



## **GOVERNMENT OF GIBRALTAR**

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## **PRESS RELEASE**

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The suggestion by the EU Environment Commissioner that the UK and Spain should propose a joint management plan for The Site of Community Interest ("SCI") under the Habitats Environmental Directive within British Gibraltar Territorial Waters, is politically unacceptable, inappropriate in practice, and legally impossible. As the Commissioner himself recognises, the Directive brings with it Member State competences, obligations and liabilities, and there must ultimately be one Member State responsible for this.

In any event, the proposal is politically wholly unacceptable and the Gibraltar Government rejects it outright. The UK has already said that it does not recognise the validity of the designation of a Spanish SCI in British Gibraltar Territorial Waters. The Gibraltar Government, with UK Government's support is already challenging the legality of the EU Commission's decision. The UK should now bring its own separate legal challenge to the Commission's latest Decision which reaffirms the original one challenged by the Gibraltar Government.

Only the laws of Gibraltar apply within British Gibraltar Territorial Waters, whether they be laws that apply Gibraltar's EU obligations or domestic government policy in our territorial waters. No other EU member state can have EU responsibilities within British Gibraltar Territorial Waters. The EU Habitats Directive therefore does not apply to, does not need to be complied with, and will not be enforced in any part of British Gibraltar Territorial Waters which does not form part of an SCI designated under the Habitat's Directive by the UK at the Gibraltar Government's request.

Statements made in Spain may lead some individuals there to believe that they are at liberty to ignore the authority of Gibraltar law enforcement agencies in British Gibraltar Territorial Waters. This would be a serious error, since it is likely to lead to their arrest and prosecution at the discretion of Gibraltar's police and prosecuting authorities, as would happen to any local citizen who did the same thing.

The Chief Minister, Peter Caruana, will address the Foreign Affairs Committee of the House of Commons in London, on behalf of Gibraltar, on Thursday 14<sup>th</sup>

January 2010 on the subject of British Gibraltar Territorial Waters and their sovereignty, jurisdiction and control.

Commenting on the subject, the Chief Minister Peter Caruana said:-

“The EU Commission’s suggestion is politically unacceptable, inappropriate in practice and incompatible with the legal architecture of the European Union. It is not acceptable either to the UK or to Gibraltar. It amounts, effectively, to joint sovereignty of British Gibraltar Territorial Waters.

Everyone has always known and understood that the UK and Gibraltar on the one hand, and Spain on the other, have different positions on the sovereignty of British Gibraltar Territorial Waters. This is not new. It has always been the case, before Spain was a democracy, and afterwards during the Governments of all political colours and shapes in Spain. Nevertheless the disagreement has always been contained in practice on the basis that Spain frequently recorded its political position on the matter, but did not seek to deny, interfere with or undermine Gibraltar’s defacto and exclusive jurisdiction and control in the waters. Spain has never before taken executive physical action within British Gibraltar Territorial Waters pursuant to its political position.

That was the status quo, with which all parties could and did live, until June this year when, in the run-up to Snr Moratinos’ visit to Gibraltar, for the first time Spanish Authorities sought to take executive physical action in British Gibraltar Territorial Waters.

It seems to the Gibraltar Government that the return to the decades long status quo ante June 2009 is the only sensible way forward, and should be restored.

Those who unilaterally disrupt the longstanding status quo bear the responsibility for the consequences of doing so. Gibraltar itself is not doing anything or behaving differently to what has been the case for many decades, if not centuries. There has been not an iota of modification of our behaviour. There are obvious political and legal differences that need to be managed and contained, and not irresponsibly enflamed or complicated. Government will not countenance any developments that prejudice the sovereignty of British Gibraltar Territorial Waters.

Whilst acknowledging and understanding that Spain has a different position, the Gibraltar Government firmly believes that Spain’s position is based on an unsustainable interpretation of the Treaty of Utrecht, and on a misconception of international law, and that Spain’s position is thus wrong and unsustainable. The Gibraltar Government has long been a proponent to getting the legal position clarified by referring the issue to the International Court of Justice for an advisory opinion. Those who are not willing to do so cannot expect others to simply accept their position just because they assert it.

The Gibraltar Government wants a return to the long standing status quo (by which this matter can be contained to everyone’s practical benefit), and close co-operation between Gibraltar and Spanish law enforcement agencies in the fight against cross border crime in all the waters of the nearby region”.