

Institution: University of the West of England, Bristol		
Unit of Assessment: 13		
Title of case study: Adapting terrestrial property management law to protect the marine environment		
Period when the underpinning research was undertaken: 2013 – 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Thomas Appleby	Associate Professor	1996 – present
Emma Bean	Lecturer	2018 – present
Period when the claimed impact occurred: 01.08.2013 - 2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact		
<p>Research at the University of the West of England (UWE) led by Dr Tom Appleby has applied established terrestrial land-management law to marine fisheries. This has significantly changed the understanding and practice of fishery rights on the part of key stakeholders, including government bodies, with long-term benefits for the sector. Research explicitly influenced the development of fisheries legislation in the UK in the context of Brexit reforms. It also questioned the legality of, and contributed to significant changes to, EU fishing practices, including the banning of electric pulse trawling in EU waters ahead of Brexit. Engagement with UWE research by government bodies and environmental NGOs has further contributed to the protection of marine environments in the UK and EU, including the effective management of fishing practices in Marine Protected Areas (MPAs), and to the creation of new MPAs off the coasts of Ascension Island and Scotland.</p>		
2. Underpinning research		
<p>The research looks at marine and coastal law, and asks the following questions:</p> <ul style="list-style-type: none"> • What are public and private rights relating to fisheries operating in the sea? • How should those rights be reflected in regulation? <p>Public and private rights form the basis for terrestrial management regimes, but these rights have rarely been interrogated in the context of marine fisheries. The research is relevant not just to the UK and its Overseas Territories, but also to waters controlled by the EU and its member states (around 20,000,000km²).</p>		
Public and private rights		
<p>UWE research focussed on the UK's fishery, demonstrating that the fishery was not ownerless, as had often been supposed, but owned by the Crown on behalf of the UK public. The research showed that, as a result, public bodies have a duty to actively manage the fishery for demonstrable public benefit (G1, R1, R2). The research also indicated that the proper privatisation mechanisms had not been undertaken. The public fishery had been wrongly distributed free to the commercial sector, via quota, with none of the usual terms governing the disposal of a public asset. The result of this unregulated disposal was considerable upset among fishing communities, and a rapid and unpopular consolidation of private ownership of fishing quotas, which give exclusive access to the UK fishery (R2).</p>		

Regulation

UWE research explored the creation of marine protected areas (MPAs) by the UK Government in UK waters. MPAs are areas of the sea with special regulatory protection to allow the sea to recover its fecundity, and are required under international law. UWE research (**G1**, **R3**) found that there were significant obstacles to the creation of MPAs, such as a requirement for expensive scientific evidence before protection from damaging activities could be put in place. This distorts the precautionary approach of the Marine Acts, as if in 'a *fairground hall of mirrors*' (**R3**, p76). The creation of MPAs can be extremely politically sensitive; the UK Government's creation of a huge MPA in the Chagos Archipelago led to international litigation with neighbouring Mauritius. UWE research noted that the UK's prior sale of fishing rights in the area had *not* led to litigation, but that both MPA creation and the sale of fishing rights were unequivocal acts of UK sovereignty - the real point of contention leading to the Mauritian complaint about the Chagos MPA (**R4**).

The adoption of EU environmental law in the terrestrial sector is relatively mature; key European Directives were established in the early 1990s. There is no explicit exemption for fisheries from EU environmental law, and yet the key conservation law, the Habitats Directive, is yet to be properly applied in EU waters over 12 nautical miles from the coast because of a purported exemption under the EU's Common Fisheries Policy (CFP). This region of sea covers the vast majority of EU member states' waters. The research (**R5**) discovered that the exemption did *not* apply to member states, and that member states were acting illegally by permitting their vessels to fish using destructive fishing gears in offshore MPAs. These sites should have been protected under Article 6 of the Habitats Directive and member states should not have licensed destructive fishing practices there. The research further found that at the end of the Brexit transition period, the UK Government will have a clear and direct legal obligation to protect offshore MPAs (**G2**, **R4**, **R6**).

3. References to the research

- R1** Agnew, C., Appleby, T. and Bean, E. (2019) The ownership of inshore fisheries in Scotland: an opportunity for community ownership? *Journal of Water Law*, vol 26(3), pp.70-77. <https://www.lawtext.com/publication/the-journal-of-water-law/contents/volume-26/issue-2>
- R2** Appleby, T., Cardwell, E. and Pettipher, J. (2018) Fishing rights, property rights, human rights: the problem of legal lock-in in UK fisheries. *Elementa: The Science of the Anthropocene*, vol 6(1). <http://doi.org/10.1525/elementa.295>
- R3** Appleby, T. and Jones, P. (2012) The marine and coastal access act - A hornets' nest? *Marine Policy*, 36 (1). pp. 73-77. <https://doi.org/10.1016/j.marpol.2011.03.009>
- R4** Appleby, T. (2015) The Chagos marine protected arbitration — A battle of four losers? *Journal of Environmental Law*, vol 27(3), pp. 529-540. <https://doi.org/10.1093/jel/eqv027>
- R5** Appleby, T. and Harrison, J. (2019) Taking The Pulse Of Environmental And Fisheries Law: The Common Fisheries Policy, The Habitats Directive And Brexit. *Journal of Environmental Law*, vol 31(3), pp 443-464. <https://doi.org/10.1093/jel/eqy027>
- R6** Appleby, T., & Harrison, J. (2017). Brexit and the future of Scottish fisheries – key legal issues in a changing regulatory landscape. *Journal of Water Law*, 25(3), 124-132. <https://uwe-repository.worktribe.com/OutputFile/898784>

Evidence of the quality of the underpinning research

G1 Staddon, C. *The Lloyd's Register Educational Trust International Water Security Network*, Lloyds Register Educational Trust, 2013 – 2020, £2,538,205.

G2 Appleby, T. *A legal Assessment of Scottish, Welsh and English Inshore Fisheries*, Sustainable Inshore Fisheries Trust, 2016 – 2017, £12,662.

R1, **R2** and **R3** were funded by a grant of £160,000 to investigate coastal laws, as part of **G1**. **R1** and **R6** were funded by **G2**.

4. Details of the impact

Recognition of the UK fishery as a public asset

In highlighting the lack of clarity about the ownership of the UK fishery (**R1**, **R3**, **R6**), UWE research has underpinned a new recognition by government bodies and NGOs of the UK fishery as a public asset.

The New Economics Foundation, a leading political think tank, noted that UWE research:

'has been critical in highlighting the importance of this issue... As a result of this work, in collaboration with the NEF and fisheries stakeholders, for the first time fishing quota is now widely viewed as a public asset and fisheries administrations are taking steps to bring it back into public control (S1).

Environmental NGO the Blue Marine Foundation (BLUE) relied on UWE research to influence the development of the government's fisheries legislation in the context of Brexit. The CEO of BLUE noted that UWE research on the ownership of fisheries (**R1**, **R2**) was central to one of 'four key asks of government from BLUE' over Brexit (**S2**). Drawing on UWE research, BLUE lobbied the government for the 'treatment of the UK's fishery as a public asset to be distributed on the basis of sustainability' (**S2**).

As a result of this pressure, the UK Government have now clarified the ownership position. Lord Gardiner, presenting the Fisheries Bill in Parliament in June 2020 stated:

'the Government are clear that there is a public right to these fish. Indeed, lawyers have advised me that UK case law recognises that fish are a public asset, held by the Crown for the benefit of the public' (S3).

Commenting on this statement by Lord Gardiner, former UK Fisheries Minister and chair of the Government's review of highly protected marine areas, Richard Benyon, noted that 'UWE research was a key driver for the Government taking this view' (**S4**).

Electric pulse trawling banned throughout Europe

UWE research indicating that EU member states were in breach of the Habitats Directive (**R5**, **R6**) was used in a campaign by BLUE and French NGO Bloom, to ban the destructive practice of electric pulse trawling in UK marine protected areas (MPAs) in the North Sea. This fishing method was used by nearly 100 European vessels. In 2018, **R5** 'formed the basis of a complaint to the European Commission' by BLUE and Bloom (**S5**) and led to public scrutiny of the EU for permitting such practices (see article in *The Times*, October 2018 (**S6**)).

Bloom's Scientific Director acknowledged that 'UWE's research demonstrated that this [electric pulse trawling in MPAs] was illegal under EU law' (**S5**). In August 2019, with the entry into force of Regulation (EU) 2019/1241, the EU ensured that electric pulse trawling would be phased out, not only in MPAs but in *all* EU waters by 2021 - a 'significant victory for marine conservation' (**S5**).

NGO campaign to ban bottom-towed gears from Marine Protected Areas

In 2018-2019, BLUE lobbied for the removal of bottom-towed gears from European offshore MPAs via their complaints to Directorate General Environment, focused on destructive fishing practices at the Dogger Bank MPA (around 17,000 km² of relatively shallow water in the North Sea). The complaints were based on UWE research (R5), and written by UWE's Dr Tom Appleby (S7). The BLUE complaints maintained that, notwithstanding the Common Fisheries Policy, there was a legal requirement contained in the Habitats Directive that ruled out the use of bottom-towed gears in MPAs such as the Dogger Bank.

In June 2019, a coalition of European NGOs led by WWF Netherlands lodged a further legal complaint to the European Commission, also based on UWE research (R5). A marine biologist at WWF commented:

'The central legal argument of our combined complaint is that fishing activities [on the Dogger Bank] should be suspended by the Commission and member states until they can demonstrate they do not harm the site. The arguments stem straight from the Appleby & Harrison paper [R5]' (S8).

In March 2020, the EU's Directorate-General Environment notified BLUE and the WWF coalition that it was investigating the UK, Dutch, Belgian and German governments for failure to implement management measures on the Dogger Bank under the Habitats Directive. BLUE's CEO noted:

'On the strength of our complaint, based on UWE research, the UK and Dutch governments are being investigated by DG Environment for failing to regulate their fishing fleets' (S2). The WWF noted that 'DG Environment are now actively investigating the complaints, and have accepted key arguments they contain' (S8).

NGO campaign for effective post-Brexit management of UK Marine Protected Areas

Despite the UK's departure from the EU, the Habitats Directive will continue to apply, because it has already been incorporated into UK law. This means that any exemption contained in the EU Common Fisheries Policy from meaningful management measures for commercial fishing vessels, expires at the end of the transition period (R5, R6). Relying on UWE research, BLUE made it a key plank of their Brexit policy to ensure that effective management measures are brought in from January 2021 (S2). In September 2020, BLUE threatened to seek judicial review of the UK Government's actions unless the Habitats Directive is applied to the Dogger Bank offshore MPA from January 2021 (S9).

A New Marine Protected Area around Ascension Island

Environmental NGO BLUE was instrumental in creating an MPA around Ascension Island, a UK Overseas Territory in the Atlantic. The MPA was established in March 2019. BLUE's CEO noted that *'BLUE has run a successful campaign to persuade the Ascension Island Government to declare the largest marine reserve in the Atlantic (170,000 km²). A key part of the campaign strategy was to learn from UWE's research [R4] into the failure of the Chagos MPA and undertake very deep stakeholder engagement, as a means of unlocking political support for the reserve' (S2).*

A New Marine Protected Area in Scotland

The Marine Acts around the UK created various MPAs. MPAs are usually promoted by government bodies, but one of the most effective was put forward by a community group, the Community of Arran Seabed Trust (COAST). The former chair of COAST noted that the

Trust 'made use of UWE research [R3] to help frame its proposal' (S10), which led to the management measures being brought into force in 2015. These measures are binding on commercial fishing in 80% of the MPA. The former chair observed that 'the South of Arran MPA is one of the most effective MPAs in Scotland' and that 'the area is already showing huge benefits for the island as a nursery area for fish stocks and other biodiversity benefits' (S10).

5. Sources to corroborate the impact

- S1 Testimonial from Senior Programme Manager at the New Economics Foundation
- S2 Testimonial from CEO Blue Marine Foundation
- S3 Hansard – Fisheries Bill (House of Lords), Vol 804, debated Monday 22nd June 2020
- S4 Testimonial from former Parliamentary Undersecretary of State for Natural Environment and Fisheries
- S5 Testimonial from Scientific Director, Bloom Association NGO
- S6 *The Times* article 01.10.2018 *Dutch Devastate Marine Life with Electric Shock Trawling*. Available: <https://www.thetimes.co.uk/article/dutch-devastate-marine-life-with-electric-shock-fishing-x9hpgc6hv>
- S7 Blue Marine Foundation supplementary complaint to European Commission
- S8 Testimonial from Marine Biologist at World Wildlife Fund Netherlands
- S9 Department of Environment Food and Rural Affairs press release 23.09.2020 (see penultimate paragraph) <https://deframedia.blog.gov.uk/2020/09/23/our-response-to-greenpeaces-action-at-dogger-bank/>
- S10 Testimonial from the former Chair of the Community of Arran Seabed Trust