

The Environment Bill's policy statement on environmental principles: a golden opportunity for a principled framework for the sustainable management of UK waters.

Today, the resilience of coastal communities and marine ecosystems is undoubtedly a key policy priority for many Governments around the world. Coupled with a growing recognition of the role which the ocean could play in climate change recovery and the growth of our economies and that the fate of the ocean and humans is inextricably linked,¹ the need to protect and preserve the marine environment has never been so compelling. In recognition of this reality, the United Kingdom (UK) is already playing a commanding role on an international level via its involvement in alliances which aim to foster inter-state collaboration and target-setting to protect the marine environment (e.g. [Global Ocean Alliance: 30x30](#) initiative; [Ocean Risk and Resilience Action Alliance](#)). Nationally, however, the UK's vision has been shaped by an array of policy documents and legislation which set some of the world's most ambitious targets without sufficient guidance on the pathways to implement them over decades to come. Should it wish to deliver on its national and international ambitions, Her Majesty's (HM) Government must lead the line in adopting an *approach to develop and implement* marine protection policies under a robust framework which would enable and guide decisions for the sustainable management and use of UK waters. The Environment Bill gives it the chance to do just that.

Having been part of the European Union (EU) and its predecessor the European Economic Community (EEC) for just under 50 years, the UK's policy for the protection of the marine environment and the sustainable use of marine resources has been shaped by a body of high-level EU strategic policies and Regulations and Directives that aimed to implement them. Following its departure from the Union, the UK now has the chance to set its independent approach for managing its marine environment. Brexit also meant that the UK had to decide on how this change will affect the relevant existing legislative and regulatory framework which, until January 2021, was still [to various degrees] guided by EU legislation,² as well as on how new primary Acts of Parliament (primary legislation) would address its ambition to leave the environment in a better state for future generations.

The Environment Bill, which is now passing through the Report Stage in the House of Lords, has the potential to play a fundamental role in future UK environmental policymaking, including with regards to sustainable development and the protection of the marine environment. The novelty of the Bill lies in its provision for a duty for the Secretary of State to prepare a "policy statement on environmental principles" which explains how a set of five internationally recognised and legally binding environmental principles³ should be interpreted and proportionately applied by Ministers across Whitehall and underpin their decisions around policies that could affect the environment. This could entail that the interplay between strategic Plans affecting marine activities (e.g. [offshore wind](#); [The Ten Point Plan](#)) and the delivery of wider UK environmental objectives (e.g. [achieving net-zero by 2050](#)) would become more neatly presented by decision-makers when the statement comes into effect. For example, a hypothetical retroactive application of a clearly defined principle of preventive

¹ The Department for Environment, Food and Rural Affairs (DEFRA) recently published the results of the largest [ocean literacy survey](#) to date (8 June 2021) according to which 94% of people stated that they believed that the fate of the ocean and humans is inextricably linked.

² See European Union (Withdrawal) Act 2018

³ The principles are: the principle that environmental protection should be integrated into the making of policies; the principle of preventative action to avert environmental damage; the precautionary principle, so far as relating to the environment; the principle that environmental damage should as a priority be rectified at source; and the polluter pays principle.

action would qualify strategic Plans for the deployment of offshore wind turbines as a *preventive* policy that aims to avert the realisation of the scientifically-established and *known* risk of climate change. On the other hand, an application of the precautionary principle could underpin HM Government's (HMG) plans to expand the existing Marine Protected Areas network by developing policies for the introduction of Highly Protected Marine Areas to manage human activities in UK waters in a way to allow the protection and recovery of marine ecosystems despite lack of conclusive scientific evidence around the nature and extent of damage caused by such activities.

Importantly, the Bill requires that the Secretary of State is satisfied that the draft statement which is laid before Parliament would contribute to the improvement of environmental protection and to sustainable development. In addition, the Bill will introduce a robust governance system through, *inter alia*, requiring the Secretary of State to set legally binding targets in respect to "priority areas" and to prepare an environmental improvement plan (akin to the [25 Year Environment Plan](#)), and through establishing a new Office for Environmental Protection. On the face of it, the Bill thus seems to hold a lot of promise to deliver a comprehensive policy framework that would contribute in turning around the alarming trends of environmental decline and afford a much-needed clarity and consistency amongst environmental policies across Whitehall. However, should the binding nature of the environmental principles be limited to Ministers of the Crown and exclude local decision-makers and public authorities, their impact would be limited to high-level policy documents and strategies which, in reality, would only make a difference when action is delivered locally. The sustainable development of marine coastal areas and UK waters cannot practically be achieved without integrating national and localised approaches of decision-making. As such, despite its great promise, the Bill would miss out on a golden opportunity to enable a strategic approach to *marine environmental planning* which aligns with the UK's current and future policy objectives.

The importance of marine environmental planning for delivering sustainable development objectives cannot be understated. In fact, back in 2007, aiming to foster the sustainable development of all sea-based activities and coastal regions in the EU (as regards to shipping, seaports, the environment and fisheries management, *etc.*), the EU Commission produced an Integrated Maritime Policy ([COM\(2007\)0575](#)) which provided an overarching framework that improves the coordination of various [sea-related EU policies](#). It recognised the need to change the way we develop policies and take decisions affecting the marine environment and reiterated its proposal for the adoption of a Marine Strategy for the Community. Having regard to this proposal, the European Parliament and Council published the Marine Strategy Framework Directive ([2008/56/EC](#)). The Directive set an objective of achieving Good Environmental Status (GES)⁴ of EU marine waters by 2020, which it aimed to realise by requiring member States to develop appropriate marine strategies for their respective waters (including via conducting an initial assessment of their waters, monitoring progress towards GES and developing programmes of measures to achieve GES). The UK did this by adopting the [Marine Strategy Regulations 2010](#) (MSR) and integrating them within its [Marine Policy Statement](#) (MPS). In accordance with section 44 of the [Marine and Coastal Access Act 2009](#), the MPS sets a policy framework for local authorities preparing Marine Plans and taking decisions affecting the marine environment. At the core of this framework sits the EU-derived requirement to achieve GES and sustainable development in UK

⁴ GES means that "the different uses made of the marine resources are conducted at a sustainable level, ensuring their continuity for future generations". See <https://ec.europa.eu/environment/marine/good-environmental-status/index_en.htm> accessed 20 July 2021.

waters. It is worth noting that, in its latest (2019) updated assessment of the UK Marine Strategy and GES, the DEFRA revised the objectives and targets for the 2018-2024 cycle.⁵

Ahead of the UK's departure from the EU and in accordance with powers conferred to it by the European Union (Withdrawal) Act 2018, DEFRA published a statutory instrument to detail how the MSR will continue to be operable after Brexit.⁶ Interestingly, DEFRA's accompanying explanatory memorandum did not contain any guidance since the instrument only provided for the "minimum changes necessary to ensure the continuity of existing marine environmental protection post EU Exit". This is problematic as the existing set of EU-derived guidance documents that were critical for the interpretation and effective implementation of EU environmental requirements would continue to be applicable in the UK.⁷ Moreover, should the policy statement on environmental principles not also underpin [local] Marine Plans,⁸ local planning authorities would be deprived of the steer which could once be provided by [Article 191\(2\)](#) of the Treaty on the Functioning of the EU which lists the environmental principles upon which the EU's policy on the environment "shall be based" and of the interpretation of these principles through Communications from the EU Commission⁹ and the jurisprudence of the Court of Justice of the EU. Reiterating the essential role which local authorities play in delivering the UK's high-level strategic marine environmental objectives, the lack of a bottom-up approach to guide decisions around marine environmental planning would invite inconsistencies with wider national policies and deprive local authorities from uniform decision-making tools that would allow them to develop Marine Plans which would be sensitive to the geographical particularities of the areas to which they would apply.

When DEFRA launched its consultation on the draft policy statement on the five environmental principles, it announced that it will provide "information workshops and training, and incorporate the principles into existing government policy guidance documents" in order to assist Ministers with understanding and applying the requirements of the new duty in their policymaking.¹⁰ If HMG is serious about achieving its high marine environmental policy objectives and sustainable development, a similar, consistent effort must be made to draft or update guidance documents that would support local planning authorities when making decisions about how we use, develop, protect and enhance our marine environment. On a more granular level, the principles could also underpin codes of practice and detailed regulations that would govern the risk management techniques followed by proponents of activities which pose threats to the marine environment. Whether or not and the manner in which UK courts would enforce the duty and interpret the policy statement on

⁵ DEFRA, *Marine Strategy Part One: UK updated assessment and Good Environmental Status* (2019), available <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921262/marine-strategy-part1-october19.pdf> accessed 20 July 2021.

⁶ DEFRA, *The Marine Environment (Amendment) (EU Exit) Regulations 2018*, available <<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>> accessed 20 July 2021.

⁷ Marine Scotland Directorate, *EU Exit: marine environmental legislation in Scotland* (2020), available <<https://www.gov.scot/publications/eu-exit-marine-environmental-legislation-scotland-2/pages/7/>> accessed 20 July 2021.

⁸ Marine and Maritime Organisation, *Marine Planning in England*, available <<https://www.gov.uk/government/collections/marine-planning-in-england>> accessed 20 July 2021

⁹ For example, Commission, 'Communication from the Commission on the precautionary principle' (Communication) COM (2000) 1 final.

¹⁰ Defra consultation on environmental principles launched, see <<https://www.gov.uk/government/news/consultation-launched-on-environmental-principles>> accessed 20 July 2021.

environmental principles will be critical to the impact which any future policy would have in actually protecting the marine environment and engendering good practices.

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