



A legal review of the National Parks and Access to the Countryside Act (1949)

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by Cardiff University

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'Two things are characteristic of this age, and more particularly of this island. The conscious appreciation of natural beauty, and the rapidity with which natural beauty is being destroyed ... This passion for natural beauty that consumes so many of us to-day, found recent expression ... in the sphere of practical effort ...'

G. M. Trevelyan, 'An Autobiography & Other Essays' (1949) 92.

Executive Summary

The National Parks and Access to the Countryside Act 1949 is one of Britain's most iconic environmental statutes. It is best known as the legal basis for the thirteen national parks in England and Wales. National Parks currently connect many millions of people in England and Wales with cherished areas of the countryside, including the coast, covering about a quarter of the territory. The 1949 Act is also the origin of 'sites of special scientific interest' (SSSIs), a Britain-wide designation, whose marine examples alone cover an area of coastal waters larger than Greece and its Islands combined. In Scotland, the Scottish National Parks Act 2000 provides a similar legal basis for the establishment of national parks with express provisions for the designation of marine areas.

The report examines the scope for interpreting the provisions of the 1949 Act to expand the parameters of national park designations, like SSSIs and the Scottish Act, to the marine territory. Whilst the legislative framework in England and Wales for national parks does not make explicit provision for 'National Marine Parks', that does not preclude an interpretation of the Act – its letter and spirit - as supportive of national marine park designations. Like all legislation, the 1949 Act is living law. It can adapt to the changing political (and legal) context of environmental protection. Moreover, key statutory terms, above all the definition of 'land' and the objectives of a national park designation, are broad enough to include marine territory. Whilst there is also scope for introducing amendments to the Act, and adjacent marine planning legislation, to address nuances that may arise during the practical administration of National Marine Parks, amendment is not essential. The Act as it stands enables marine designations.



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'I think that he now feels the desire and need for the wildness [...] One cause of this change is the victory that [man] has now attained over nature, through science, machinery and organization, a victory so complete that he is denaturalizing the lowland landscape. He is therefore constrained to seek nature in her still unconquered citadels ...'

G. M. Trevelyan, 'An Autobiography & Other Essays' (1949) 101.

Introduction

The report is divided into two main Parts. Part I examines the political and legal context of the Act, under the umbrella of the Act's 'spirit'. As is explained, marine conservation was a concern of growing importance in the decades leading up to the passage of the Act, as was, crucially, marine recreation. Concern with marine conservation hand-in-hand with recreation came together between the wars in the growth of sea swimming and yachting clubs, whose members sought to enjoy some of the country's 'wilder' natural environments. Whilst the voices of *inland* recreational and cultural interest groups (e.g. the Ramblers Association and the Campaign for the Protection of Rural England) undeniably dominated the reports and debates leading up to the passage of the 1949 Act, the clear spirit of the national parks provisions is to facilitate a wide ranging public enjoyment and conservation of the nation's 'great outdoors' regardless of inland, coastal, and marine settings.

Part II examines key aspects of the letter of the 1949 Act. The principal focus is on the definition of 'land' in section 114 and on the objectives of environmental conservation and recreation set out in section 5. Aspects to highlight are that land includes 'waterways', which have an expansive definition. It is particularly salient that there are powers to construct jetties in the sea for purposes of public access to coastal national parks, which further support a 'liberal' interpretation of the Act's marine application. Attention is also given to overlapping designations under the Act, notably SSSIs. Whilst the objectives of these designations a purely nature conservation (rather than conservation allied to recreation) they share with national parks provisions the same definition of 'land'. Given that SSSI designations bear on marine areas, this offers a precedent for interpreting land as supporting a National Marine Park designation(s).



Part I : The Spirit of the Law

'... without sight of the beauty of nature the spiritual power of the British people will be atrophied.'

G.M Trevelyan to the Annual Conference of the Council for the Preservation of Rural England in 1937
(as cited in John Dower, 'National Parks in England and Wales: A report to the Minister of Town and
country Planning' April 1945) 14.

'This is not just a Bill. It is a people's charter – a people's charter for the open air, for the hikers and the ramblers, for everyone who loves to get out into the open air and enjoy the countryside. Without it they are fettered, deprived of their powers of access and facilities needed to make holidays enjoyable. With it the countryside is theirs to preserve, to cherish, to enjoy and to make their own.'

Lewis Silkin, HC Debate 31 March 1949 vol 463 col 1486.



Historic overview of the National Parks movement in England and Wales

The National Parks and Access to the Countryside Act 1949 has a complex policy background, which it is important to examine in order to understand the spirit of National Marine Park designations. This Part examines this, drawing (amongst other things) contrasts between the US and the British national parks 'movement' and highlighting its significance for the marine environment.

Origins of National Parks : The US 'wilderness model'

The expression 'national park' was first used by those advocating the large-scale public preservation of uncultivated areas in the Western US during the 19th century. Scholarship has suggested that the early wilderness conservation model reflected the unique American relationship with the sublime character of its untamed western frontier, as well as the nation's political democracy, economic affluence and swathes of 'virgin' land mass. The first example of such a scheme was the designation in 1872 of over two million acres of federal land in north-western Wyoming as the Yellowstone National Park. The US model of 'national parks' was exported to geographically similar sites located in other settler societies such as Canada and New Zealand.

Recently, however, the American claim on the invention of the "national park" concept has been challenged in academic literature. A comparative study of parallel European nature preservation developments frames the genesis of the "national park" model in the broader context of the era's transnational exchange of information on the imminent threat to nature. In both the US and Europe concerns regarding the future of wildlife were expressed in early multilateral international agreements, political forums and widely published academic research. Consequently, the extent to which the "national parks" concept developed in isolation of this global conversation is debatable.

Nevertheless, notwithstanding the origin of the term "national park," it is evident that its early 20th century British manifestation was influenced by and evolved with the distinct physical, political, and social environment of England and Wales.

The British context

Historically, the British rural landscape was the province of poets, painters, and the social elite.

*'What first inspired a bard of old to sing
Narcissus pining o'er the untainted spring?
In some delicious ramble, he had found
A little space, with boughs all woven round;'*

John Keats, 'I stood tiptoe on a little hill' (1816).



Indulgence of the countryside was restricted to those with the time and capital to support membership of exclusive open-air recreational societies, and the right to access areas governed by the traditional landowning class.

Little or no attention has been given in the literature on leisure and the countryside in Victorian Britain to the marine environment. Owned by the Crown, coastal waters in contrast to inland country estates, had a degree of accessibility that made it attractive to the public seeking outdoor recreation. Inspired by Cpt Matthew Webb's crossing of the English Channel in 1875, the Swimming Association of Great Britain 'took off' in the second quarter of the nineteenth century and by 1914 boasted 1,468 affiliated clubs. The sea here represented nature's swimming pool, providing a wild and affecting environment for the wider public, in contrast to inner city lidos and swimming pools whose use was limited by Victorian gender and class norms. Yachting was another important marine recreational activity which grew in popularity in Victorian times, with 'day sailing' a popular pastime beginning in the late nineteenth century and gathering momentum in the twentieth century (aided by innovation in boat design, e.g. the invention of the Mirror Dinghy). The 'seascape' was in these respects a precursor for the rambling and other inland associations which dominated the campaign for national parks.

More research is needed to establish the extent to which marine conservation and marine recreation were 'secretly' formative in the evolution of the national parks movement, but Alain Corbin's influential book *The Lure of the Sea* contains some pertinent observations which are returned to throughout the report below. As the author explains, early industrialization had a profound impact on how society viewed - and valued - the sea. Less a dangerous wildness full of monsters and monstrous weather, the sea became invested in moral significance as a vital 'recourse against the misdeeds of civilization'. This is reflected in the emergence of painters of coastal landscapes from the vantage point of both the coast and the sea; the birth of the recreation called 'sea bathing' in which the upper classes 'took the salts' for therapeutic purposes; and in developments in science, by which salt waters were increasingly believed to hold clues as to the origins of the earth.

To Corbin's analysis here can be added Coleridge's seminal poem 'Frost and Midnight', in which a 'child of Nature' reflected on a landscape of 'see, hill and wood'. This is reflected in Raymond Williams' comment, in *Country and the City*, on the broad meaning denoted in Britain by the words 'country' or 'countryside'. The terms include areas within the rural interior, coast ('charming coastal retreat') and sea ('barren offshore island').

With the emerging importance of marine areas to recreation is a related development in the form of marine focused conservation legislation. For example, the Sea Birds Preservation Act 1869, and the Grey Seals Protection Act 1914, represent some of the first nature conservation legislation in the world. Thus, whilst the marine



environment was not prominent in the debates leading up to the passage of the 1949 Act discussed in the passages of the report immediately below, marine recreation and conservation have deep roots in British society and its laws and is an important part of the broader spirit of the Act which supports a broad and inclusive definition of the Act's scope in terms of the designation of National Marine Parks.

Times of transition

The radical social and cultural upheaval following the First World War is said to have precipitated a 'transitional age' which instigated an 'urban mass attack' on countryside amenities.

Growing affluence, a taste for unspoilt landscape and an emphasis on the horrors of high-density housing led to the unchecked territorial spread of large cities through rapid low-density suburbanisation and ribbon developments. Observers decried the despoliation of Britain's scenic heritage by the erection of pylons and overhead cables to support the electrification of new settlements. The situation was further exacerbated by the agricultural depression following the post-war break-up of landed estates which pressurised new landowners to embark on piecemeal developments. The concurrent popularisation of physical fitness and open-air activities amongst the general public likewise intensified inroads in rural spaces due to the increasing use of motor transport, petrol stations and afforestation.

In 1926 the Council for the Preservation of Rural England (CPRE) was established. The organisation coordinated the activities of 22 constituent bodies and numerous affiliated organisations with interests in nature preservation, public access to the countryside and the provision of open-air recreation facilities. The CPRE monitored land-use changes and promoted legislation of more extensive and firmer planning controls. The CPRE took a leading role in the campaign to obtain National Parks, and in 1929 the organisation (with the support of their Scottish and Welsh counterparts, Association for the Preservation of Rural Scotland and the Council for the Preservation of Rural Wales) submitted a memorandum to the newly elected Labour Prime Minister Ramsay MacDonald requesting an official government enquiry into the need for a series of national parks.

The CPRE's lobby was endorsed by a publicity campaign for national parks initiated by Lord Bledisloe, Parliamentary Secretary at the Ministry of Agriculture and later Governor-General of New Zealand. A lifelong proponent of effective husbandry and responsible use of the countryside, Lord Bledisloe was inspired by the transatlantic national park experience and its potential public health benefits for the 'brain weary workers in crowded urban areas' and 'nerve racked people.' In 1928 Lord Bledisloe wrote to Prime Minister Stanley Baldwin, proposing the Forest of Dean as a pioneer area for national parks. As an inducement Lord Bledisloe offered to grant a 'public right of access for all time' to parts of his estate which adjoined the Forest.



Political institutionalisation during the interwar period

The issue was considered by both the Office of Works and the Forestry Commission, yet little progress was achieved until the election of the Labour Government in May 1929. The CPRE's memorandum and Lord Bledisloe's assertions that the policy could be 'adapted to our special national requirements and different local conditions' led to the appointment of an inter-departmental National Park Committee commissioned to report;

'... if it is desirable and feasible to establish one or more National Parks in Great Britain with a view to the preservation of natural characteristics including flora and fauna, and to the improvement of recreational facilities for the people; and to advise generally and in particular as to the areas, if any, that are most suitable for the purpose.'

Christopher Addison, 'Report of the National Park Committee' (April 1931).

The Committee concluded its report in 1931 following 28 meetings and verbal evidence from 34 witnesses, as well as supplementary written evidence. Whilst advocating in favour of national parks, the Committee recognised the difficult task of harmonising objectives for nature preservation versus public access and recreational use. From the outset the report asserted that the scale of North American parks, which allowed for the simultaneous accommodation of palatial hotels and refuge for timid wildlife, was not easily replicated in the small and populous British landscape. Consequently, the Committee recommended a twin system of designations based on either the preservation of wildlife ('National Sanctuaries') or public access to outdoor recreation areas situated near large urban centres ('National Reserves').

However, the continued urban sprawl in rural areas throughout the 1930s triggered the establishment of the Standing Committee on National Parks (SCNP) in 1936. The SCNP drew its membership from voluntary organisations representing largely terrestrial interests such as rambling, climbing, farming and others. Notably absent were marine based recreational organisations, which meant that the dialogue of the national parks campaign was largely informed and influenced by inland areas and terrestrial recreation interests. The consortium sustained an active lobby throughout the war years; it disputed the sufficiency of existing planning legislation and contended that National Forest Parks created by the Forest Commission could not substitute national parks given recreation would always be a subsidiary to commercial considerations.

Towards the end of the war the SCNP urged the government to set up a National Parks Authority that would have the powers to designate and finance park areas. The SCNP were anxious to ensure national parks achieved a distinguishable role in the comprehensive land planning schemes being discussed for the post-war reconstruction period.



Post-war reconstruction and the legislative process

Speculation around post-war urban reconstruction opened a floodgate of expectation which transformed the political and public reception for advocates of outdoor recreation and the preservation of scenery and wildlife.

The national park idea gradually worked its way into informal pronouncements as to desired objectives following the end of war. Early proposals framed national parks as an act of national compensation for the mortal and material sacrifices made during the war effort.

Subsequently, national parks received a favourable response in a number of influential committees investigating the management of land use change during the early 1940s. A report by the Committee on Land Utilisation in Rural Areas (Scott Committee) described the beauty of the countryside as the 'heritage of the whole nation,' and advised the establishment of national parks was an essential factor in the 'proportioned use of rural land for the long-term benefit of countrymen and townsmen alike.' Such comments prompted the Ministry of Works and Planning to commission John Dower's report on the 'general issues of national parks backed by specific information.'

The Dower report was a powerful restatement of the case in support of national parks and the first comprehensive survey and delineation of possible national park areas across England, Wales, and Scotland. Significantly, Dower's vision of national parks 'as an extensive area of beautiful and relatively wild country' was a departure from the Addison Committee's focus on 'intimate charm.' Nevertheless, the Hobhouse Committee report that came two years later in 1947, and the 1949 Act itself, both affirm Dower's view of the parks as extensive and beautiful, the emphasis on wild is less clear. Thus, the definitive characteristics of national parks subsume three inter-related though separate values: the country, the wild, the nature. Consequently, national parks were able to align the conservation and recreational interests which had sustained the early park movement.

Tasked with considering the implementation of Dower's proposals, the Hobhouse Committee produced a trinity of reports on national parks, footpaths, and wildlife conservation.

The powerful lobbies sustained by voluntary societies over several decades ultimately mobilised public and political opinion in favour of national parks. Likewise, a sense of urgency drove the legislative process as there were concerns that the pending relaxation of building restrictions following the end of the war would lead to an increase of planning applications in areas set aside for national parks. By the end of 1949 the National Parks and Access to the Countryside Bill had successfully passed through both Parliamentary houses and received Royal Assent in December – formalising the legislative framework for national parks in the National Parks and Access to the Countryside Act 1949.



The extent to which National Parks are ‘*national*’

There is considerable complexity to the use of the word ‘national’ in the context of the 1949 Act. As alluded to above, the choice of the word can be understood as part of a broader national story – a story of nation-building - with that story being specific to the jurisdiction at hand. Keeping with the Anglo-American comparison, Yellowstone National Park, for example, is an iconic work of the US Federal Executive and Legislature, in the name of ‘the People’. The land is owned by the nation, which can give rise to tensions with individuals (notably proprietors) and sub-national political structures (notably states). The position is profoundly different in the UK. From the very first report (the Addison report), the idea of national ownership was rejected in favour of retention of private ownership, supplemented by the power (rarely exercised) vesting in local and central government bodies to acquire land for the public benefit where necessary (on payment of compensation). National parks under the Act thus reflect the primacy of common law, private property rights.

Linked to this is British emphasis on ‘voluntarism’ in land management practises. National parks preserved what Max Nicholson (founder of the International Union for the Conservation of Nature) called the ‘biological police force’ of local, patrician landowners who ‘were nature lovers’, in ways inspired by ‘the brilliant succession of poets, from Pope and Thompson to Coleridge and Wordsworth’. Such custodians (so the argument goes) could ‘cherish’ nationally significant landscapes far better than governmental owners, and should be left to their own traditional management norms as far as possible. Inevitably this casts something of a long shadow over national parks and their administration, featuring in complaints about elitism within national parks governance today.

Another significant aspect of the national story is Britain’s relation within wider Europe. In *Where Poppies Blow*, John Lewis-Stempel draws upon diaries of soldiers during 1914-1918 War which spoke of nature’s healing and motivating properties, to suggest a ‘national psyche’ of nature conservation which is nationally distinctive. Local landscapes and their place in human lives supplied what the author call the main will soldiers to persist in the fighting. Broadly the same is true of the second world war, as reflected in the choice of landscapes as the principal subject matter of propagandist Frank Newbould’s prints ‘Your Britain - Fight For It Now’. Tellingly, these prints evoke gentle country scenes in which local buildings co-exist alongside vernacular plants, animals, hydrogeological features – scenes considered reflective of what it means to be ‘British’.

The theme of the ‘national’ within the 1949 Act’s provision is further complicated by the emphasis on local government within national park management. Once the Minister approves a national park designation, management becomes largely a matter for the individual proprietors and the local planning authorities who make up the national parks authorities within whose jurisdiction the designation falls. The aspect of the national story engaged here is what Nigel Haigh calls the ‘principle of devolved



responsibility.’ Haigh’s caveat is that that membership of the EEC/EU ‘centralise[d] into government’s hands some powers that had previously been devolved to local government or other agencies.’ However, the national parks regime largely operated outside the EU Treaty regime, with its centralising tendencies, and that is something which speaks to the strong thread of ‘localism’ running through some national parks initiatives in the south of England.

Whilst Lewis Silkin remarked during the second reading of the Bill that ‘the term “national” is misleading;’ an alternative and better way to capture the position is to describe the term ‘national’ as complex and nuanced. National parks are ‘national’ in diverse senses. This comes together above all in parks recognising the landscapes (and seascapes) which a peoples might aspiring to calling its home, drawing on them material, aesthetic and spiritual sustenance.



Part II : The Letter of the Law

'An Act to make provision for National Parks and the establishment of a National Parks Commission; to confer on the Nature Conservancy and local authorities powers for the establishment and maintenance of nature reserves; to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and to amend the law relating to rights of way; to confer further powers for preserving and enhancing natural beauty; and for matters connected with the purposes aforesaid.'

[16th December 1949] National Parks and Access to the Countryside Act 1949 .



Statutory interpretation

The question of whether the 1949 Act contains the power to designate areas of land 'national park' is a question of statutory interpretation. This is subject to well established legal rules and principles, notably that any interpretation must start with the wording used by the Crown in Parliament, as sovereign legislature. Where - as is often the case - the wording is ambiguous in any particular practical setting, rules of interpretation allow for the purpose or mischief (including the spirit) of the Act to be the guide (above). There have been no cases under the Act on the question at hand, and thus no precedents beyond the general interpretative principles the courts have developed. This part explores the most plausible interpretation of key aspects of the letter of the law, viz the objectives of national park designation (conservation and recreation); the definition of 'land' as the territory in England and Wales to which a national park can be designated; and provisions relating to 'access' within any national park designation. Guidance can also be obtained from a close look at the offshore application of overlapping regimes within the 1949 Act, notably sites of special scientific interest (SSSIs).

One important caveat to the above remarks to consider at the outset is the principle of legality. The principle is engaged where there is potential to interfere with common law property rights. The background to this principle is that property rights have a common law constitutional status under the British constitution, such that it is necessary for the courts to adopt a presumption against interference with property rights in the absence of express wording or a necessary implication from the wording given. Were this principle engaged in the context of offshore national park it would certainly suggest that Parliament would need to express a power of this sort in the clearest, most explicit terms. However, as explained above, and with the exception of compulsory purchase powers which are rarely exercised, the Act works with the grain of common law property rights. The remainder of this section works on the assumption that the principle is not engaged.



Wording of National Parks Provisions

Objectives of the 1949 Act

'(1) The provisions of this Part of this Act shall have effect for the purpose –

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

...

(1) A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park ... and shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.'

s5(1) and s11A(1) of the National Parks and Access to the Countryside Act 1949

From the outset National Park status was not simply an environmental conservation designation but maintained twin environmental and social objectives; the dual purpose, to protect and enhance the natural beauty of designated areas and encourage public enjoyment of the landscape. The long-held 'Sandford principle' policy, later enshrined in legislation, established a preference for conservation over public enjoyment where a conflict between the two purposes could not be resolved. However, the courts have since observed that the 'Sandford principle' will only be triggered when a National Park Authority makes a value judgment that it can no longer apply a management or stewardship solution. Therefore, the precedence of environmental protection concerns only arise in certain circumstances and do not undermine the general significance of the public enjoyment objective.

Later additions by the Environmental Act 1995 have expanded objectives to recognise the importance of wildlife and cultural heritage, and their interconnection with the appearance and character of an area. Moreover, a modern amendment has framed the pursuit of objectives holistically, taking account of the socio-economic well-being of local communities. This evolution has paralleled the advent of the global sustainability agenda which requires the harmonisation of economic growth, social inclusion, and environmental protection.

A particularly telling aspect of the Act's objectives, as modified by amendments to the 1949 Act arising from the Countryside Act 1968 (section 12(3)), is the power to facilitate marine recreation, as follows:

'A local planning authority whose area consists of or includes any part of a National Park which is bounded by the sea, or by any waterway which is not part of the sea, may, on land which is in or in the neighbourhood of the National Park, carry out such work and do such other things as may appear to them necessary or expedient for facilitating the use of the waters so adjoining the National Park by the public for sailing, boating, bathing and fishing and other forms of recreation.'



Provision is made for the construction of jetties out to sea, as summarised in Halsbury's Laws of England, Volume 43:

If the park is bounded by the sea or other waterway which is not part of the sea the local planning authority has power to carry out any work for these purposes on land which is in or in the neighbourhood of the park, if the existing facilities are inadequate or unsatisfactory (Countryside Act 1968 s 12(3)); and the authority may construct jetties wholly or partly in the sea or other waters (s 12(4)).

The effect of this is that national park authorities in coastal national parks have the power to construct jetties in the sea (subject to relevant approvals of the Environment Agency (in England) or Natural Resources Wales).

'Land' 'water' and 'waterways'

A key function of a designation order under the 1949 Act is to identify an area to be designated as a National Park. The question in the current context is the extent to which the legislation permits the designation of a marine area as part of a National Park.

The first iteration of the 1949 Act did not expressly define the geographical scope of its application. Proposals for designations were simply made in relation to 'areas,' which were expressed as 'extensive tracts of country in England and Wales'. A modern reading of the legislation in conjunction with the Government of Wales Act 2006, which defines Wales as 'including the sea adjacent to Wales out as far as the seaward boundary of the territorial sea,' suggests that 'tracts of country' may be interpreted to mean the sovereign territory of England and Wales which would include the 12 nautical miles of territorial sea. If this were the case, 1949 Act would be applicable to the English and Welsh 'inshore' region.

Whilst there are no express prohibitions on the application of National Park designations to marine areas, a clause which states that the 1949 Act applies to 'land in England and Wales' creates a possible limitation on the type of site that a designation may be applied. However, the term 'land' is defined expansively under section 114 of the 1949 Act 'to include land covered by water.' 13(1) A broad understanding of the term 'land covered by water' would include the seabed of the territorial sea. Scottish legislation supports such a reading as the Land Registration etc. (Scotland) Act 2012 frames the term 'land' as both 'the seabed of the territorial sea' and 'other land covered with water.' The broad interpretation is further supported by the 1949 Act's recognition that 'waterways' may be located within the parameter of a National Park designation. Significantly 'waterways' is expressed as 'other waters suitable or which can be reasonably rendered suitable for sailing, boating, bathing or fishing', all of which can be generally practised within territorial waters.



'Access'

The ambiguity of whether the 1949 Act limits the application of National Park designations to terrestrial areas suggests that modification of the Act would be required to designate National Park status to areas composed exclusively of sea. Other practical issues arise when considering the feasibility of separating a marine area from adjacent land areas, particularly the conditions required to propose a designation:

'That by reason of –

(1) Their natural beauty, and

(2) The opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population.'

s5(2) of the National Parks and Access to the Countryside Act 1949

In the case of exclusively marine areas, the latter half of the second condition – 'their relation to centres of population' – may be difficult to apply without modification.

On the other hand, interpreted literally, section 5(2) refers to spatial proximity between designated area and urban centre. If that is the interpretation the section is held to bear, then this is not an obstacle to offshore designation. By virtue of the nature of urbanisation in the UK (as elsewhere), urban centres will typically have a close geographical relation with coastal waters. For example, taking Swansea as a centre of population which supports the Pembrokeshire National Park, there are areas of coastal waters that are more closely related than are the 'outer reaches' of the current coastal designation. More generally, Ordnance Survey estimates that no one in the UK is more than 72 miles from the sea.



The interaction of the 1949 Act with other statutory nature conservation designations and the common law

The national park regime under the 1949 Act has a dual concern with natural heritage conservation on the one hand and access to nature for purposes of recreation on the other. In this respect it is not the only, or necessarily the most important, access-oriented aspect of the Act. Comparable provisions include maps of footpaths, bridleways and other types of public highway applicable to England and Wales (Part IV), and the designation of 'open country' (Part V). These sit alongside 'purely environmental' regimes within the 1949 Act, notably National Nature Reserves (NNRs) (Part III) and Sites of Special Scientific Interest (SSSIs) (section 23).

SSSIs are particularly probative to the scope for interpreting the Act as extending to the marine environment. Described as 'jewels in England's natural heritage', SSSIs number over 4000 in England, covering 8% of the inland territory. But there is an often overlooked marine dimension to this designation. A good example is Grassholm NNR and SSSI, lying 8 miles off the coast of the Pembrokeshire National Park. As noted in an early study of the implementation of EEC environmental law, the SSSI designation is the 'tool' chosen by the British Government through which to implement the Wild Birds Directive (providing for special areas of protection (SPAs)).⁹³ The UK's marine SSSIs cover an area of coastal waters larger than Greece and its Islands combined. Crucially, the power to designate a SSSI has a shared basis in the definition of 'land' common to all other designations originating in the 1949 Act. This is one of the most powerful arguments in support of the 1949 Act conferring a power to designate national parks offshore.



Conclusions

The report supports the interpretation of the 1949 Act as containing the power to designate areas within territorial waters 'National Marine Park'. This is by virtue of both the spirit and the letter of the Act, as follows.

Spirit of the Act

The spirit of the Act is to promote environmental conservation and recreation regardless of environmental medium, in keeping with a tradition of outdoor recreation involving the offshore and onshore environment dating back to the eighteenth century.

The concept of 'countryside' in Britain is not confined to rural land, but extends to coastal land and coastal waters.

Letter of the Act

The statutory objectives of Act are to promote 'sailing, boating, bathing and fishing and other forms of recreation', as introduced into the national parks regime by section 12 of the Countryside Act 1968.

The territorial application of the Act is broadly defined, with 'land' defined as encompassing 'water', 'waterways' and 'sea' (section 114).

By virtue of the fact that in England and Wales (and the UK as a whole) no one is more than 72 miles from the sea, the marine environment contains many areas that are accessible for purposes of the 1949 Act.

The overlapping conservation regime of sites of special scientific interest has been extensively applied at sea, with 'offshore SSSIs' being used to comply with international and EU law relating to the conservation of migratory birds.



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