

MPAs Designation in the UK: accounting for socio-economic issues

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Socio-Economic Considerations in MCZs Designation

s 117(7): “ the appropriate authority may have regard to **any economic or social consequences**” of designation.

This power breaks with domestic and European nature conservation law where protected area designations are based on ecological criteria only (e.g. Case C-371/98 *R v Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd* and C-226/08 - *Stadt Papenburg v Bundesrepublik Deutschland*)

Integration of socio-economic considerations: a success story?

1. Socio-economic considerations during the **participatory stakeholder working groups** (South-East case study)*
2. **Impact Assessments (IAs)**: effective and reflexive regulation tools?**
3. **Ways Forward?**

*Pieraccini, M. 2015, 'Rethinking participation in environmental decision-making: Epistemologies of marine conservation in South-East England'. *Journal of Environmental Law*, vol 27., pp. 45-67

**Pieraccini, M and Cardwell, E. 2016. Impact Assessments: effective and reflexive? *Public Law*. Forthcoming.

Participatory stakeholders groups and Socio-Economic issues

“social and economic impacts will be taken into account in designating MCZs[.]. The Government wants sea-users, environmental bodies and other interested parties to have a prominent role in formulating advice to Government on the creation of MCZs” (DEFRA guidance 2010)

Accent on participation: Regional Stakeholders Groups set up to provide recommendations to SNCBs and the government

Socio-Economic considerations during stakeholders working groups

Participants put in pre-determined categories (livelihood, ecology...);

Socio-economic consequences primarily considered as costs;

Ecological Network Guidance canonised what counted as the ecological;

Participants were stakeholders, not deliberants: compromise and bargain at the core of the process.

The pragmatic effects of this participatory process

The Environment Audit Committee 2014 Report stated that “the statutory provision which allows socio-economic considerations to be taken into account has made the process of designation a contested one”.

In the South-East case study this had repercussions on fishermen’s perceptions of marine conservation (see: <https://www.youtube.com/watch?v=BqA8OUMOAcc>) leading to:

- The construction of the “ecological other” (SNCBs, environmental NGOs were all clustered as the “tree-huggers” uncommuning the sea)
- Fishermen’s antagonism towards many recommended MCZs
- Fishermen advocating a return to technocracy

Re-thinking Participatory procedures: Theoretical insights

“Calls for procedures that will facilitate participation or deliberation often do not go further, and do not consider the *form* that participation should take”

(Black 2001, *OJLS*, p. 599- emphasis added)

To consider the form of participation, Black proposes a distinction between “thin” and “thick” proceduralisation.

Participation: Theoretical insights

THIN Proceduralisation	THICK Proceduralisation
<ul style="list-style-type: none">• Liberal view of democracy• Participation as bargaining process between opposing interests.• The outcome is a compromise• Actors' preferences remain exogenous and unchanged by the participatory process	<ul style="list-style-type: none">• Deliberative view of democracy• Participation as inter-subjective engagements.• The outcome is Habermasian inter-subjective truth• Actors' individual preferences are transcended during the process

Moving towards thicker proceduralisation

For Black: a move towards “thick” proceduralization entails the use of mediation techniques to overcome differences in modes of discourses, interests and power among participants.

My focus:

though acknowledging differences is important, it risks essentialising/fixing people’s identities and knowledges;

By reconceptualising *difference as multiplicity*, people’s multiple knowledges and identities can be expressed in the participatory arena so to move towards thick proceduralisation.

Impact Assessments (IAs)

Another way in which socio-economic issues were considered was through IAs

IAs have become central in UK regulatory improvement strategies in the past three decades and are in line with government's aim to cut the red tape.

The Department for Business, Innovation and Skills (2011) defines IAs as both “a continuous **process to help think through the reasons for government intervention**, to weight up various options for achieving an objective and to understand the consequences of a proposed intervention; and **a tool to be used to help develop policy by assessing and presenting the likely costs and benefits and the associated risks** of a proposal that may have an impact on the public, business or civil society organisations, the environment and wider society over the long term”

IAs: a bridge between effectiveness and deliberation?

Key aspects of IAs according to the Better Regulation Framework Manual:

evidence-based processes informing decisions via cost-benefit analysis, forecasting the future consequences of current regulatory choices (“regulatory foresight”)

Policy-makers are not the only ones to be informed by IAs as an important part of IAs is the potential for public scrutiny.

Underlying assumption is that CBA is the best measure of public policy (Sunstein would agree) but this raises problems of commensurability and ethics

IAs for tranche 1 MCZs

Each Regional MCZ project produced IAs, featured based, for all recommended MCZs (rMCZs)

Research Methods :

Focus on fishing sector

Desk-based review of IAs and Primary qualitative research

Critique of IAs for MCZs

Various shortcomings due to:

1. IAs as a simplifying tool
2. Uncertainty
3. Transparency issues

IAs as a simplifying tool

Critical literature of IAs stress that:

- There are divergent estimates of cost and benefits in society that are difficult to subsume under a single metrics and some environmental issues cannot be easily assigned a monetary value,
- Risk of disfavoring the protection of goods that are priceless and “soft” variables tend to get lost in the analysis (e.g. Ackerman and Heinzerling 2004; Sagoff 1998, Driesden 1997).
- One-shot guess’ at the nature of future interventions (but regulation demands ongoing coordination evolve with their implementation...see Baldwin2005)
- Paradox: rational and evidence-based regulation meaning rigorousness yet at the same time emphasis on simplification and deregulation (Baldwin 2010)

These issues arose in relation to IAs for MCZs:

- The potential positive impacts of MCZs were not quantified and the positive and negative impacts kept entirely separate in the IA report.
- Uniform 75% displacement figure was adopted for all MCZs regardless of legal and geographical specificities (e.g. size of boats/ICES zones, other designations).

Uncertainty

Process of designating MCZs permeated by managerial and scientific uncertainty

How to model potential socio-economic costs if the activities that could be carried out in the MCZs were unknown? A best estimate figure representing impact was derived from the range by setting a mid point between high and low cost scenarios for each type of fishing gear (scenarios are extreme)

Transparency issues

How did IAs for MCZs fulfilled transparency and accountability requirements?

IAs, produced by project economist, were not subject to full debate during the stakeholders working groups

“some people never heard anything about the IA until the very last meetings.”
(fisherman, South-East)

The calculations in the IAs were features based but by the time the IA was put out for consultation, the government had made the decision to designate on the basis of a fraction of the original features proposed yet the IAs reports still show the impact on all features.

Fisheries in Selected Case Studies

Beachy Head East



Area put forward by the regional group to protect chalk reef and mussel bed.

Designation had strong support from fishermen “we tried to get the area protected through a bylaw 25 years ago. It is quite a delicate habitat so we wanted to prevent beam trawling. Everybody thought it would be dead cert this would go through as a MCZ” (fisherman, Beachy Head East)

IA for Beachy Head East gave socio-economic cost figure derived from a range of management scenario falling between a low cost scenario (a zoned closure to trawls and dredges) and high cost (total closure of MCZ to protect infralittoral fine sand). Ironically, the feature was not proposed for designation but nevertheless the site was not put forward.

Fisheries in Selected Case Studies

Hythe Bay

Put forward for the protection of subtidal mud supporting spoon worms and burrowing shrimp communities



A) the inaccuracy and unreliability of socio-economic data for IAs

“the socio-economic data produced in the IA suggests that the economic interests to the UK commercial fishing sector would be £3,000. Not only is this very poor research on behalf of the report owner, it is also unsubstantiated” (fisherman, Hythe Bay)

B) Procedural legitimacy and transparency of the process

“some people never heard anything about the IA until the very last meetings.” (fisherman, Hythe Bay)

C) displacement issue: critiques of the blanket national approach

“we have no capacity to adapt. If it goes through, I don’t think I can carry on fishing”. (fisherman, Hythe Bay)

IAs for tranche 1 MCZs: some conclusions

IAs used in the first tranche of MCZs designation raise questions of procedural and substantive legitimacy

Reducing uncertainty is difficult as it happens at different levels (evidential, scientific and managerial)

IAs were made using a variety of assumptions, artificially reducing uncertainty (blanket approach to displacement, assumptions of management scenario, assumptions regarding compliance and enforcement)

Moving forward?

Considering socio-economic issues at the stage of designation of MPAs could be a welcome step in nature conservation law. However, how best to do it?

Moving beyond the dichotomy between the “socio-economic vs. ecological” that ended up rigidifying knowledge and stakes and making IAs not as effective and reflexive