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## Impact of Natura 2000 sites on Environmental licensing

### Swedish Report

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#### A. Natura 2000 sites

##### 1. Country or area

Sweden

##### 2. Number and area of sites

4,071 sites have now been designated (May 2006): 3,981 under the Habitat Directive and 530 areas under the Birds Directive. Sweden contributes to Natura 2000 as follows.

- The 3,981 Sites of Community Interest (SCI sites) under the Habitat Directive have a combined area of just over 6,255,506 hectares.
- The 530 Special Protection Areas (SPA) under the Birds Directive have a total area of approximately 2,876,263 hectares. Following the Government's decision these are included automatically in Natura 2000.

There is a considerable geographical overlap between areas covered by the Habitat Directive and those covered by the Birds Directive.

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

The sites have been selected by the County Administrative Board in each county. They have consulted with landowners and the authorities concerned. The Swedish Environmental Protection Agency has reviewed the selection and drafted the national Natura 2000 site list prior to the decision by the Government.

The Swedish Environmental Protection Agency coordinates information about Natura 2000. Each County Administrative Board is responsible for management, protection, regulation and monitoring of Sweden's Natura 2000 sites. Regulatory control of forestry activities is exercised by the County Forestry Boards;

municipalities are responsible for their own reserves, and the Surgeon-General for activities affecting Swedish defence.

#### **4. How were the sites chosen?**

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

A screening of possible sites and field surveys was made when necessary.

- **Were existing conservation areas designated as sites?**

A large part of the Natura 2000 sites had the status of nature reserves, national parks. etc (see question 8 below).

- **Which authorities participated in the screening process?**

As mentioned above (question 3) the screening process was lead by the County Administrative Board in each county which selected the sites. They consulted with the landowners and the authorities concerned, i.e. the Swedish Forestry Agency, affected municipalities, the Geological Survey of Sweden, the Armed Forces Property Specialists, the Swedish Board of Agriculture, the National Heritage Board, the Swedish Civil Aviation Authority and the Swedish Maritime Administration. The Swedish Environmental Protection Agency has reviewed the selection prior to the selection by the Government.

- **Did NGOs have a say?**

NGOs did in some cases purpose sites, but they were not directly involved in the decision processes.

- **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?**

The Swedish Environmental Protection Agency has opened a website showing Swedish Natura 2000 sites and why they have been selected. There are maps of the sites and lists of species involved and where they can be found. As a precautionary measure, the exact location of certain endangered species has not been given. Most of the County Administrative Boards also have information and biological data regarding the different sites on their websites.

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

The Government.

#### **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?**

The Swedish Legal Review of Administrative decision Act gives individuals the right to appeal a Natura 2000 decision if it concerns exercise of public authority. Environmental interests groups do not have legal standing under this Act. A new Act, Legal Review of Government decision Act, has however been adopted (effective from 1 July 2006), which allows environmental interest groups to appeal a permit decision by the Government according to Article 9.2 of the Aarhus Convention. It will also be possible for an individual whose civil rights or liabilities, as defined in Article 6.1 of the European Convention on Human Rights, have been violated to appeal a decision by the Government. It is the Supreme Administrative Court that decides on an appeal. The appeal may only be founded on the illegality of the decision (legal review).

#### **7. Number and success of appeals**

There have not been any appeals.

### **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?**

Over 60 per cent are already protected as nature reserves, national parks etc. Sweden continues to use the forms of protection available to us. For example, in addition to reserves and national parks, we have biotope protection as well as bird and seal protection areas. In some cases other kinds of protection may be used. One example is shoreline protection. Other approaches include nature conservation agreements for forest management or environmental grants for agricultural land. Fisheries legislation can also be used to regulate fishing.

The form of protection used for a given site is determined by the need for measures to conserve or protect the site. This is in turn determined by:

- what is to be protected;
- the sensitivity of the site;
- the protection already in place.

Two examples: A landowner may enter into a nature conservation agreement whereby he undertakes not to fell forest along one of the designated major rivers in northern Sweden. In some cases a voluntary agreement of this kind may complement the creation of a nature reserve.

Management plans may govern the way an entire industry uses an area deserving of protection. Thus: the fishing industry has agreed with the authorities on where and how trawling is permissible in a number of areas in the Koster fjord. This will make it possible to conserve unique underwater habitats at this Natura 2000 site.

### 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.**

Article 6 of the Habitats Directive has been transposed into national law through the Environmental Code, Chapter 4 and 7, and the Ordinance on protection of areas. There are also certain special laws implementing the Directive, inter alia the Planning and Building act and the Minerals act.

Those carrying out activities or industrial operations having a potentially significant effect on the environment in a Natura 2000 area must according to the environmental code Chapter 7 section 28 a apply for a permit. A permit may not be granted if the activity, either individually or in combination with other activities, may harm the habitats deserving of protection or if conservation of the species to be protected is not threatened or hindered (Chapter 7 section 28 b). Without prejudice to sections 28 a and 28 b, a permit may be granted if the Government decides that an activity, in the absence of alternative solutions, must nevertheless be carried out for imperative reasons of overriding public interests.

- **How is the protection of Natura 2000 sites ensured? Are there site-specific management plans or other rules of conduct regulating activities within the sites?**

Each Natura 2000 site must have its own conservation plan, which describes in detail what is to be protected and when and how this is to be done. The local County Administrative Board is responsible for producing the plan jointly with landowners. This system is put in place to protect and manage the sites in order to retain a favourable conservation status of each site.

In addition, activities at a Natura 2000 site having a potentially significant impact on the environment require a permit issued by the County Administrative Board or the Environmental courts (see question 9).

### 10. Coverage of implementation

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

Yes

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

One shortcoming is that Sweden does not have any special mechanisms to coordinate assessments of plan or projects which is set out in Article 6.3 in the Habitats Directive. So far this problem has been dealt with on a case-by-case basis.

#### 11. Assessment of impacts

- **Which authority decides on whether an assessment is to be made or not?**
- **If harmful effects on a Natura 2000 site are probable, which party is responsible for assessing the impacts: Applicant, Environmental authority, Licensing authority, etc?**
- **How is the appropriateness of the assessment ascertained?**

Those carrying out the activities or industrial operations must apply for a permit. The application must include an environmental impact assessment (EIA), appraising the environmental effects of the activities and possible alternative activities. Applications are usually made to the County Administrative Board. However, the process begins with an initial consultative stage with the County Administrative Board to agree the contents of the application and the EIA.

- **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?**

The applicant has access to the website administered by the Swedish Environmental Protection Agency. If a conservation plan has been drawn up the applicant also have access to the biological data used by the County Administrative Board when drafting the conservation plan. All information on Natura 2000 sites is public unless classified as secret by a competent authority.

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

#### 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**

Many of the cases have concerned insufficient EIAs and incomplete basic data for decision making. In most of these cases the Environmental Court of Appeal has referred the case back to the Environmental Court for further investigation.

In a case concerning the Lais river and the case concerning building of a waste incinerator in Torsvik, the impacts were not deemed adversely affect the integrity of the site.

In the case Hägerums kvarn, part II, the Environmental Court of Appeal stated that even if the planned project was situated outside the Natura 2000 area it would affect the area in such a way that the Environmental Code, Chapter 7 section 28 a, was applicable. The impacts in this case were however not deemed significant and the court granted a permit.

- **Impacts were assessed and deemed significant**

In the case Hägerums kvarn, part I, regarding the building of a power station, the EIA was not approved by the Environmental Court of Appeal because it lacked a description of the habitats and the wild animals and plants in the area, which was necessary in order for the courts to decide whether to grant a permit.

### **13. Relevance of Community decisions**

- **What kind of influence has the judicature of the ECJ had on national decisions (e.g. the precautionary principle)**
- **Relevance of the Commission guidelines on Managing Natura 2000 sites?**

The conclusion in the case Hägerums kvarn, part II, is based on the Commission's guidelines *Managing Natura 2000 sites: The provisions of Article 6 of the Habitats' Directive 92/43/EEC*.

### **14. Examples of licensing decisions concerning exemptions from protection (Article 6 paragraph 4)**

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

The Government decides on exemptions. The preconditions for exemptions are set out in the Environmental Code, Chapter 7 section 29. A permit can be granted if the Government decides that a plan or a project, in the absence of alternative solutions, must nevertheless be carried out for imperative reasons of overriding public interest and compensatory measures are undertaken. Appeals against the Government's decision shall be lodged in the Supreme Administrative Court. As mentioned above (question 6) the appeal may only be founded on the illegality of the decision.

- **Have exemptions been applied for and have they been granted?**

- **Grounds for refuting and allowing an exemption (alternative solutions, imperative reasons of overriding public interest, opinions of the Commission)**
- **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 case of the Botnia Railway – a new railway is being built along the coastline in the north of Sweden; the railway will pass through a special protected area under the Birds Directive – the Swedish Government (Ministry of Sustainable Development) decided after having consulted with the EU Commission, that the building of the railway was permissible. According to the Government (and the EU Commission) there was an absence of alternative solutions, and there were imperative reasons of overriding public interest for building the railway. In this case it was however a task for the Environmental Court to grant a permit and the Court did so. The permit was appealed to the Environmental Court of Appeal. The court established that it was bound by the decision by the Government. Thus, the court was not free to judge if there were other alternatives or if reasons for building the track through the protected area were good enough, but stated that the areas proposed for compensation were not acceptable; they were situated too close to an airport. Because of that the Environmental Court of Appeal overruled the decision of the Environmental Court and referred the case back to the Environmental Court for further investigation concerning other possible compensatory measures.