

## What are the forthcoming legislative issues of interest to ecologists and conservationists in 2011?

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William J. Sutherland, Richard Barlow, Andy Clements, Martin Harper, Peter Herkenrath, Ceri Margerison, Kathryn A. Monk, James A. Robinson and Des B.A. Thompson.

We are struck that ecological science and legislation appear to largely operate independently. While fully accepting that the role of ecology extends well beyond working with politicians and their advisers, we suggest there are benefits of a more informed approach. There are at least two good reasons why it is helpful for the ecological community to be aware of possible forthcoming legislation. Firstly, ecologists could contribute to the creation and development of policies through their scientific input. Secondly, future legislation may impact upon ecological research and practice, for example by leading to new research and monitoring opportunities. We note that much new legislation is now heavily informed by a good evidence base which is challenged through clause-by-clause scrutiny by politicians and government officials. However, we are mindful that subsequent to new legislation coming into force, the attention to detail on researching and monitoring the subsequent impacts is not as sharp as it could be; there are key opportunities here for researchers, agencies and NGOs to contribute to the evidence base on impacts of legislation.

The aim of this exercise is to identify likely new legislation which may have direct or indirect impacts on ecologists, or which might benefit from proactive links with ecologists. We consider legislation that has global importance, from the European Union and wider Europe and from the UK or its countries. This exercise is not aimed at policy makers, many of whom will know this material well, but at scientists who may gain from increasing awareness of issues.

Legislation is defined by the Oxford English Dictionary as "laws collectively". For the purpose of this review we consider legislation that is forthcoming. We also include significant developments in existing legislation, and the development of White Papers that might result in new laws being passed or in reinterpretation of existing laws (See <http://www.parliament.uk/about/how/laws>).

We do not aim to give a comprehensive assessment of content and consequences of each piece of possible legislation but simply aim to identify subjects and encourage readers to investigate further if required. We plan to repeat this exercise annually.

### GLOBAL

There is a multitude of multilateral environmental agreements. A useful overview is provided by Kiss & Shelton<sup>1</sup>, while ECOLEX, a database operated by the International Union for the Conservation of Nature, Food and Agriculture Organisation and United Nations Environment Programme provides access to environmental legislation from around the world ([www.ecolex.org](http://www.ecolex.org)). The International Institute for Sustainable Development (IISD) [info@iisd.ca](mailto:info@iisd.ca) provides a comprehensive reporting service of news, information and analysis on international environment and sustainable development negotiations and policy making. While the trust in the global environmental law process under the United Nations was shattered when in December 2009 in Copenhagen the United Nations Framework Convention on Climate Change failed to agree on future measures on climate change, the UN system showed its strengths again with a successful outcome of the 10<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity in October 2010 in Japan and modest progress at the United Nations Framework Convention on Climate Change meeting in December 2010 in Mexico.

#### *Nagoya Protocol on Access and Benefit-sharing under the Convention on Biological Diversity*

The legally-binding Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization ([www.cbd.int/abs/](http://www.cbd.int/abs/)) was adopted by the 10<sup>th</sup> Conference of the Parties to the Convention in October 2010 in Nagoya, Japan. A key issue for researchers is the provision that Parties to the Protocol should create conditions to promote research on biodiversity, including 'through simplified measures on access for non-commercial research purposes'. The Protocol will enter into force 90 days after the 50<sup>th</sup> country has ratified it, which is expected to be in 2012.

#### *Code of Ethical Conduct in Respect of Indigenous Heritage*

Among the many decisions taken by the 10<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity ([www.cbd.int/cop10](http://www.cbd.int/cop10)) is the adoption of the voluntary Tkarihwaïé:ri (a Mohawk term meaning 'the proper way') Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage

<sup>1</sup> Kiss, A. & Shelton, D. 2004. International Environmental Law. United Nations Environment Programme, Nairobi, Kenya.

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of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity. Its ethical principles provide guidance for activities that relate to indigenous land or knowledge. Among the audience for these principles are ecological scientists working on indigenous land.

### *Kyoto Protocol to the United Nations Framework Convention on Climate Change*

The December 2010 meeting in Cancun, Mexico, had a number of significant outcomes ([http://unfccc.int/meetings/cop\\_16/items/5571.php](http://unfccc.int/meetings/cop_16/items/5571.php)), but progress under the Kyoto Protocol was limited (See also Sarah Pratt's article on p00 of this issue). The quantified greenhouse gas emission reduction targets for developed countries under the first commitment period of the Kyoto Protocol will expire in 2012. Parties did not agree on targets for the second, post-2012, commitment period. They undertook simply to continue to work on this issue with the aim of ensuring no gap between the first and second commitment periods.

### *Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, including Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks (REDD+)*

REDD has been discussed for several years and is aimed at bringing addressing deforestation and forest degradation into the mechanisms for mitigating climate change under the United Nations Framework Convention on Climate Change. The extension to REDD+ rather than REDD signals the understanding that any such mechanism needs safeguards for biodiversity conservation. The agreement on REDD+ is one of the key outcomes for biodiversity of the United Nations Framework Convention on Climate Change Cancun meeting. It establishes the main outline of the REDD+ mechanism and asks developing countries to develop national REDD strategies or action plans, reference levels for emissions from deforestation, and forest monitoring systems. Developed countries are urged to support capacity-building for REDD in developing countries.

### *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)*

After several years of discussion and negotiation in various fora, the United Nations General Assembly in December 2010 approved the creation of IPBES ([www.ipbes.net](http://www.ipbes.net)). The new body will aim to mirror, for biodiversity, the success of the Intergovernmental Panel on Climate Change in providing scientific advice to climate-related decision-making. IPBES will address the gulf between the wealth of scientific

knowledge on the decline and degradation of biodiversity and appropriate political action, by providing knowledge on effective solutions. IPBES is expected to be established after the meeting of the United Nations Environment Programme Governing Council/Global Ministerial Environment Forum in February 2011.

## EUROPE

There is well established, well known and strong European legislation underpinning nature conservation, notably the Birds and Habitats Directives, together enabling a European network of protected areas, Natura 2000. These provisions place tough restrictions on development in and around protected areas and, as a result, are under fairly constant pressure for reform, so far resisted. It is understood that the key EU Guidance 'Managing Natura 2000 Sites' is undergoing a review by the EU Commission. In addition to these directives, the Bern Convention on the protection of endangered natural habitats and endangered vulnerable species is administered by the Council of Europe. A recent relevant development under the Bern Convention is the European Strategy on Invasive Alien Species, signalling the increasing importance of this threat to natural biodiversity. Fry (2008) provides a comprehensive digest of European nature conservation law, and the Institute of European Environment Policy provides information services.

### *EU Budget Reform 2014-2020*

The European Multi-annual Financial Framework currently represents 1% of Europe's annual GDP. Debate for the spending period 2014-20 has already started and draft legislative proposals will emerge in 2011 prior to political debates in 2012-13. The next seven year EU Budget provides an opportunity for reform to ensure that EU public money supports EU public policy priorities. To date, a small percentage of the overall pot supports attainment of environmental priorities, such as climate change mitigation and nature conservation. 976 billion was allocated for the seven year period (2007-13) with the bulk of the expenditure coming through Structural and Cohesion Funds (40.16%) and the Common Agriculture Policy (47.76%). The remainder of the budget is made up of Life + (0.25%) which is the only dedicated budget to support biodiversity objectives, such as fulfilling the requirements of the Nature Directives, Marine and fisheries funding (0.79%), External spending (3.28%), TEN-T (transport) funding (0.94%), FP7 (research) funding (0.94%) and other (6.38%).

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### *Common Agricultural Policy reform*

Reform is due in 2013 with proposals likely to be presented in 2011. There is active debate about the likely extent of continued subsidies. There have been promises that the subsidies will be equally available across all countries, including those that have recently joined. There is likely to be a shift from direct subsidies for farming to payment for benefits to society and especially those relating to ecosystem services.

### *Common Fisheries Policy reform*

Consultation is currently underway aiming for approval for change by the European parliament and Council in 2013. The consultation considers fundamental changes to fisheries policy, including the recovery of natural fish stocks.

### *Soil Framework Directive*

Discussions continue on the introduction of a Directive concerned with the protection of soils. There is a European thematic strategy on soils, and recent developments are well summarised in Kibblewhite (2007). Progress is currently blocked by the EU Council and its future remains uncertain.

### *European Landscape Convention*

This Council of Europe treaty became open for signature by Member States in 2004, and has been signed and ratified by some, but not all, countries. It promotes the protection, management and planning of European landscapes, and organises European cooperation on landscape issues.

## UNITED KINGDOM

The document released by the UK's Coalition Government in the wake of the May 2010 election (*The Coalition: our programme for Government*) outlines the UK Government's priorities for the next five years. This document was translated into the Queen's Speech in October, in which the Coalition outlined the legislative programme for the 2010 – 11 parliamentary session. The legislative programme contains a mixture of proposals relevant to varying degrees to the four countries of the UK, depending on whether a particular area of policy is 'devolved' to the respective country administrations or whether law-making powers are 'reserved' to the UK parliament.<sup>2</sup>

The environment is a devolved area of policy, with Scotland, Wales and Northern Ireland holding responsibility for developing their own environmental legislation. The UK Parliament can still pass legislation for any of the devolved administrations, but in practice only does so with the consent

of the Scottish Government, Welsh Assembly Government or Northern Ireland Assembly. The Westminster administration is known as the 'UK Government', despite much of its policy priorities and legislation applying to England-only.

In the following section we outline those areas of policy which apply to more than one country of the UK, and then discuss those legislative developments applying to England, Wales, Scotland or Northern Ireland alone.

Fry<sup>3</sup> gives a comprehensive overview of current UK conservation law.

### *Marine and Coastal Access Act*

The Marine and Coastal Access Act sets out provisions to designate an ecologically coherent network of Marine Conservation Zones (MCZs) in English, Scottish and Welsh territorial waters. In addition, a long-distance walking route will be created around England's coasts. Natural England and the Joint Nature Conservation Committee are leading the Marine Conservation Zones project, to identify and recommend MCZs to Government. Four regional projects bring together stakeholders in the south west and south east seas, the North Sea and the Irish Seas, recommending MCZs in these areas. Proposals for the locations of Marine Conservation Zones are currently being debated by regional groups while the national list is due to be consulted upon in early 2012.

### *Carbon Reduction Commitment (CRC)*

The phased effect of this will be felt over the next few years having come into initial force during 2010. The carbon reduction program is a mandatory programme for organisations in the UK that consumed more than 6,000 megawatt-hours (MWh) of electricity per year. Participants include supermarkets, water companies, banks, local authorities and all central Government Departments. The scheme is designed to help reduce the UK's overall carbon emissions by 80% by 2050. The first phase extends to 2013 when there are reporting obligations for, and unlimited carbon allowances required to be purchased by, participating organisations. Thereafter a limited level of carbon allowances will be available to be purchased through the marketplace with the cost of such allowances determined by the carbon market. Organisations are taking steps to reduce their energy

<sup>2</sup> A useful guide to devolved and reserved powers can be found on the BBC website: [http://news.bbc.co.uk/1/hi/uk\\_politics/election\\_2010/first\\_time\\_voter/8589835.stm](http://news.bbc.co.uk/1/hi/uk_politics/election_2010/first_time_voter/8589835.stm)

<sup>3</sup> Fry, M. ed. (2008). *A Manual of Nature Conservation Law*, 2nd edition, NCWG Publishing Limited.

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use or to acquire green energy generation facilities and this may well lead to increased pressure for development of wind, solar, tidal and energy from waste facilities, all of which have potential impacts upon ecology.

### *European Union Bill*

Implementing a commitment from the Coalition Government, the Bill extends to the whole UK and will require a UK referendum before accepting any proposed EU Treaty that transfers areas of power or competences. The Bill also places on a statutory footing the common law principle of Parliamentary sovereignty with respect to directly applicable or directly effective EU law, with such laws given effect in the law of the UK only by virtue of an Act of Parliament. This would be a marked change from the current situation where, for example, EU Regulations have effect as law in the UK without further transposition.

### *Public Bodies Bill*

The Public Bodies Bill was introduced into the House of Lords in October 2010. This applies to all four countries of the UK. In the autumn of 2010 the UK Government announced the abolition of nearly 200 'quangos' (quasi-autonomous non-governmental organisations), with the aim of saving money and improving public accountability for decision-making. The Public Bodies Bill puts in place provisions for the Government to enact these cuts, which include the abolition of the Royal Commission on Environmental Pollution and the withdrawal of funding from the Sustainable Development Commission. In addition, the Bill contains provisions for the Secretary of State to amend those parts of the Forestry Act 1967 relating to disposal, management or use and letting and granting of rights and interests. The Government has signalled its intention to sell 15% of the Forestry estate over the period of the Comprehensive Spending Review, 2011 to 2014 (40,000 hectares). The Government will consult on how the remaining Forestry Commission land can be best managed (expected in spring 2011).

### *Localism Bill*

This Bill devolves greater power from Central to Local Government and to allows members of the public to have a greater say in decisions affecting their local communities, including planning matters. Provisions in the Bill, if passed by Parliament, will result in the abolition of Regional Spatial Strategies (strategies to inform decision making regarding development spanning county or district boundaries, including outline housing figures for Local Authorities to take forward). These will be replaced by 'Neighbourhood Plans', whereby developments will proceed if a majority of

the local community is in favour of them. The Bill currently includes a 'duty to cooperate' with respect to 'the planning of sustainable development'. The Infrastructure Planning Commission will also be abolished, with the Secretary of State instead making the final decision regarding large, economically significant infrastructure development, such as offshore wind farms and nuclear power stations. Most of the provisions in the Bill apply to England only, whilst some apply additionally to Wales, or to Wales only. A very small number of provisions apply to Scotland. The Localism Bill received its first reading in the House of Commons on 13 December 2010. The Bill will be complemented by a National Planning Policy Framework, which will be developed in 2011. This is designed to consolidate policy statements, circulars and guidance documents into a single document.

### ENGLAND

A major driver behind UK Government priorities at present is the shift from centralised and 'top-down' control to the 'Big Society', reliant on individual and community effort at the local scale, whilst the need to cut the UK's financial deficit has driven swingeing cuts across Departments. The Department for the Environment, Food and Rural Affairs (Defra) must make savings of over 30% in its budget by 2014.

Business Plans for 2011-2015, released in November of last year, translate policies outlined in the Coalition Agreement into action for individual Departments.<sup>4</sup> The Defra plan includes: commitments to a Natural Environment White Paper for England; a national tree planting campaign; a review of the governance of National Parks; the introduction of 'a carefully managed and science-led policy of badger control' to combat bovine tuberculosis, and the introduction of a new designation, similar to Sites of Special Scientific Interest, to protect green spaces of significance to local communities<sup>5</sup>. These activities will be brought forward, amongst others, in 2011, with the Business Plan refreshed annually.

### *Natural Environment White Paper*

The Government will launch a new Natural Environment White Paper for England in spring 2011 aiming to set the

4 The Defra plan covers England-only, except with regard to the UK Government's priority to 'Support and develop British farming and encourage sustainable food production'. Although agriculture is a devolved issue, a common UK position on reform of the Common Agricultural Policy must be fed into EU negotiations. The UK Government will develop this through liaison with the devolved administrations.

5 Business Plan for 2011 – 2015, Department for Environment, Food and Rural Affairs (2010): <http://www.defra.gov.uk/corporate/about/what/documents/defra-businessplan-101108.pdf> (Accessed 17 January 2011)

direction of travel for environmental policy in England over the coming years. The last such White Paper was launched over 20 years ago. Defra launched a consultation document in late summer 2010, seeking views on what the final White Paper should include. The consultation was scant in detail but it is likely that the final document will include proposals to bring forward a system, or systems, of 'biodiversity offsetting' in England, which is the subject of a further specific DEFRA consultation and the Government's response to the Lawton Review of England's protected area network. Plans will also be brought forward to re-draft the Biodiversity Action Plan for England. The White Paper can be seen as Defra's response to the Coalition Government's 'Big Society' agenda, with the consultation placing emphasis on the engagement of local communities in the management of England's natural assets.

It is unlikely that the White Paper will lead to new legislation. It will instead set a framework for Defra policy development with regard to England's natural environment.

## SCOTLAND

### *Wildlife and Natural Environment (Scotland) Bill*

This legislation, due to come into force in March, covers a range of topics including deer, game, snaring, badgers, invasive non-native species (seeking to prevent further releases or, if already released, control, containment or eradication where possible); species licensing; and muirburn (introducing greater flexibility when muirburn is permitted). There will be abolition of Areas of Special Protection orders, due to perceived duplication in other pieces of legislation. For Sites of Special Scientific Interest (SSSIs), the Bill includes changes to the scope, administration and enforcement of restoration notices issued by SNH with regards to damaged natural features of an SSSI, and allowing the combination of two or more SSSIs into a single SSSI. The Bill includes a contentious section on 'vicarious liability', whereby employers may be liable for the illegal actions of their employees or agents.

## WALES

### *Welsh Assembly Government A Living Wales: a new framework for our environment, countryside and seas*

Also known as the Natural Environment Framework, the public consultation closed in December 2010 but background papers and a developing evidence base can be found on <http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en>

The Welsh Assembly Government is now leading a programme of work to develop this new approach and

determine how it will be made operational. In parallel with the Defra Natural Environment White Paper for England, this will drive sustainable land and marine management in Wales through integrated land, water, and air management underpinned by an ecosystem services approach. The final objective of the work in 2011-12 is a clear set of national priorities, backed up by institutional and regulatory changes and integrated local delivery mechanisms.

### *Welsh Assembly Government Strategic Policy Position Statement on Water 2011*

This revised Statement, currently being developed, updates the position of the Welsh Assembly Government, reflecting key developments over the last two years and highlights areas that will be a priority in the future. Focus will be at the whole catchment level, including the interaction with activity on land, and taking account of the likely impacts of climate change. The Water Framework Directive provides a key legislative driver and the River Basin Management Plans the tool for delivering this integrated approach. The incoming Assembly Government may make a more detailed statement on its policy in the context of the planned UK Government Water White paper scheduled for publication in summer 2011.

Consultations on environmental legislation can be found at <http://wales.gov.uk/consultations/environmentandcountryside/?lang=en>

## NORTHERN IRELAND

### *Northern Ireland Wildlife and Natural Environment Bill*

This includes new provisions and amendments to the Wildlife (Northern Ireland) Order 1985 and the Environment (Northern Ireland) Order 2002. It is progressing through the Northern Ireland Assembly and is currently at the further consideration stage. The Bill includes a new biodiversity duty, additional stop and search and powers of entry in enforcement of the Wildlife Order, and the inclusion of a lesser offence for third party damage to Areas of Special Scientific Interest. The species protection schedules are also being revised to account for changes in the conservation status of species.

### *Northern Ireland Planning Bill*

The Assembly's Executive has made it clear they are committed to developing a modern, efficient and effective planning system to achieve economic growth while balancing environmental and social issues. Following consultations, a Planning Bill was introduced to the Assembly in December 2010. At the time of writing, the Bill is at the initial consideration stage in the Assembly.

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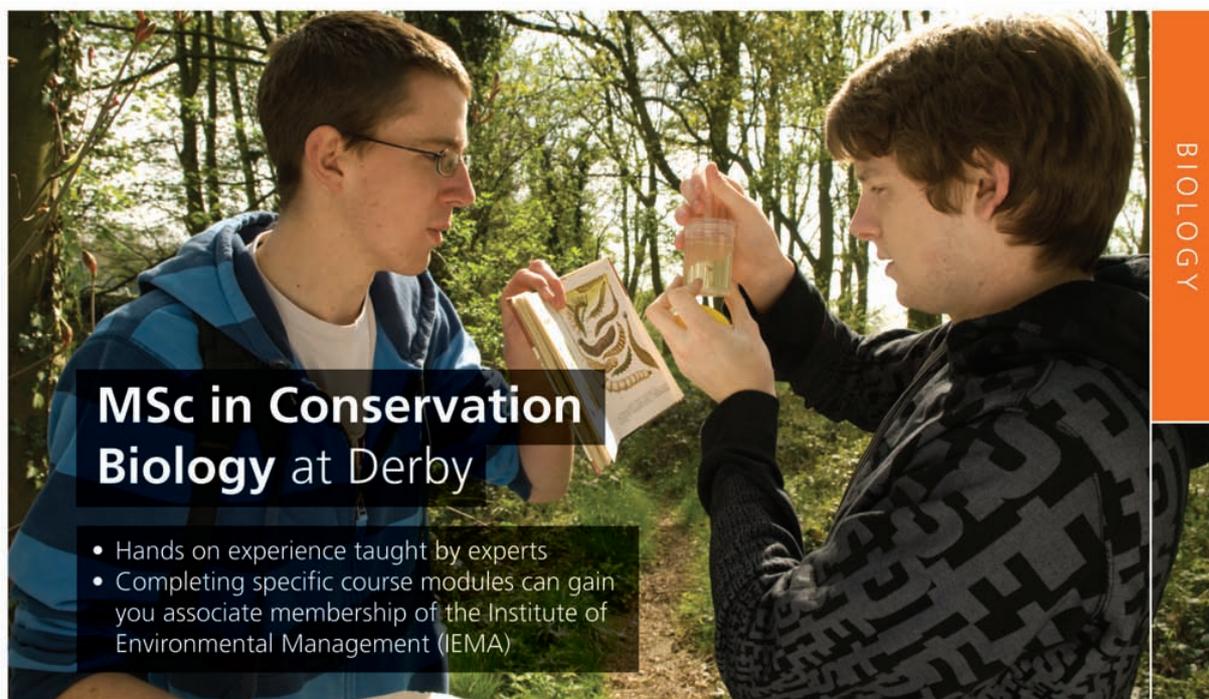
### *Northern Ireland Marine Bill*

Following the Royal Assent of the UK Marine and Coastal Access Act 2009, the Environment Minister intends to introduce measures to address marine management in Northern Ireland territorial waters (within the 12 nautical mile limit). The Bill is likely to contain provisions for marine planning, marine nature conservation, and further streamlining of licensing for devolved functions. A draft Bill is likely to be published later in 2011.

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