

MPA NEWS



Published on *MPA News* (<https://mpanews.openchannels.org>)

Perspective: What does Brexit mean for UK MPAs?

By Jean-Luc Solandt, Bryce Stewart, and Alice Puritz

Editor's note: Last year, MPA News published a [brief article](#) on how the UK's Brexit vote in June 2016 — in which citizens chose for the country to exit the European Union — might impact the country's marine protected areas. The perspective piece below offers deeper insights on the potential future for UK MPAs. It also demonstrates how change in national governance can cause an array of follow-on impacts on protected areas.

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Brexit may be the single biggest constitutional change that will happen to the UK in its history. The UK government and civil service are still coming to terms with the process of change, the complexity of developing new laws, and the new political horizon of working with our European partners once the UK exits the EU.

The environment and MPAs are also in line for change. Indeed, what will become of the UK's MPA network when over 50% of our sites were set up under EU laws? Designation of the UK's first large, significant MPAs started because of EU laws drawn from the Bern Convention, an international treaty on protecting wildlife. These EU laws resulted in Special Areas of Conservation (SACs) for fauna and flora in the UK under the [EU Habitats Directive](#), and Special Protection Areas (SPAs) for birds under the [EU Birds Directive](#). In the marine area, these SACs and SPAs are known collectively as European Marine Sites, or EMSs.

How might Brexit affect the UK's MPAs?

Two things the UK could do with its EMSs are de-designation (ending the sites' status as protected areas) or re-designation (changing them to another type of MPA).

Civil servants in the marine program of the UK's Department for Environment, Food and Rural Affairs (Defra) have said in public fora that they do not want to de-designate sites set up under EU laws. These individuals want to ensure this key element of the MPA network remains in place. European Marine Sites currently cover over 12% of UK seas, so losing these sites would be catastrophic for our country's MPA network. These MPAs are also designated in areas of the most important habitats and species for European biodiversity and wildlife, which are also nationally important. So we believe their continued protection should be given the highest priority going forward.

The UK government has designated 50 Marine Conservation Zones (MCZs) since 2013 under the *Marine and Coastal Access Act* to protect additional nationally important species and habitats not already protected by European sites. However, the laws governing MCZs are weaker than those for EMSs. EMS legislation, for example, places protected areas where there are the most outstanding examples of EU importance, regardless of the presence of current or potential business interests. MCZs do not have that same siting requirement. And regulations to protect EMSs from damaging activities — including that developers, fishers, and heavy industries need to show their activities will not have adverse effects on the sites before being allowed to proceed — are more restrictive than those for MCZs. (Indeed, there is pressure from some commercial groups now to repeal or amend the UK law that transposes key EU environmental legislation into UK domestic legislation — which could weaken the relatively strong protections for the UK's EMS sites.)

So what would this mean for EMSs? One possibility is that they would *all* be changed into UK sites (MCZs). Given the weaker protections for MCZs, we would be strongly opposed to this approach. On the contrary, we recommend that once the UK leaves the EU, we not only keep EMSs as protected areas under UK law but also enhance the current legal protections for MCZs — making them equivalent to the legal protections currently afforded to EMSs. This would favour environmental protection.

What would losing EU MPAs mean for stakeholders?

The most significant recent progress in UK MPAs has been the ['revised approach'](#) to fisheries management in EMSs, initiated in 2012. This significant policy change, and subsequent development of management measures, has resulted in over 40 local laws in England and Scotland to ban or restrict trawling and dredging from a large number of coastal EMSs (over 45 sites; about 6000 km² of our seas).

These measures could be under threat for two reasons when we leave the EU: (1) as mentioned above, some commercial stakeholders are calling for the UK legislation that implements EU law to be repealed or amended; and (2) if this happens, the work that has been invested by regulators, fishers, environmentalists, and central government since 2012 to develop these MPA management measures, and the local laws that implement them, could also be lost. This would be a tragedy for UK marine conservation and well-managed inshore fisheries.

If the government wanted to get rid of EMSs, what challenge could be made by civil society?

With the UK as an EU Member State, protection of key conservation features within EMSs has so far been upheld by the powerful 'stick' of the EU court of justice (ECJ). ECJ fines Member States that have allowed sites to be damaged. Fines of 10s of thousands of pounds *per day* have been enough to result in rapid protection measures for places like Strangford Lough in Northern Ireland. The ECJ has also previously ruled on failings by the UK and other Member States to both designate EMSs and enact adequate protection measures for them. Such fines tend to focus minds of regulators and governments.

After the UK's formal exit from the EU (likely to be April 2019), there will be no recourse to an EU court for matters regarding failure of the UK to protect our European MPAs. These cases have often been initiated by civil society groups (e.g., NGOs) informing the European Commission of breaches to protection measures within sites. Subsequent threats of legal action and large fines have pushed the designation of sites and management measures.

How is the full network of UK MPAs progressing?

There has been a delay in designating a third and final tranche of domestic MCZs in UK waters (of up to a further 50 sites) whilst the UK Government absorbs the implications of Brexit. Defra is one of the smallest UK government departments yet has the most legislation to consider for keeping or changing under Brexit. So there is a great deal of pressure on the civil service to come up with a Brexit plan whilst also including consideration of a further round of MCZs. UK government will develop a 'Great Repeal Bill' that should immediately transfer and retain UK laws derived from EU legislation when we leave in April 2019, including EU-derived MPA legislation. Fisheries are a much bigger political and constitutional headache for Defra in terms of agreeing to future sharing of quotas, and access of foreign fleets to the UK EEZ.

Given past access of foreign fishers to UK offshore waters, what will happen to MPAs beyond territorial waters but within the UK EEZ?

A negotiation will need to be undertaken — not only with the EU as an entity but with other Member States individually. In theory, all options are on the table. The UK could potentially exclude all EU boats from our offshore MPAs or even from the UK EEZ altogether. However, such a move seems unlikely given it would threaten trading arrangements with the EU, which are vital to the UK economy. In contrast, there appears to be a stronger chance of foreign fishers being excluded from the UK 6-12nm zone, where they have had historical access rights under the [London Convention](#) (a fisheries agreement that predates the EU). In some cases, this has led to huge trawlers fishing in the same grounds as small (<10 m) UK inshore fishing boats.

If Scotland leaves the UK but stays in the EU, what would this mean for UK MPAs?

The Scottish First Minister, Nicola Sturgeon, has indicated her desire for a second referendum on Scottish independence, largely so that Scotland can stay in the EU. Should this come to pass then Scotland would obviously retain its EMSs and continue to implement its national MPA network, in which fishing is being increasingly well managed. While this situation may appear to therefore consolidate the UK MPA network overall, it would leave the rest of the UK increasingly isolated in negotiations with Europe over fisheries and access to offshore MPAs.

For more information:

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Source URL: <https://mpanews.openchannels.org/news/mpa-news/perspective-what-does-brex-it-mean-uk-mpas#comment-0>