

EUFJE 2006
Helsinki, 15 – 16 September

Impact of Natura 2000 sites on Environmental licensing UK response

Delegates and observers are invited to answer this questionnaire and to return their contribution to the organisers no later than June 16th, 2006. For the convenience of the organisers, we ask you to answer freely but to recognisably adhere to the disposition and the questions below. The answers will be summarised and presented at the meeting. Those delegates wishing to present case examples of how possible effects on Natura 2000 sites have been taken into account in the environmental licensing process are invited to submit the topic of their talk and, preferably, a brief abstract no later than August 15th, 2006.

A. Natura 2000 sites

1. Country or area

United Kingdom

2. Number and area of sites

SCI - None (all SCIs in the UK have been designated as SACs)

SAC - 608 sites (2,504,016 hectares)

SPA – 247 sites (1,482,292 hectares)

3. Which authority drafted the national Natura 2000 site list?

A number of authorities, being most recently the Department for the Environment and Rural Affairs (for England), the National Assembly for Wales (for Wales), the Scottish Executive (for Scotland) and the Northern Ireland Department of the Environment (for Northern Ireland).

4. How were the sites chosen?

Was there a screening of possible sites and field surveys of competing site candidates?

The Joint Nature Conservation Committee which acts on behalf of the statutory nature conservation agencies (English Nature, the Countryside Council for Wales and Scottish Natural Heritage) collates information on sites for nature conservation in the UK. This includes screening sites and the

completion of field surveys as well as consideration of existing data on habitats and species.

Were existing conservation areas designated as sites?

Some existing conservation areas in the UK have also been awarded status as either an SPA or SAC. For example, most Sites of Special Scientific Interest are either an SPA or SAC.

Which authorities participated in the screening process?

Defra, the devolved administrations (see answer to question 3), the Joint Nature Conservation Committee and the statutory nature conservation agencies (see answer to first question in this section).

Did NGOs have a say?

Yes. The UK government has regularly held the Natura 2000 and Ramsar Forum which includes representatives from NGOs. This has provided an opportunity for NGOs to inform government of their views on, for example, the selection and management of Natura 2000 sites.

Was there a public debate on the criteria for choosing sites?

No.

Did (or does) the public have access to the biological data, on the basis of which decisions were made?

Yes. There is a register of “European sites” which covers Natura 2000 sites and which is open to the public. It contains data on interest features and maps.

In addition, the JNCC also provides on its website comprehensive details of the biological data for each of the UK’s SACs.

5. Which authority decided which sites were to be included in the Natura 2000 network?

Depending on where the site is located, Defra or one of the devolved administrations (see answers to question 3).

6. Appeals against the Natura 2000 national network decision. Which authority decided on the appeals, which parties had legal standing and on what grounds could appeals be lodged?

There is no appeal procedure as such. However, consultation is carried out on candidate SACs with landowners and occupiers of land that may be affected. In addition, decisions are amenable to judicial review in the courts on administrative law grounds.

7. Number and success of appeals

N/A.

B. Conservational status of Natura 2000 sites

8. Status of Natura 2000 sites

Do Natura 2000 sites also have the status of nature reserves, national parks or other nature protection areas?

Yes, the vast majority. See, for example, the response to the second question under 4.

9. Protection of Natura 2000 sites

How has Article 6 of the Habitats Directive been transposed into national law in your country? By special national law implementing the Directive, by other national law, etc.

Yes. The two principal pieces of legislation are Part 2 of the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats, &c) Regulations 1994 (“the Habitats Regulations”).

How is the protection of Natura 2000 sites ensured?

Through the implementation of the national legislation and by policy.

Are there site-specific management plans or other rules of conduct regulating activities within the sites?

Yes. For example, the statutory nature conservation agencies have power to enter into agreements with owners and occupiers of land to manage Natura 2000 sites and if necessary, enforce these agreements. They also have powers to make bylaws and to otherwise restrict the carrying out of potentially damaging operations.

10. Coverage of implementation

Do national acts, plans and other rules implement the Habitats Directive fully?

The UK has been subject to two recent rulings against it in the ECJ on its implementation of the Habitats Directive (Case C-6/04 and Case C-131/05). We are dealing with the failures identified by the court in these cases.

Are there types of enterprises, impacts on nature or licensing procedures where the requirements of the Directive are not altogether taken into account?

We are not aware of any such omissions.

11. Assessment of impacts

- Which authority decides on whether an assessment is to be made or not?

This should be the authority granting approval for the plan or project.

- If harmful effects on a Natura 2000 site are probable, which party is responsible for assessing the impacts: Applicant, Environmental authority, Licensing authority, etc?

Again, is normally the authority granting approval for the plan or project, but after having consulted a statutory nature conservation agency and having taken into account information from the applicant. Public consultation might also take place.

- How is the appropriateness of the assessment ascertained?

Again this is for the authority granting the approval but general guidance is provided by central government or the devolved administrations and advice, in specific instances, by statutory nature conservation agencies.

- If the applicant is required to assess impacts, does he/she have access to the data that prompted the inclusion of the area into a Natura 2000 site?

Whilst applicants do not assess the impacts, they have access to the data described – see response to last question in section 4 and would have the opportunity to comment on any appropriate assessment.

- How is assessment of impacts caused by projects or plans in combination with other projects or plans safeguarded?

Guidance deals with this issue.

C. Case examples of how possible impacts on Natura 2000 areas is taken into account in the licensing procedure

12. Examples of licensing decisions regarding projects outside or inside Natura 2000 sites, where

- Assessment of impacts was not deemed necessary
- Impacts were assessed but not deemed adversely affect the integrity of the site concerned
- Impacts were assessed and deemed significant

13. Relevance of Community decisions

- What kind of influence has the judicature of the ECJ had on national decisions (e.g. the precautionary principle)

The most recent guidance issued by ODPM and Defra (Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) describes the effect of case C-127/02 – the Waddenzee judgment). But the basic influence is that we need to interpret our obligations under the Habitats Directive in accordance with the decisions of the ECJ.

- Relevance of the Commission guidelines on Managing Natura 2000 sites?

The guidelines are referred to in the above guidance.

14. Examples of licensing decisions concerning exemptions from protection (Article 6 para 4).

- Which authority decides on exemptions and which authority on appeals?

In broad terms, this is the authority which approves the plan or project. However, under regulation 49 of the Habitats Regulations there is an obligation to notify the Secretary of State (or the National Assembly for Wales or the Scottish Executive) before approval is given to a plan or project despite a negative assessment. There is also a power for the Secretary of State etc to give directions requiring an authority to refrain from approving the plan or project. This in practice allows the Secretary of State etc to ensure that decisions are properly taken and the necessary compensatory measures secured.

- Have exemptions been applied for and have they been granted.

Yes, principally in relation to planning consents.

- Grounds for refuting and allowing an exemption (alternative solutions, imperative reasons of overriding public interest, opinions of the Commission).

These are the same as in Article 6(4) – see, for example, regulation 49 of the Habitats Regulations.

- In case an exemption has been granted, how has the incurred loss to protected values of nature been recompensated? How has the Commission reacted?

In the past this, has included habitat creation.

In line with the UK's obligation under Article 6(4) of the Habitats Directive, the Commission has been notified of the details of any compensation and how this has been secured. To date the Commission has not challenged any of the compensatory measures in the UK.