

ENVIRONMENTAL LAW

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ABSTRACT

This report shall examine how the destruction of Marine Wilderness Areas are legally managed through five examples:

Section 2: Examines Bottom Trawling in New Zealand

Section 3: Examines Bottom Trawling in Canada

Section 4: Examines Bottom Trawling in Palau

Section 5: Examines Pulse Bottom Trawling in the Netherlands

Section 6: Examines the case of Greenpeace UK Ltd vs The UK Department for Environment, Food and Rural Affairs (DEFRA)

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Glossary of key terminology

Beam Trawling: Trawlers that use a large net attached to a heavy beam that is dragged along the seabed. Trawlers tow two nets one upon either side of the vessel

By-catch: the unwanted fish and other marine creatures trapped by commercial fishing nets during fishing for a different species.

Ecosystem Based Approach: a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way.

Exclusive Economic Zone: A sea zone prescribed by the United Nations Convention on the Law of the Sea over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind

High Seas: The open ocean, especially that not within any country's jurisdiction

Marine Protected Area (MPA): Protected areas of seas, oceans, estuaries or large lakes. These marine areas can come in many forms ranging from wildlife refuges to research facilities

Otter Trawling: A trawl that uses otter boards to spread its net

Pulse Bottom Trawling: Beam trawlers that are fitted with electrodes to emit a current to stun all biota within nets

Territorial Waters: Any area of water over which a state has jurisdiction, including internal waters, the territorial sea, the contiguous zone, the exclusive economic zone and potentially the continental shelf

The Precautionary Principle: The precautionary principle generally defines actions on issues considered to be uncertain

In an article in the Independent, July 2018, scientists revealed that only “13% of oceans are still untouched wilderness” (Jones et al, 2018, p1). Their research paper also outlines that marine wilderness areas are “ignored in global environmental agreements” (Jones et al, 2018, p4). Their paper concludes with the recommendation that a ‘Paris Agreement for the ocean’ in a similar vein to the Paris climate agreement agreed in 2015, is needed to further halt the decline of wilderness areas in the ocean.

Using this piece of research as a basis, you are to investigate ONE of the key legal issues relating to one of the following threat categories: Fishing; Ocean-based; Land-based. You must clearly outline the legal issue at hand, and how this is or isn't being managed in relation with the destruction of marine wilderness areas.

This should be presented in a professional style report, 2000 words +/- 10%.

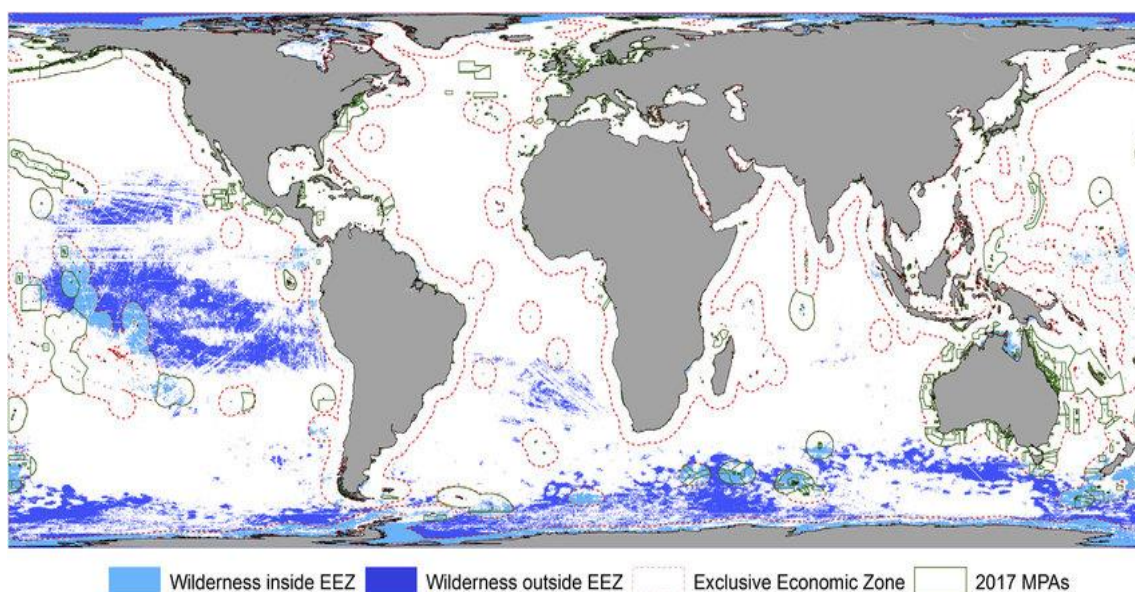
1. Introduction

In the paper “*The location and Protection Status of Earth’s Diminishing Marine Wilderness*” Jones et al (2018) state that:

- 13.2% of the world’s ocean can be classified as Marine Wilderness Areas
- There are few Marine Wilderness Areas in coastal regions
- 4.9% of Marine Wilderness Areas are in Marine Protected Areas (MPA’s)
- There needs to be a legally binding international agreement similar to the Paris Climate Agreement in order to conserve Marine Wilderness Areas

Jones et al (2018) have mapped the extent of Marine Wilderness Areas.

Figure 1: *The Location and Protection Status of Earth’s Diminishing Marine Wilderness*



One of the recommendations for protecting Marie Wilderness Areas made in the paper is “to prevent overfishing and destructive fishing practices” (Jones *et al*, 2018:5).

A destructive fishing practice is Bottom Trawling which is a key legal issue related to ocean-based fishing. (Stiles *et al*, 2010; Church, 2011; Le Manach *et al*, 2019). Bottom Trawling is defined as:

“A method of fishing in which a large bag-shaped net is dragged along the bottom of the sea, behind the vessel. The mouth of the net is kept open by various methods, such as a wooden beam (beam trawl) or large flat boards (otter trawl)” (Fisheries.noaa.gov, n.d.)

Bottom Trawling has been estimated to account for 23% of global fishing production (Hiddink *et al*, 2017). There are several types of Bottom Trawling summarised in the table below.

Table 1: Types of Bottom Trawling

Bottom Trawling category	Description
Otter Trawling	<i>A trawl that uses otter boards to spread its net</i>
Beam Trawling	<i>Trawlers use a large net attached to a heavy beam that is dragged along the seabed. Trawlers tow two nets one upon either side of the vessel</i>
Pulse Bottom Trawling	<i>Beam trawlers are fitted with electrodes that emit a current to stun all marine biota within the nets</i>

The destructive impacts of Bottom Trawling are far reaching and include:

- Killing benthic sea organisms through entrapment and suffocation in beam nets (Kelleher, 2005)
- Damaging the structure and composition of the sea bed (Greenpeace, 2008)
- Damaging sensitive benthic communities such as coral (Roberts *et al*, 2005)
- Negatively impacting on the livelihoods of other fishermen (Clucas, 1997)
- Negatively impacting on tourism and recreation (Stiles *et al*, 2010)

1.1 Global and EU regulation of Bottom Trawling

Goal 14.4 of the 2030 Agenda for Sustainable Development is to “end over fishing and destructive fishing practises” (United Nations, 2015). Bottom Trawling is regulated in High

Seas and in Exclusive Economic Zones (EEZ) by a series of UN Conventions that provide a legal framework (**Duncan and Currie, 2004**).

In 2004 the UN discussed a global ban on Bottom Trawling based upon the legal practice of the 'Precautionary Principle'. The proposal was unfortunately blocked by lobbyists and fishing groups (**United Nations General Assembly, 2006**).

In 2016 the EU introduced a ban on deep-sea fishing below 800 meters in the North East Atlantic region (**European Union, 2016**). The new European laws aim to protect Vulnerable Marine Ecosystems (VME's) and state that any vessel that exceeds VME by-catch must immediately cease all fishing activity and resume at least 5 nautical miles from where it first encountered the VME.

1.2 Roadmap of the report:

This report shall examine how the destruction of Marine Wilderness Areas are legally managed through five examples:

Section 2: Examines Bottom Trawling in New Zealand

Section 3: Examines Bottom Trawling in Canada

Section 4: Examines Bottom Trawling in Palau

Section 5: Examines Pulse Bottom Trawling in the Netherlands

Section 6: Examines the case of Greenpeace UK Ltd vs The UK Department for Environment, Food and Rural Affairs (DEFRA)

The report will then conclude with recommendations to manage future Bottom Trawling from a legal perspective in order to protect Marine Wilderness Areas.

2. Bottom Trawling in New Zealand

Jones et al (**2018**) estimate that 25% of New Zealand's EEZ is comprised of Marine Wilderness Areas (**Jones et al, 2018**). In a peer reviewed paper Clark *et al* (**2019**) examined the resilience of benthic communities on seamounts located in New Zealand's EEZ over a period of 15 years. The authors used a series of towed cameras to monitor changes in six seamounts between 2001 and 2015. The authors found that:

- The abundance, diversity and species richness of benthic communities was higher on un-trawled seamounts
- There was low-resilience amongst benthic communities on seamounts that had been trawled

- The resilience and recovery of deep-water benthic habitats impacted by Bottom Trawling are unclear
- The seamounts were subject to a variety of trawling impacts with some impacted more than others

On the 4th of April 2007 the Government of New Zealand announced that 30% of its's EEZ would be legally protected from Bottom Trawlers. This action was based upon the work of Clark *et al* (2019) (New Zealand Herald, 2007). The ban aims to legally protect 17 marine areas over a million square kilometres under an initiative.

Based upon the findings of Clark *et al* (2019) this report would recommend that all Marine Wilderness Areas found in New Zealand's EEZ should be protected by a ban on all trawling activity therefore this region isn't being fully legally managed in relation with the destruction of Marine Wilderness Areas.

3. Bottom Trawling in Canada

Jones *et al* (2018) estimate that *"the majority of Marine Wilderness Areas (>6 million km²) within EEZ's are located in the Arctic"* (Jones *et al* 2018:1). Consequently as sea ice melts new areas are being opened up for commercial fishing industries (Church, 2011). Based upon this information this report will examine three legal solutions to protect Marine Wilderness Areas in the Canadian Arctic. These are:

1. Regulation of Bottom Trawling at a policy level first then the development of protective legislation
2. Developing an Ecosystem-Based approach to managing Marine Wilderness Areas
3. Designated more MPA's geographically encompassing Marine Wilderness Areas

In a peer reviewed journal Church (2011) has published a paper that examines how commercial Bottom Trawling is regulated in Canada. The author examined how permits were granted and the destructive commercial opportunities that this presented. The findings of the paper exposed systemic failings in how permits were granted and the lack of judicial proceedings against Bottom Trawlers. The author recommends that regulations needs to be undertaken through government policy rather than through the courts.

Wallace *et al* (2015) advocate for a Canadian Ecosystem-Based approach to managing Bottom Trawling. Their paper examined a British Columbian case study where non-governmental organisations and stakeholders had developed their own voluntary regulating measures (Wallace *et al*, 2015). The authors found that these voluntary regulating measures significantly reduced the impact of Bottom Trawling upon sensitive benthic communities such

as coral. The authors suggest that this approach can be used in other marine regions but are dependent on committed self-governance.

Charles and Wilson (2009) suggested that the best way to conserve marine ecosystems is to designate more MPA's into Canada's EEZ. However in the case of the Canadian Gully MPA which was introduced in 2004, a 'no-take fish' policy has increased conflict between authorities and trawlers (Charles and Wilson, 2009). The authors argue for this approach to be successful both human and ecological dimensions of MPA's must be considered during planning and implementation of policies.

Consequently this report recommends combining all three approaches in the development of effective legislation to protect Marine Wilderness Areas in Canada. Currently Canada isn't being legally managed in relation with the destruction of Marine Wilderness Areas.

4. Bottom Trawling in Palau

Pacific Island nations along with Arctic regions contain the majority of Marine Wilderness Areas (2.7 million km²) within their EEZ's (Jones et al, 2018). Asian-Pacific nations produce half of the world's fish (Loh and Jaafar, 2015). Loh and Jafaar (2015) also state that in order to preserve livelihoods, food security and marine ecosystems in the region a blanket ban on all trawling activity is necessary.

In 2006 the government of the Western Pacific island of Palau passed an Act to ban Bottom Trawling in its EEZ and Territorial Waters (Web.archive.org, 2006). The Act was made to meet the requirements of the UN Convention on The Law of the Sea (1982) which aims to preserve the marine environment by protecting and preserving fragile ecosystems, protecting and preserving marine habitats, Protecting and enhancing fish stocks and co-operating with other nations in order to preserve the living resources of the high seas (UN.org, n.d.).

The Act included bans on:

- Operating and participating in any trawling activity in Palau's EEZ and Territorial Sea
- Palauan nationals from participating in trawling activity worldwide
- Businesses registered in Palau to participate or assist in any trawling activity
- Vessels registered in Palau to participate or assist in trawling activity worldwide

The penalties for non-compliance include civil proceedings where vessels can be impounded by the government and criminal proceedings that can include imprisonment for up to ten years and a maximum fine of five hundred thousand dollars (Web.archive.org, 2006).

“We argue that national fisheries departments should prioritize the process of phasing out bottom trawling while accounting for supporting measures. Zoning restrictions may seem more tractable on paper, but total bans are more effective and easier to enforce” (cited in Loh and Jaafar, 2015:3).

This Act banning all trawling activity in the region is an example of effective legislation in the management of protecting Marine Wilderness Areas.

5. Pulse Bottom Trawling in the Netherlands

Very few Marine Wilderness Areas lie in coastal areas, with no Marine Wilderness Areas located in Europe (Jones et al, 2018).

Le Manach *et al* (2019) examined Pulse Bottom Trawling in the Netherlands and found despite a legal threshold of 18 vessels, the Dutch fleet comprised of 84 pulse trawlers. Pulse Bottom Trawling was originally intended to be a scientific experiment and not intended for wide use. The authors found that the Dutch government were heavily subsidising Pulse Bottom Trawling in breach of both European fishing laws and Sustainable Development Goal 14.4 (United Nations, 2015).

In February 2019 the EU approved a policy banning Pulse Bottom Trawling from 2021. To date no protective legislation has been formulated. Some argue that Pulse Bottom Trawling can lower marine mortality rates amongst by-catch and lower energy usage (Sherer and Boersema, 2019). Critics of the ban argue that it promotes other forms of Bottom Trawling and has little scientific credibility. (Sherer and Boersema, 2019: Le Manach *et al*, 2019).

Currently within Europe there is no protective legislation in place for Bottom Trawling.

6. ‘R’ on behalf of Greenpeace UK Ltd vs UK Secretary of State for Environment, Food and Rural Affairs (2004)

In October 2004 Greenpeace UK Ltd sued the UK Department for Food and Rural Affairs (DEFRA) over a proposed ban on Beam Bottom Trawling in the UK’s EEZ and Territorial Waters (BBC news, 2005). DEFRA only implemented a ban up to 12 nautical miles of the coasts of Devon and Cornwall (BBC News, 2005). Greenpeace wished for a ban covering all of the EEZ in order to protect marine mammals such as the Common Dolphin (*Delphinus delphis*) (Greenpeace.com, n.d.).

The case went before the High Court in October 2005 and was lost because:

- There were no requirements in the UK legislation to give priority to environmental criteria
- The UK government had incentivised environmentally friendly fishing practises more than any other European Union member
- The criteria for a ban was transparent and widely applied in the UK
- The UK government was compliant with article 17 of the EU Common Fisheries Policy (bailii.org, 2016)

The case was passed to the Court of Appeal in November 2005 and also rejected due to insufficient evidence of increased cetacean mortality cause by Beam Bottom Trawlers beyond 12 nautical miles (BBC news, 2005).

This case highlights that Beam Bottom Trawling needs to be banned across all EEZ and Territorial waters and not limited to 12 nautical miles from the coastline in order to protect Marine Wilderness Areas.

7. Conclusion and recommendations

This report has looked at Bottom Trawling in four nation states and in one example of UK case law. The table below summarises whether each example selected **is** or **isn't** being legally managed for the protection of Marine Wilderness Areas.

Table 2: Effective legal management of Marine Wilderness Areas

<i>Example</i>	<i>Effective legal management</i>
Bottom Trawling in New Zealand	<i>No</i>
Bottom Trawling in Canada	<i>No</i>
Bottom Trawling in Palau	<i>Yes</i>
Pulse Bottom Trawling in the Netherlands	<i>No</i>
Greenpeace UK Ltd vs DEFRA	<i>No</i>

Jones *et al* (2018) state that Marine Wilderness Areas are often overlooked in conservation strategy and policy. One of their key recommendations is to “*end overfishing and destructive fishing practises*” (Jones *et al*, 2018:5). This recommendation also aligns to Goal 14.4 of the Sustainable Development Goals (United Nations, 2015).

This report has highlighted that national and international laws that regulate Bottom Trawling are a failing to protect Marine Wilderness Areas. In order to legally manage and protect Marine Wilderness Areas the following recommendations will be made:

- Introduce a global ban on all forms of Bottom Trawling in Marine Wilderness Areas
- Develop worldwide legislation and enforcement to ban Bottom Trawling
- Allocate more effective MPA's covering Marine Wilderness Areas

(Word count: 2,087 words)

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Appendix

Tables and figures

Figure 1: The Location and Protection Status of Earth's Diminishing Marine Wilderness

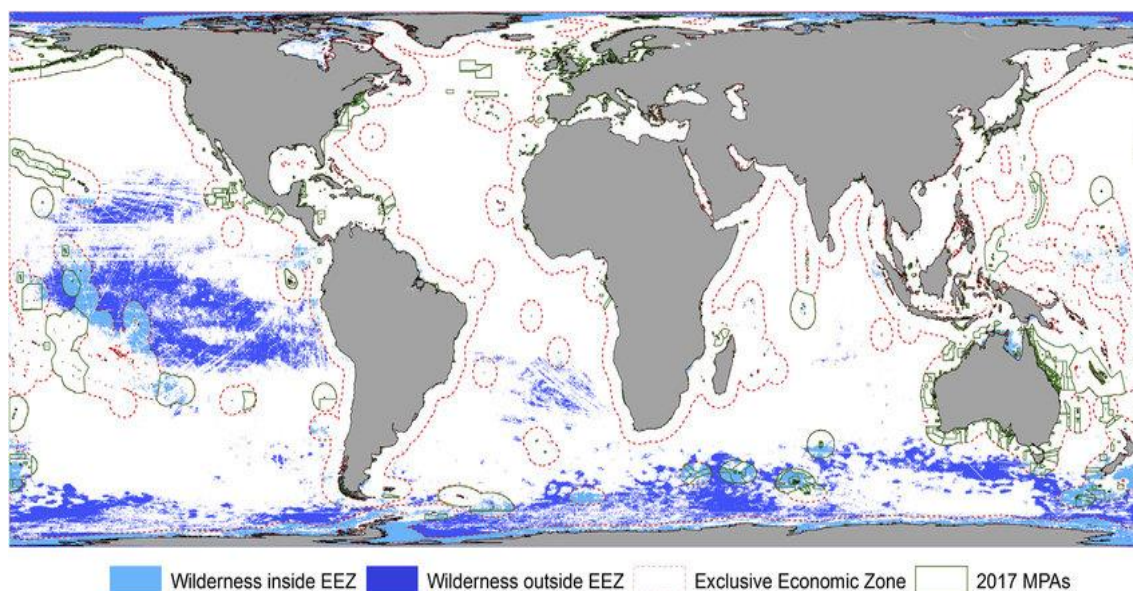


Table 1: Types of Bottom Trawling

Bottom Trawling category	Description
Otter Trawling	<i>A trawl that uses otter boards to spread its net</i>
Beam Trawling	<i>Trawlers use a large net attached to a heavy beam that is dragged along the seabed. Trawlers tow two nets one upon either side of the vessel</i>
Electric Bottom Trawling	<i>Beam trawlers are fitted with electrodes that emit a current to stun all biota within the nets</i>

Table 2: Ocean based legal issue: Bottom Trawling

Section	Is this being managed in relation to the destruction of Marine Wilderness Areas?
2: Bottom Trawling in New Zealand	No
3: Bottom Trawling in Canada	No
4: Bottom Trawling in Palau	Yes
5: Pulse Bottom Trawling in the Netherlands	No
6: Greenpeace UK Ltd vs DEFRA	N/A