

**Fortress conservation at sea: a commentary on the Chagos marine protected area.**

De Santo EM<sup>1</sup>, Jones PJS<sup>2</sup> and Miller AMM<sup>2</sup>

<sup>1</sup>Correspondence author. Marine Affairs Program, Dalhousie University, 6100 University Avenue, Halifax, NS B3H 3J5, Canada, Email: [Elizabeth.De.Santo@dal.ca](mailto:Elizabeth.De.Santo@dal.ca), Tel: +1 902 494 7132

<sup>2</sup>Department of Geography, University College London, Pearson Building, Gower Street, London WC1E 6BT, United Kingdom

**Abstract**

The world's largest no-take Marine Protected Area in Chagos is examined in light of the Convention on Biological Diversity's provisions on Access and Benefit Sharing, as well as terrestrial experiences with fortress conservation. It is acknowledged that this closure presents a unique opportunity to preserve an ecologically 'pristine' area. However, the means by which the political process unfolded are brought into question. In particular, the fact that the UK proceeded with designating the area whilst the European Court of Human Rights was deliberating the right of native Chagossians to return to the island is questioned. In addition it is argued that the scale of the area poses significant management and enforcement challenges, which are not necessarily taken into consideration in the rush for large, no-take Marine Protected Areas.

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In the run up to the 2012 deadline for the establishment of networks of Marine Protected Areas (MPAs) set by *inter alia* the Convention on Biological Diversity (CBD) and World Summit on Sustainable Development, it is worth reflecting on the recent rush for 'bigger is better' and 'no-take is best' designations [1] that lack clear management/enforcement frameworks, as well as related implications for the access and benefit sharing provisions of the CBD. In particular, the April 2010 declaration of the world's largest no-take MPA (210,000 square miles) surrounding the Chagos archipelago in the British Indian Ocean Territory was met with mixed feelings on the part of conservationists and some criticism in the press [2, 3, 4, 5]. These critiques focus on the fact that the designation was put in place whilst a legal decision regarding the native Chagossians' right to return to the islands was ongoing. Should the islanders return to the archipelago, they could be prohibited by the MPA from partaking in fishing or any other marine resource exploitation activities that could provide for their subsistence and enhance their livelihoods.

The decision to designate the Chagos MPA followed a consultation process run by the Overseas Territories Directorate of the Foreign and Commonwealth Office of the UK Government, whereby a consultation document was disseminated through websites, representative groups and directly to representatives of parties with a known interest. Over a quarter of a million people responded to this questionnaire, although 249,500 of these came through as petitions, which offered only limited opportunity for any substantive comment from individual respondents. Nonetheless, of all those that registered a response, more than 90% supported greater marine protection of some sort, recognising the conservation potential of protecting a marine environment that is deemed to be the healthiest and most resilient in the world [6, 7]. The subsequent designation of the MPA was therefore welcomed by many, including nine of the world's largest environment and science bodies such as Greenpeace, the Pew Environment Group and the Royal Society, with the event described as 'inspirational' and a 'global benchmark for responsible ocean stewardship' [8]. It has also been recognised as part of Gordon Brown's 'green legacy' upon leaving office [9], and a "cost-effective demonstration of the UK government's commitment to environmental stewardship" [6 at p.4].

However, with the conservation benefits acknowledged, this case has also drawn widespread criticism in the press and from the governments of Seychelles and Mauritius, as well as members of the Chagossian community, because it came about whilst the European Court of Human Rights is still debating the native Chagossians' right to return to the islands, following more than 40 years of exile in Mauritius, the Seychelles and the UK [2, 3, 4, 5, 10]. A significant body of response, including most members of the Chagossian community, raised objections to such strict conservation measures during the consultation process. Participants in meetings in the Seychelles proposed instead that exceptions be made for Chagossians' fishing projects to ensure their livelihood potential on their return [7]. In spite of these objections, the declaration of a full no-take MPA went ahead, with a caveat that "should circumstances change, all the options for a marine protected area may need to be reconsidered" [7 at p.7]. The new coalition government has since supported this designation and the rights of the Islanders remain unresolved [11].

What lessons can be learned from terrestrial examples of conservation? The answer is not encouraging given the case described above. The critical relationship between people and protected areas is obvious: without stakeholder engagement and support, long-term viability of a protected area is at serious risk, though it should also be recognised that it is all too easy for societal economic goals to outweigh conservation objectives. In addition, whilst the UK is promoting a more 'bottom-up' approach to the designation of Marine Conservation Zones (MCZs) within its waters, this 'top-down' manoeuvre in the

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British Indian Ocean rings of colonialism. Looking at previous experiences with terrestrial conservation and in particular the history of protected areas, 'fortress conservation' without the engagement of local stakeholders has long been recognized as an approach that is both unjust and ineffective. In contrast, 'new conservation' approaches, such as community-based conservation, treat conservation as simply one of many forms of natural resource use and acknowledge the role that markets play in the achievement of conservation goals [12]. In considering how protected areas have evolved over the past half century, a paradigm shift can be seen, as outlined by Phillips [13], whereby local engagement and wider societal benefits have become more of a driving force in protected area designation and management than complete exclusion. However, there are still arguments for exclusionary approaches [14], and indeed there is often an inherent conflict between nature conservation objectives and community development objectives which leads to mixed successes [15]. It must also be recognised that fortress conservation approaches in Africa have in some cases transformed the way local communities frame their relationship with nature; whereas they once accepted wildlife in their midst, they now view animals as intruders and conservation as a threat [16].

With regard to MPAs, it is important to consider the marine environment's unique ecological and management challenges [17], coupled with the fact that the majority of protected areas have been designated in nations where governance is weak [18], resulting in the creation of numerous 'paper parks'. Governance, defined as the interactions among structures, processes and traditions that determine direction, how power is exercised, and how the views of citizens or stakeholders are incorporated into decision making, is a critical aspect of effective conservation and a prominent component of the CBD's work on protected areas [19, 20]. Discussions regarding the access and benefit sharing (ABS) provisions of the CBD to date have dealt more with the 'benefit sharing' component than 'access', including heated debates over the exclusion of local people from protected areas and related equity issues (*e.g.* the distribution of benefits gained from genetic resources derived from biodiversity, such as pharmaceuticals). An exclusionary fortress approach to conservation as implemented via no-take MPAs raises equity concerns regarding 'access' as well, in this case to marine living resources. It is this 'all or nothing approach' that alienates stakeholders and breeds fear and mistrust towards MPAs.

The conservation of resources through MPAs must strike a balance between providing for restrictions on exploitation activities that are unsustainable and incompatible with conservation objectives, and providing sustainable livelihoods for local communities. 'Paper' MPAs are imbalanced in this respect, allowing, by default, resource exploitation activities that are often unsustainable and driven by increasing demand from global markets. This does not necessarily mean, however, that the 'pendulum of protection' should swing so far as to completely ban all access to marine resources, including subsistence and small-scale commercial fishing, defined as being restricted to supplying local markets to feed local people and visitors. Whilst it must be ensured that such fishing does not creep towards large-scale commercial fishing to supply global markets, it must also be accepted that there must be reasonable provisions for subsistence and small-scale commercial fishing in order to conserve the well-being of local communities. Ensuring the effectiveness of MPAs must be balanced with ensuring the well-being of local people. MPA governance should be both effective *and* equitable [21], including the careful balancing of top-down and bottom-up approaches to governance [17].

The CBD includes 'access' obligations to "as far as possible and appropriate... respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity" (Art. 8(j)) and to... "protect and encourage customary use of biological resources in accordance with traditional

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cultural practices that are compatible with conservation or sustainable use requirements” (Art. 10(c)). The Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands accordingly provides for indigenous people to exploit marine resources for sustenance and subsistence purposes and to maintain traditional practices<sup>1</sup>. Whilst the local communities of the Chagos islands were forcibly removed by the UK government to make way for a military airbase over 40 years ago, the legal question as to whether they have the legal right to return to the islands is still being considered by the European Court of Human Rights. It is arguably premature to foreclose the option of subsistence and small-scale commercial fishing by re-settled communities through the designation of a completely no-take MPA around the Chagos archipelago whilst this legal question is still being considered. It would seem reasonable to keep the option open of providing for subsistence fishing by local communities, drawing on the example of the Papahānaumokuākea Marine National Monument, and even of providing for small-scale commercial fishing to supply markets on the island. Without this option, there is arguably little for the people to return to, recognising that ‘you cannot eat the scenery’ and that it would arguably be unsustainable to import the food that local fisheries could provide.

It is very challenging to achieve the inter-related balances of providing for effectiveness and equity and for combining top-down and bottom-up approaches. The tendency for creeping if not rampant commercial exploitation in paper MPAs has led MPA advocates to resort to calling for completely no-take MPAs that exclude all human exploitation, even that related to subsistence and small-scale commercial fishing. With regards to the Chagos MPA, it is argued, however, that it would seem reasonable to provide for and carefully control such fishing, as the Papahānaumokuākea Marine National Monument does, and premature to preclude this option when a legal decision as to whether ‘local communities’ forcibly removed from the islands can return is pending. An MPA designation that precludes the return of local people to the Chagos archipelago will, from a human rights perspective, also sustain the injustice that the previous removal of these people represents. An over-zealous focus on ensuring the effectiveness of the Chagos MPA and the neglect of providing for equity and human rights could signal that fortress conservation is alive and well at sea, rather than having been relegated to colonial history.

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