

Regulating the Sea

This book is the first ever written on English marine conservation regulation from a socio-legal perspective. The monograph presents an in-depth analysis of key aspects of Marine Protected Areas regulation in England, offering the reader access to an under-investigated field. Such regulatory mapping is complemented by an interdisciplinary treatment of the subject exploring the relationship between people and marine parks through central themes in environmental social sciences and regulatory theory, namely space, rationalisation, democracy and adaptation. Thus, the book is of interest to environmental lawyers and regulatory scholars but also to human geographers, environmental sociologists and political scientists. As the book provides critical reflections on current legal and regulatory structures, it contains valuable insights for policymakers and regulators. The book has a strong methodological basis drawing on in-depth desk-based research, complemented by primary qualitative research, conducted over a number of years.

Margherita Pieraccini is Professor of Law at the University of Bristol. She has been researching in the field of environmental law and socio-legal studies for over ten years, focussing on protected areas and commons in the UK and Italy. Her work crosses the boundaries between law and environmental social sciences.

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Regulating the Sea

A Socio-Legal Analysis of English Marine Protected Areas

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Preface and Acknowledgements

The seeds of this book were planted a long time ago, when I embarked on an Economic and Social Research Council (ESRC)-funded project (ES/K001043/1) from 2012 to 2015 to study the development of the UK marine protected areas (MPAs) network following the entry into force of the Marine and Coastal Access Act 2009. The research consisted in doctrinal analysis and in-depth primary qualitative research in selected case study areas across the UK. Some of the voices of the research participants, which were interviewed during that project, are reported in this book, especially in Chapter 5. Others, although not explicitly present here, have still been immensely valuable in helping me understanding what the real issues are, giving me a grounded perspective on the topic.

It was during the ESRC-funded project that I developed an interest in regulatory impact assessments too when exploring what went well and what went wrong in the designation of the first tranche of Marine Conservation Zones (MCZs). Hence, some of the background research for Chapter 3 can be traced back to that project, although the designation of new tranches in 2016 and 2019 demanded new research in regulatory impact assessments to provide an up-to-date picture. Whilst conducting the study and asking research participants about the designation of the new MCZs, I noticed that local regulators (the Inshore Fisheries Conservation Authorities) were preoccupied also with something else, that is, the management of fisheries within European Marine Sites, adopting a risk-based approach. This topic was beyond the scope of the ESRC project, so I investigated it in the following years, and the findings are presented in Chapter 4.

At the same time, marine conservation was experiencing political and ecological changes. Politically, the Brexit referendum in 2016, leading (slowly) to the UK departure from the European Union in 2020, was a cause of uncertainty for marine conservation law and regulation. Ecologically, climate change having impacts on marine ecosystems could not be left out of an analysis of marine conservation. It became interesting to explore the extent to which regulation was adapting to these ecological and political changes, as discussed in Chapters 7 and 8. Finally, in line with a long-standing interest of mine in environmental democracy, I decided to investigate key institutions contributing to it, as visible in Chapter 6.

Next to this regulatory analysis on English MPAs and a legal map presented in Chapter 2, the book attempts also to deliver a critical assessment of the

relationship between people and parks by drawing on the concepts of commons and commoning, which are introduced in Chapter 1 and then return throughout the book. This conceptual contribution and the theoretical bridges the book forges between legal and regulatory studies, on the one hand, and environmental social sciences, on the other, is what I hope will continue to be valuable to scholars now and in the future as, realistically, some of the laws discussed are likely to change rapidly. The law is stated as at 31 December 2021.

I would like to express my sincere gratitude to various people who have contributed in different ways to this study. Thanks go to all research participants who agreed to take part in semi-structured interviews with me both during the ESRC-funded project and more recently in May 2021, and thanks to the ESRC for funding the initial project and Dr Emma Cardwell for her research assistance for part of the ESRC project.

Many thanks to Professor Tony Prosser, who has provided feedback on all the chapters of this book, to Professors Tonia Novitz and Anna Gear for having provided feedback on Chapter 1 and Professors Maria Lee, Phil Syrips and Giuseppe Martinico for their feedback and thoughts on Chapter 8. Thanks also to Mr Jack Brett, who provided research assistance for Chapters 3 and 4. Many thanks also to Professor Bronwen Morgan with whom I discussed the book proposal and to the Cambridge University Press team for their support during the writing of the book. Finally, I would like to thank Stefano, who has been an important person to share ideas with, especially regarding the ecological aspects of the book, who has helped with presentational aspects of the book such as Index formatting and who has been a supportive, caring and encouraging companion. This book is dedicated to Stefano and to the little Elio, who I hope will appreciate the sea as much as his parents do when he grows up.

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Domestic

- Southern Water Authority v Nature Conservancy Council* [1992] 1 WLR 775
Hart DC v Secretary of State for Communities & Local Government & Ors
[2008] EWHC 1204 (Admin)
Champion v North Norfolk District Council [2015] UKSC 52
*Gladman Developments Limited v Secretary of State for Housing, Communities
and Local Government and Medway Council* [2019] EWHC 2001 (Admin)
*R (Client Earth and MCS) v Secretary of State for Environment Food and Rural
Affairs* [2019] EWHC 2682 (Admin)
Lipton v BA City Flyer [2021] EWCA Civ 454
Pearce v Secretary of State for Business Energy and Industrial Strategy [2021]
EWHC 326 (Admin)
*TuneIn Inc v Warner Music UK Limited and Sony Music Entertainment UK
Limited* [2021] EWCA Civ 441

EU

- Case C-355/90 *Commission v Spain* [1993] ECR I-4221
Case C-44/95 *R v Secretary of State for the Environment, ex parte Royal Society
for the Protection of Birds* [1996] ECR I-03805
Case C-371/98 *R v Secretary of State for the Environment, Transport and the
Regions, ex parte First Corporate Shipping Ltd* [2000] ECR I-09235
Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee,
Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris Van
Landbouw, Natuurbeheer en Visserij (Waddenzee)* [2004] ECR I-07405
Case C-239/04 *Commission v Portugal* [2006] ECR I-10183
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Case C-2/10 *Azienda Agro-Zootecnica Franchini sarl and Eolica di Altamura
Srl v Regione Puglia* [2011] ECR I-6561
Case C-258/11 *Peter Sweetman and Others v An Bord Pleanála*
ECLI:EU:C:2013:220

Case C-301/12 *Cascina Tre Pini Ss v Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others* ECLI:EU:C:2014:214

C-521/12 *TC Briels and Others v Minister van Infrastructuur en Milieu*
ECLI:EU:C:2014:330

Joined Cases C- 387/15 and C-388/15 *Hilde Orleans and Others v Vlaams Gewest* ECLI:EU:C:2016:583

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ECLI:EU:C:2018:244

Case C-669/16 *Commission v United Kingdom of Great Britain and Northern Ireland* ECLI:EU:C:2018:844

International

Gabcikovo-Nagymaros Project (Hungary/Slovakia) (1997) ICJ Reports 7

Table of Legislation

Domestic

- Protection of Wrecks Act 1973
- Wildlife and Countryside Act 1981
- Sea Fisheries Regulation Act 1988
- Sea Fisheries (Wildlife Conservation) Act 1992
- The Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716)
- Environment Act 1995
- Sea Fisheries Regulation Act 1996
- Countryside and Rights of Way Act 2000
- Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91 (SI 2004/261)
- Legislative and Regulatory Reform Act 2006
- Natural Environment and Rural Communities Act 2006
- The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (SI 2007/1842)
- Marine and Coastal Access Act 2009
- The Conservation of Habitats and Species Regulations 2010 (SI 2010/490)
- Marine Strategy Regulations 2010 (SI 2010/1627)
- Sea Fishing (Penalty Notices) (England) Order 2011 (SI 2011/758)
- The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) (Habitats Regulations)
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 (SI 2017/1013) (Offshore Habitats Regulations)
- Marine Environment (Amendment) (EU Exit) Regulations 2018 (SI 2018/1399)
- The Air Passenger Rights and Air Travel Organisers' Licencing (Amendment) (EU Exit) Regulations 2019 (SI 2019/278)
- The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579)

Freedom of Establishment and Free Movement of Services (EU Exit)
 Regulations 2019 (SI 2019/1401)
 European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case
 Law) Regulations 2020 (SI 2020/1525)
 Fisheries Act 2020
 European Union (Withdrawal Agreement) Act 2021
 Environment Act 2021

EU

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural
 habitats and of wild fauna and flora, OJ 1992 No. L 206/7 (the Habitats
 Directive)
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 of 17 June 2008 establishing a framework for community action in the field
 of marine environmental policy, OJ L 2008 No. 164/19 (Marine Strategy
 Framework Directive)
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 November 2008 on waste and repealing certain Directives, OJ 2008 No. L
 312/3
 Directive 2009/147/EC of the European Parliament and of the Council of
 30 November 2009 on the conservation of wild birds, OJ 2009 No. L20/7
 (Birds Directive)
 Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011
 laying down detailed rules for the implementation of Council Regulation
 (EC) No. 1224/2009 establishing a Community control system for ensur-
 ing compliance with the rules of the Common Fisheries Policy OJ 2011 No.
 L112/1
 Consolidated version of the Treaty of the Functioning of the European
 Union, OJ 2012 C 326/47
 Regulation (EU) No. 1380/2013 of the European Parliament and of the
 Council of 11 December 2013 on the Common Fisheries Policy amend-
 ing Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and
 repealing Council Regulations (EC) No. 2371/2002 and (EC) No. 639/2004
 and Council Decision 2004/585/EC OJ 2013 No. L 354/22

International

International Convention for the High Sea Fisheries of the North Pacific
 Ocean (Tokyo) 9 May 1952, in force 12 June 1953, 205 UNTS 65 (North
 Pacific Fisheries Convention)
 Antarctic Treaty (Washington) 1 December 1959, in force 23 June 1961, 402
 UNTS 71 (Antarctic Treaty)

- Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) 2 February 1971, in force 21 December 1975, 996 UNTS 245 (Ramsar Convention)
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn) 23 June 1979, in force 1 November 1983, 19 ILM 15 (1980) (Bonn Convention)
- United Nations Convention on the Law of the Sea (Montego Bay) 10 December 1982, in force 16 November 1994, 21 ILM 1261 (1982) (UNCLOS)
- United Nations Framework Convention on Climate Change (New York) 9 May 1992, in force 24 March 1994, 1771 UNTS 107 (Climate Change Convention)
- Convention on Biological Diversity (Rio de Janeiro) 5 June 1992, in force 29 December 1993, 31 ILM 822 (1992) (Biodiversity Convention)
- Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris) 22 September 1992, in force 25 March 1998, 32 ILM 1068 (1993) (OSPAR Convention)
- Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters (Aarhus) 25 June 1998, in force 30 October 2001, 38 ILM 517 (1999) (Aarhus Convention)
- Paris Agreement (Paris) 22 April 2016, in force 4 November 2016, C.N.92.2016. Treaties-XXVII.7.d (Paris Agreement)

Abbreviations

Aarhus Convention	Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters (full citation in the Table of Legislation)
BEIS	Department for Business, Energy and Industrial Strategy
Biodiversity Convention	The Convention on Biological Diversity (full citation in the Table of Legislation)
Birds Directive	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (full citation in the Table of Legislation)
CJEU	Court of Justice of the European Union
Climate Change Convention	United Nations Framework Convention on Climate Change (full citation in the Table of Legislation)
COP	Conference of the Parties
CPR	Common-Pool Resource
DEFRA	Department of Environment Food and Rural Affairs
EU	European Union
EU Exit Habitats Regulations	The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (full citation in the Table of Legislation)
EUWA	European Union Withdrawal Act
EUWA (Relevant Court) Regulations	European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 (full citation in the Table of Legislation)
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (full citation in the Table of Legislation)
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (full citation in the Table of Legislation)
HPMA	Highly Protected Marine Area
HRA	Habitat Regulation Assessment
IA	Impact Assessment
IFCA	Inshore Fisheries Conservation Authority

IPPC	Intergovernmental Panel on Climate Change
IROPI	Imperative Reasons of Overriding Public Interest
IUCN	International Union for the Conservation of Nature
JNCC	Joint Nature Conservation Committee
MCAA	Marine and Coastal Access Act
MCZ	Marine Conservation Zone
MMO	Marine Management Organisation
MPA	Marine Protected Area
MSFD	Marine Strategy Framework Directive (full citation in the Table of Legislation)
NERC Act	Natural Environment and Rural Communities Act
OECD	Organisation for Economic Co-operation and Development
OEP	Office for Environmental Protection
Offshore Habitats Regulations	Conservation of Offshore Marine Habitats and Species Regulations 2017 (full citation in the Table of Legislation)
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic (full citation in the Table of Legislation)
Ramsar Convention	Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (full citation in the Table of Legislation)
RPC	Regulatory Policy Committee
SAC	Special Areas of Conservation
SFC	Sea Fisheries Committee
SNCBs	Statutory Nature Conservation Bodies
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea (full citation in the Table of Legislation)

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