system existing in Northern Ireland. Directive 92/43/EEC was transposed into the laws of Gibraltar on 25 August 1995 by the Nature Protection Ordinance (Amendment) Regulations 1995 (DEFRA, September 2001).
- ¹¹¹ Sovereignty over the UK Continental Shelf (UKCS) sea bed and subsoil was established by the Continental Shelf Act of 15 April 1964 (followed by several amendments in the 1960s and 1970s clarifying the extent of its jurisdiction).
- ¹¹² The three MNRs designated to date are Lundy in England, Skomer in Wales and Strangford Lough in Northern Ireland.
- ¹¹³ It is worth recalling that the 2004 Royal Commission on Environmental Pollution report mentioned earlier called for a network of no-take MPAs to be established amounting to 30% of the UK's EFZ. In addition, English Nature's 2005 Maritime Strategy (English Nature, 2005) included the objective of protecting 20-30% of each inshore marine habitat type, and the UK NGO community has been campaigning for a network of Highly Protected Marine Areas in UK waters (Jones, 2006b).





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