

International commitments, frameworks and collaboration: OSPAR, ICES, etc. & the UK post-Brexit

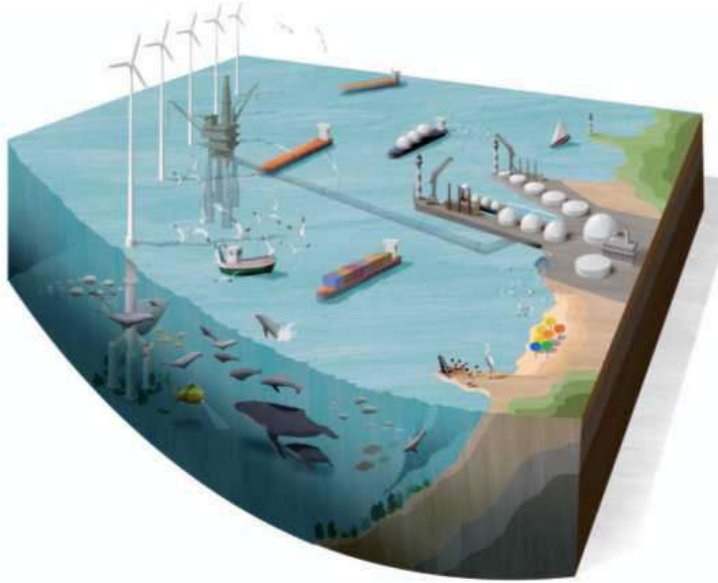
- Will the UK's international commitments fill the void created by leaving the EU?

Mike Elliott¹, Sue Boyes¹ & Bob Earll²

¹ Institute of Estuarine & Coastal Studies, University of Hull, HU6 7RX Hull, UK; Mike.Elliott@hull.ac.uk; S.J.Boyes@hull.ac.uk

² CMS, Kempsey, Gloucs., GL18 2BU; Bob.Earll@coastms.co.uk

Challenges for science & management:



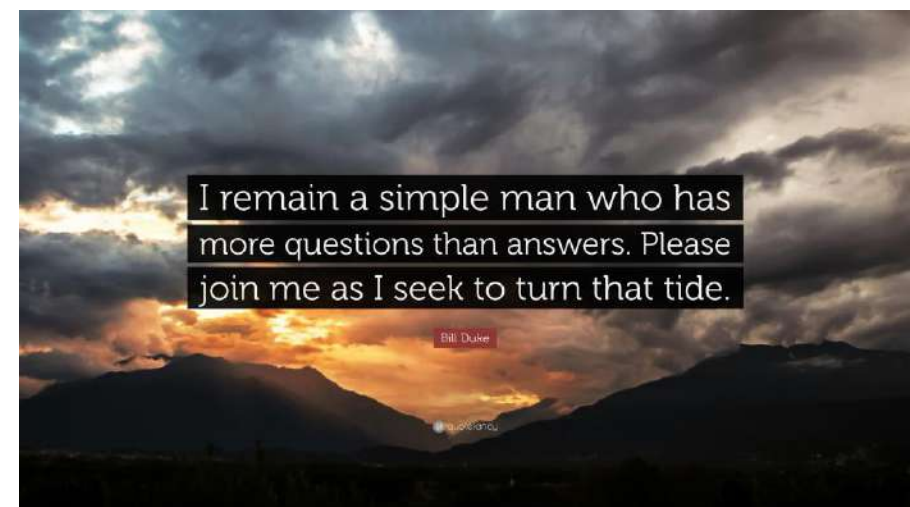
There is only one big idea in marine management: *how to maintain and protect ecological structure and functioning while at the same time allowing the system to produce ecosystem services from which we derive societal benefits.*

- Recovery/coping with historical legacy
- Endangered coastal and marine ecosystem functions
- Legal & administrative framework
- Economic prosperity and delivery of societal benefits
- Coping with climate change & moving baselines

The UK and Marine Scotland vision: “*clean, healthy, safe, productive, biologically diverse marine and coastal environments, managed to meet the long-term needs of people and nature*”.

Final Comments:

- Will we get “a world-leading environmental watchdog, an independent, statutory body, to hold Government to account for upholding environmental standards”?
 - Is Defra already reconciled to an independent arbitration body for UK-EU settlements?
 - How will harmonising Good Ecological Status (WFD), Good Environmental Status (MSFD) and Favourable Conservation Status (HD) be achieved across international boundaries?
 - Is transnational harmonisation more important for open marine Directives than ‘territorial’ ones?
- and*
- What are the bottlenecks, showstoppers and train-wrecks to achieving coherence?



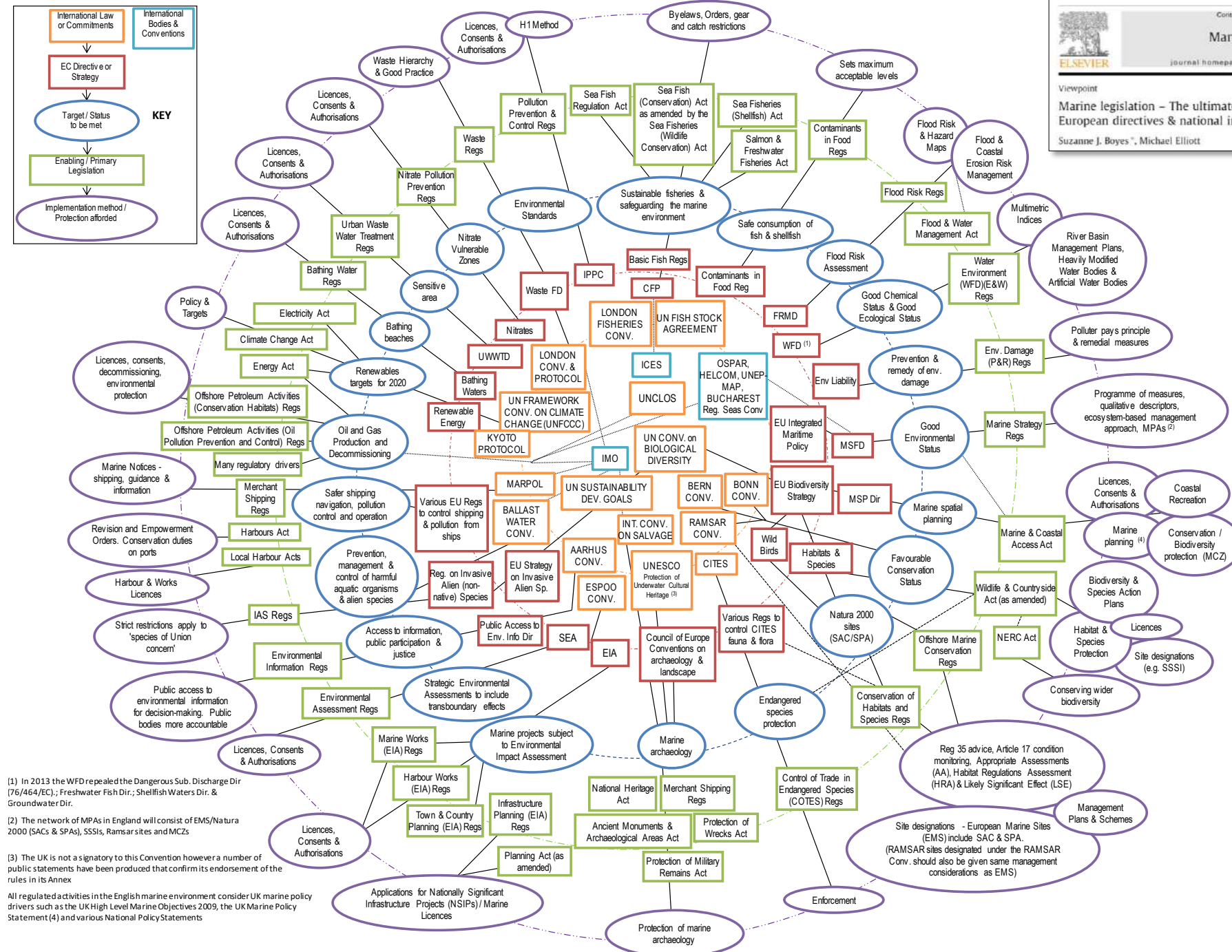
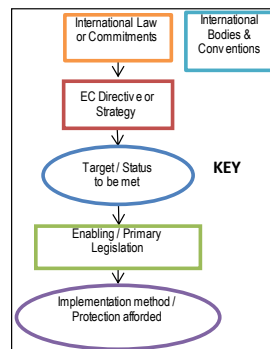
Principles of Marine Environmental Management:

- What is guiding the UK in managing the marine environment?
- What governance and management principles will we continue to support?
- What principles are legally enforceable ('adherence based on compliance not enforcement')?
- What strength has the Withdrawal Bill in relation to environmental principles?

Governance as the tool in management:

defined as globally-agreed underlying ***policies, politics, laws and administrations*** for adopting internationally recognised principles which together comprise ***The Ecosystem Approach***:

- ecologically sustainable development
- inter-generational equity
- the precautionary principle
- conservation of biological diversity and ecological integrity
- ecological valuation
- economic valuation of environmental factors
- the 'damager debt' / 'polluter pays' principle
- waste minimisation, and
- public participation - the role of individuals and ethics.



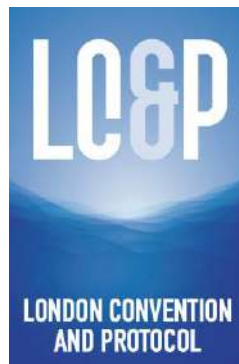
(1) In 2013 the WFD repealed the Dangerous Sub. Discharge Dir (76/464/EC); Freshwater Fish Dir.; Shellfish Waters Dir. & Groundwater Dir.

(2) The network of MPAs in England will consist of EMS/Natura 2000 (SACs & SPAs), SSSIs, Ramsar sites and MCZs

(3) The UK is not a signatory to this Convention however a number of public statements have been produced that confirm its endorsement of the rules in its Annex

All regulated activities in the English marine environment consider UK marine policy drivers such as the UK High Level Marine Objectives 2009, the UK Marine Policy Statement (4) and various National Policy Statements

What international conventions are we party to?



Convention/Agreement	Domain
UN Sustainable Development Goals	High level, e.g. SDG14 Life Below Water
UN Convention on Biological Diversity	Conservation, sustainability, Ecosystem Approach, Aichi targets
Bern / Bonn (Convention on Migratory Species)/RAMSAR/CITES	Endangered species, migratory species, trade in protected species and products
UN Framework on Climate Change Convention	e.g. Paris COP/Kyoto, emission and temperature targets
Fisheries (e.g. ICES, London Convention on Fisheries, UN Fish Stock Agreement)	Quotas, science advice, straddling stocks
IMO London (Dumping) Convention	Waste and other matter disposal
UNCLOS	International ocean law, boundary disputes
UNESCO	cultural aspects, archaeology, underwater heritage
International Salvage Convention/IMO/MARPOL	Salvage, oil spills, non-indigenous species, ballast water, garbage
OSPAR	Regional seas management, de facto implementation of MSFD
UNECE – ESPOO convention; SEA Protocol (Kyiv 2003)	Strategic environmental assessment, transboundary environmental damage
UNECE – Aarhus convention	Public access to environmental information



The Role of International Marine Conventions:

- What international conventions are we signatories to and which do we follow via the EU?
- Which of these have the EU as a signatory?
- Which ones did/do/will we have two seats at – as a separate member and via the EU as a member?
- Will these conventions (or the UK membership of them) have to and be able to take on an even greater role?
- Which of the agreements have binding arbitration?
- Will we continue to support/take an increased role in the international conventions?
- If ICES and OSPAR are getting more harmonised regarding the Ecosystem Approach then will they increasingly usurp the EU Directives and Regulations?

Fall 1995

Enforcement and the Success of International Environmental Law

Mary Ellen O'Connell
Indiana University School of Law

*Back to first
principles:*

Enforcement is defined as “the compelling of obedience to law.”² In domestic legal systems, the executive or judiciary enforce the law generally by imposing sanctions on those who disobey the law. Domestic systems may do this by controlling the assets, freedom, or the very existence of law breakers.³ In contrast to domestic legal systems, the international legal system lacks a fully developed judiciary and executive.⁴ Scholars have long discussed whether international law is really a legal system without these major

Future Sanctions and Enforcement:

- If the sanctions from the ECJ are removed they who or what will make UK comply with transboundary disputes?
- Will NGOs take the role of the ECJ inside the UK and rely on the Aarhus Convention ('proactive' not 'autoactive' action)?
- Will 3rd countries take the role for transboundary problems and rely on the ESPOO Convention?
- Will industry, especially fledgling ones, consider UK waters an easier option under international conventions or will they follow the EU versions if they operate on a pan-EU basis?

Michael Gove – Environmental Audit Committee interview:

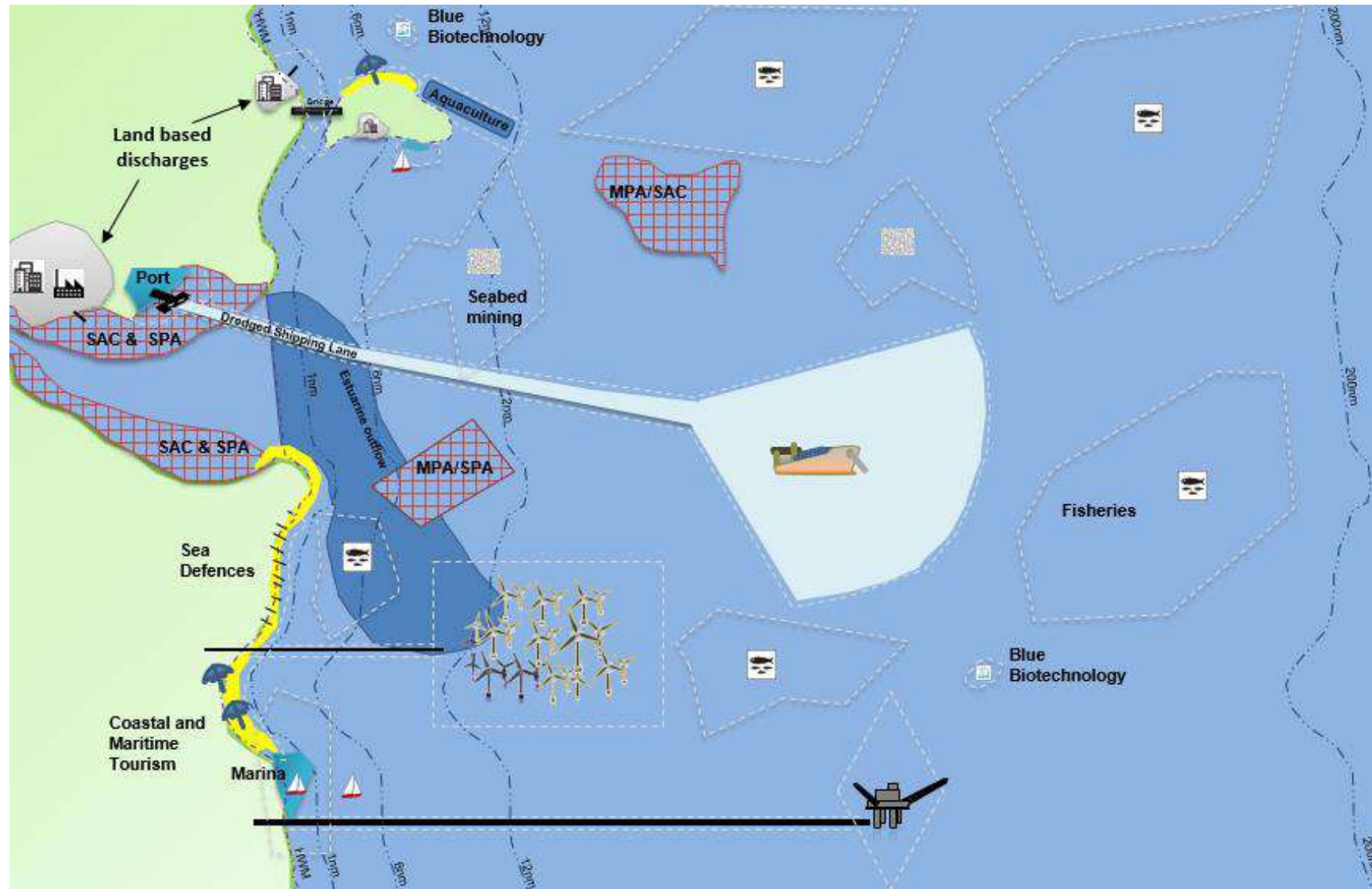
..... those directives have been supported by the work of the Commission and the ECJ

..... a reasoned opinion being issued, infraction proceedings following and fines being generated. Outside the European Union the question is what replaces the Commission, how do we have the ECJ as a role replicated. This is an absolutely important question.

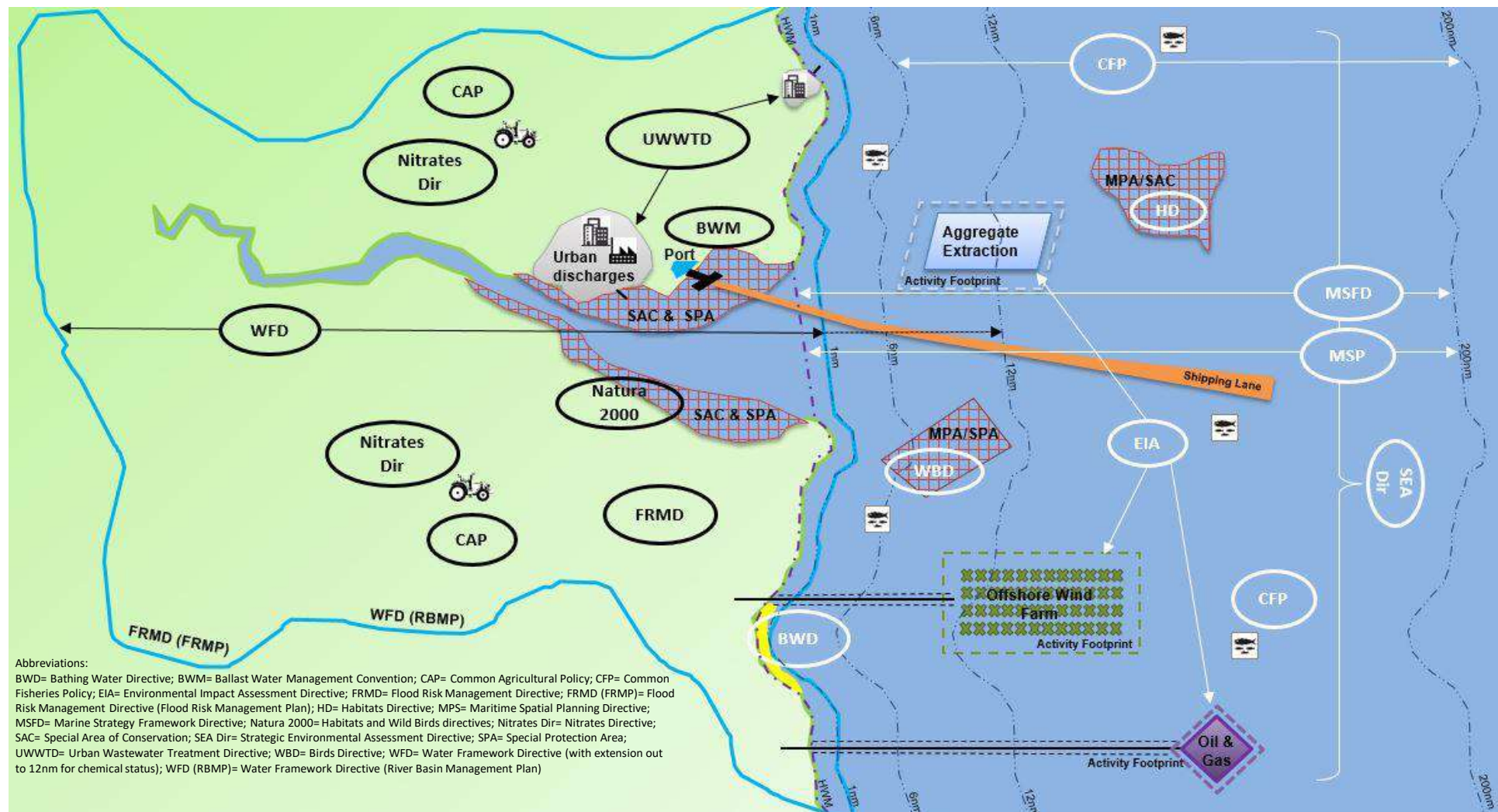
... recognising that you may well need an agency, a body, a commission that has the power potentially to fine or otherwise hold Government to account and certainly to hold public bodies other than Government to account. There is a legitimate question as to whether or not fining would be the right way of securing compliance.

Future of Continued Links with EU Marine Directives:

- Will we continue to adopt and implement the ideas in the MSFD and WFD?
- Even if we continue to implement the EU Directives then with time will our version get out of synchrony and not have the updates and modifications imposed on the EU versions?
- With a move towards greater internationalism, will the UK implement the MSFD and MSPD in overseas dependent territories?
- What will be our preferred conservation protection designation and will SSSI be given greater emphasis to replace SACs & SPAs?



Challenge – to merge environmental quality management (e.g. MSFD) with maritime spatial planning and Blue Growth initiatives (e.g. MSPD) (Elliott et al, under revision)



Geographical scope and competencies of EU legislation

Marine Pollution Bulletin 111 (2016) 18–32

Contents lists available at ScienceDirect

Marine Pollution Bulletin

journal homepage: www.elsevier.com/locate/marpolbul

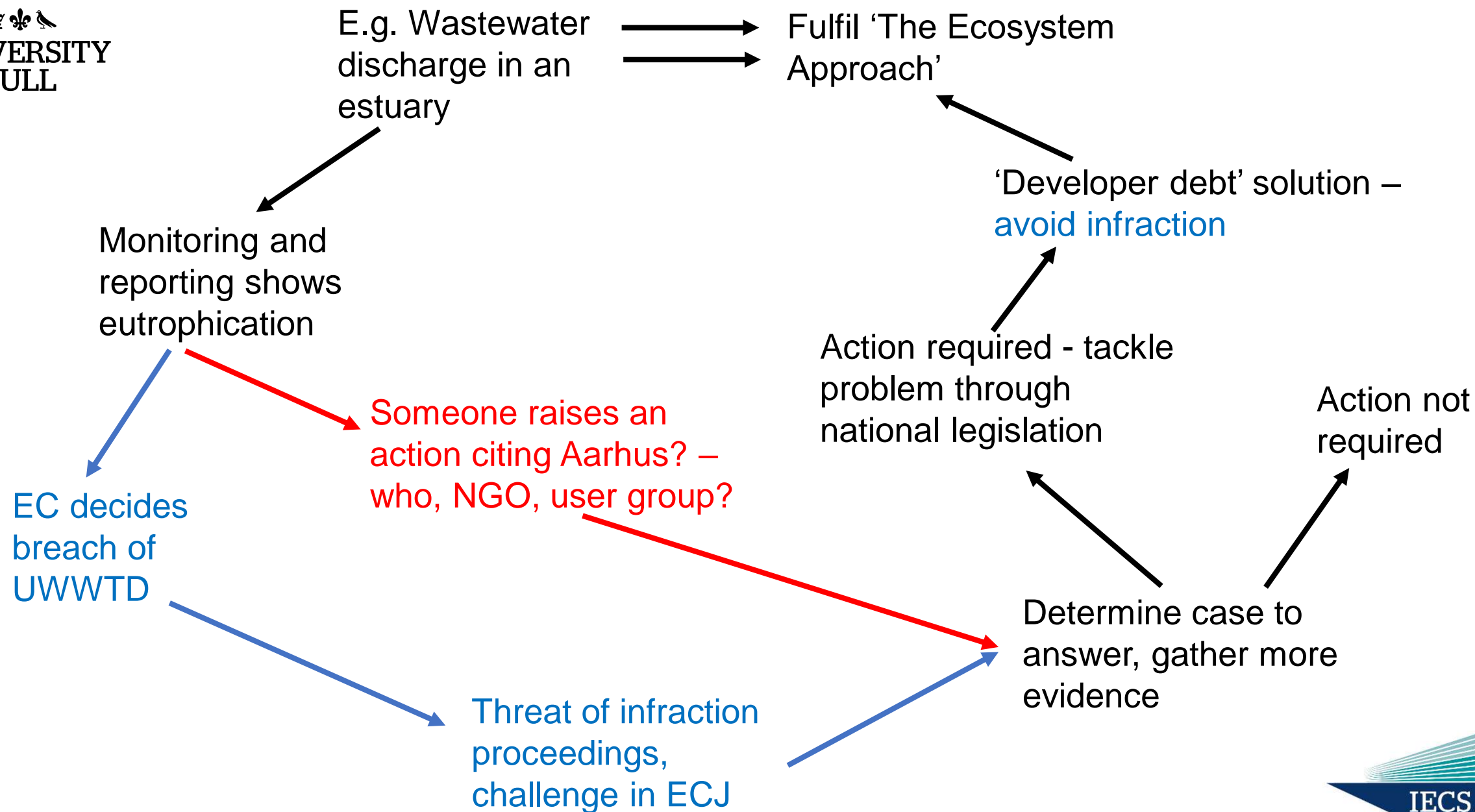
Review

Is existing legislation fit-for-purpose to achieve Good Environmental Status in European seas?

Suzanne J. Boyes ^{a,*}, Michael Elliott ^a, Arantza Murillas-Maza ^b, Nadia Papadopoulou ^c, Maria C. Uyarra ^b

^a ELSEVIER

^b CrossMark



Future International Collaboration:

- Will leaving the EU diminish our support for international and collaborative marine science?
- Will we implement the MSP Directive consistently across transnational boundaries in the North and Irish Seas and English Channel?
- If there is no ECJ then will we need a new body to arbitrate between the UK and EU?
- Will we need to resurrect the North Sea Ministerial Convention and promote similar bilateral fora for other seas (Irish Sea, Channel)?
- Will we meet our Aichi & OSPAR MPA targets for an ecological network?



Challenge of international seas:

Stylised transnational sea area showing activity footprints and transboundary Marine Protected Areas and fishing grounds – to reflect the challenges of complex marine management (Boyes & Elliott, in prep, modified from Boyes et al, 2016 and Elliott et al submitted).

Perhaps the biggest marine challenge Post-Brexit?

There is only one big idea in marine management: *how to maintain and protect ecological structure and functioning while at the same time allowing the system to produce ecosystem services from which we derive societal benefits.*

MSFD

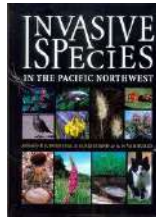
MSPD

Marine Strategy Framework Directive (MSFD, 2008/56/EC) (*the marine environmental quality directive!*)

Qualitative Descriptors



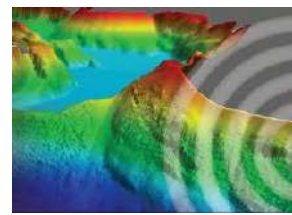
Biodiversity



NIS



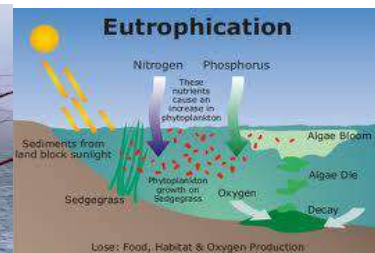
Foodwebs



Seafloor integrity



Fishing



Eutrophication



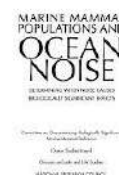
Hydrography



Pollution



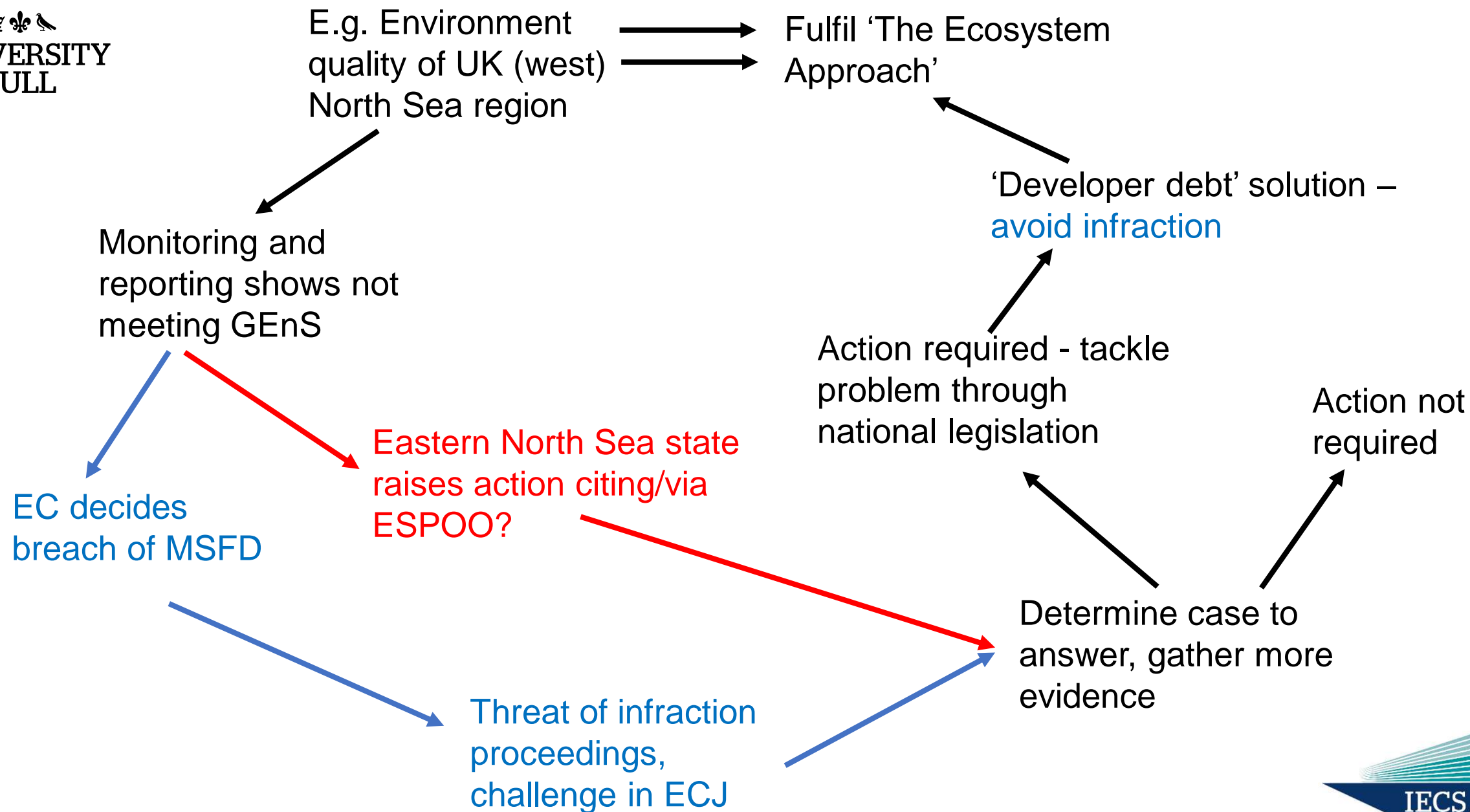
Litter



Energy/noise



**Framework Directive on
Maritime Spatial Planning
(MSP, 2014/89/EU)
(*the marine blue growth
directive!*)**



Role of OSPAR:

- Decisions are binding, and may depend upon domestic legal measures to implement.
- There is a dispute settlement process under OSPAR, which can be initiated by contracting parties, if another party is in breach.
- This is contingent upon a party commencing proceedings, so is not an automatic compliance process. The most important case under this was Ireland v UK, re. Sellafield .
- A party cannot be kicked out of OSPAR as such, although there are means of severing legal relations with defaulting States through diplomatic means.



Communications and Management
for Sustainability



UNIVERSITY OF HULL

Mike.Elliott@hull.ac.uk

<http://www.hull.ac.uk/Faculties/staff-profiles/Professor-Mike-Elliott.aspx>



(Open Access book)

