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How political are environmental charities?

A focus on Marine Protected Areas and the role of charities



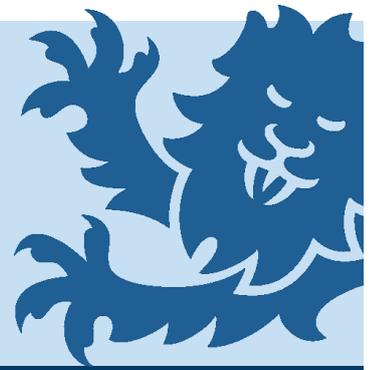
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A combination of celebrity sound-bites, popular media, moral panic, and the influence of the advocacy of environmental charities on government policy has led to a rapid increase in the declaration of large Marine Protected Areas around the UK's overseas territories. This briefing questions whether these charities are ignoring the established legal principle that charities should not engage in overt political activity aimed at legal change.



1. Introduction

In 2016, Caroline Spelman addressing the UK government Environmental Audit Committee stated that '90% of the biodiversity of UK territory is situated in overseas territories'. This does not just mean terrestrial biodiversity but marine biodiversity.

With international pressure on governments to meet targets of setting aside at least 10% of the world's ocean and marine areas as protected areas by 2020 there is a veritable race to claim credentials for saving the 'Blue Planet' by creating Marine Protected Areas, and where better to do so than around overseas territories, where not only is there often to be found the greatest biodiversity but also the least resistance.

2. Charities and the Law

Environmental charities have been at the forefront of this endeavour, attracting the support of celebrities, capturing the public imagination and lobbying and advising the UK government at every opportunity.

Indeed, the UK government acknowledges the influence of such charities and the charities themselves advertise their success in persuading the government on their various websites and publicity materials. The creation of Marine Protected Areas, however, requires new legislation and often amendment to existing legislation particularly if that permits fishing and/or other marine resource extraction. In the case of overseas territories that legislation may be made without parliamentary scrutiny either through Orders in Council or declarations under Ministerial prerogative.

While the Charities Act 2011 clearly states that protection of the environment is a recognised charitable purpose, it also affirms the long-established principle that **charities must be wholly charitable and for the public benefit.**

Charitable: has been interpreted to mean that the purpose must not include activities that are either not a recognised charitable purpose or not clearly for public benefit. This means that activities of a political nature directed at either changing an existing law or introducing a new one being advocated by the organisation seeking charitable status are excluded.

Public benefit: requires a sufficient section of the public to benefit and in such a way that the benefit is not outweighed by any detriment.

'One of the most influential players in setting targets for protecting the oceans has been the 'third sector' consisting of environmental and conservation groups – often with charitable status, philanthropic organisations, research institutes – often funded by the first two, celebrity individuals and the media.'



Sue Farran, 'The Marine Protected Area' in Burri and Trinidad (eds.), *The International Court of Justice's Advisory Opinion in Chagos* (Cambridge University Press, forthcoming 2020)

3. Do Marine Protected Areas confer a public benefit?

Saving the oceans, protecting the planet or preserving the marine heritage of mankind for future generations all appeal to a growing moral conscience about the environment popularised by programmes such as 'Blue Planet'.

While the public utility or practical benefit of doing so may be rather harder to measure, establishing Marine Protected Areas has the advantage of being amenable to hard data in terms of size, number and contribution to global targets. They are moreover, especially when established around remote overseas territories such as Pitcairn or the Chagos Archipelago, sufficiently distant so as not to be any inconvenience.

This of course ignores the fact that for the indigenous inhabitants of these islands, such as Ascension, St Helena, Tristan da Cunha, **the establishment of a no-take marine protected area may confer little or no benefit and indeed a detriment** if previously enjoyed fishing rights

are curtailed and the possibility of developing commercial fishing – if only on a small scale – is now prohibited.

This most notably has been occasion for Mauritius challenging the establishment of the Marine Protected Area around the Chagos Islands before the UNCLOS Arbitration Tribunal, and winning (although the UK continues to assert that the ruling has not impacted on the right to establish a Marine Protected Area). Generally however, there is minimal consideration of the sacrifices that may have to be made by local fishers for 'the greater good'.

The Secretary General of the World Forum of Fisher People speaking at the 2014 IUCN Congress stated that 'the term "conservation" carries a negative connotation for millions of local fisher folks across the world', and this is currently being ignored.

4. Conclusion

The Charity Commission guidelines on permitted and prohibited political activity are grey, and it is difficult to know where political lobbying (even if cross-party) ends and the expression of the social environmental conscience begins.

Nevertheless, it is clear that environmental charities are persuading the UK government to make or change the law when establishing Marine Protected Areas and that social justice

may find itself set aside on the grounds that the greater good outweighs the lesser evil and that some sacrifices have to be made to save the planet – even if those whose livelihoods are affected see conservation efforts in a very different light.



RECOMMENDATIONS

The Charity Commission should review its guidelines on political activity referring back to the principles set out in the *National Anti-vivisection Society v Inland Revenue Commissioners* [1948] AC 31

There should be a more critical assessment of the merits of awarding the fiscal advantages of charitable status to eco-charities which set aside considerations of social justice when advocating on what are quite clearly issues which require legal change.

Eco-charities should be examined to see if they are wholly charitable or whether some of their activities should be separated off into non-charitable status – as has happened with some human rights charities.

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'Indigenous Rights and Marine Protected Areas' in Stephen Allen, Nigel Bankes and Øyvind Ravna (eds), *The Rights of Indigenous Peoples in Marine Areas* (Hart Publishing, 2019)

'Chagos and the ICJ – The Marine Protected Area' (2018) *Questions of International Law*, December 30 2018 <http://www.qil-qdi.org/chagos-and-the-icj-th-marine-protected-area/>

'Learning from Chagos: Lessons for Pitcairn' in Allen (ed) *Fifty Years of the British Indian Ocean Territory: Legal Perspectives* (Springer, 2018)

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