

- NATURA 2000

Will Noah's Ark sink?

by Nicolas de Sadeleer

FUSL, UCL, VUB

Major crisis

- the ecosystems sink to the lowest common denominator, losing their cultural and natural specificity.
- For animal and plant species this results in a fragmentation and isolation of their habitats, constituting one of the most serious threats to their long-term survival.

considered to be under threat

- 42% of mammal species (out of a total of 250),
- 15% of bird species (total 520),
- 30% of amphibian species (total 75),
- 45% of reptile species (total 120),
- 41% of freshwater fish species (total 190),
- 12% of butterfly species (total 575)
- 21% of plant species (total 12,500)

- **directive 79/409/EEC on the conservation of wild birds**

- distinguishes between:
- the protection of the habitats of bird species (Articles 3 & 4); in particular through the designation of 'special protection areas'
- the protection of bird species as such by the regulation of their capture and their trade (Articles 5-9).

- **directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora**

- the protection of the habitats (Articles 3-10); in particular through the designation of 'special conservation areas'
- the protection of animal (other than birds) and plant species by the regulation of their capture and their trade (Articles 12-16).

- **directive 79/409/EEC**

- 'special protection areas' (SPAs)

- intended to protect wild bird habitats

- **directive 92/43/EEC**

- 'special conservation areas' (CSAs)

- intended to protect particular non-bird habitats of Community interest

NATURA 2000

- Constitution of a 'coherent ecological network' (Natura 2000): 'sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II' as well as the special protection areas (SPA)
- Pan-European Biological and Landscape Diversity Strategy: an-European ecological Network



CONSERVATION REGIME FOR SPA AND CSA

- Maintain or re-establish natural habitats and the habitats of species of wild flora fauna and flora of Community interest in a 'favourable conservation status' (Article 2).
- 'Conservation': 'series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status' (Article 1(a)).

- The conservation status will be taken as "**favourable**" when:
 - - population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
 - - the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
 - - there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

Special conservation measures (Art.6(1))

- **positive** (plans for spreading, grazing incentives, subsidies, delayed pruning, hedgerow maintenance)
- **negative** (prohibitions of soil contour modifications, deforestation, picking or harvesting wild species).

Special conservation measures: form (Art. 6(1))

- Management plans designed for the site or integrate into other development plans
- Appropriate statutory, administrative or contractual measures
- However, need to be tailored to the ecological requirements of the site

Specific preventive regime: a result-based obligation

- take ‘appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive’ (Article 6(2)).

Species and habitats covered by the general prevention regime

- Article 6(2) appears to cover the deterioration of *any* natural or species habitat inside the SCA,
- in other words, the totality of habitats present within the boundaries of the area.
- rather than simply the habitats for which the site has been classified

Geographical range of prevention measures

- may have to cover particular activities carried on outwith the site, in the light of the result-based obligation contained in Article 6(2)

Nature of the activities covered by the prevention regime

- **Article 6(2)** take ‘appropriate steps to **avoid**:
- the **deterioration** of natural habitats and the habitats of species
- the **disturbance** of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive’

Nature of the activities covered by the general prevention regime

- Any type of activity, whether past, present or future
- obligation to avoid the ‘deterioration of natural habitats and the habitats of species’, irrespective of its nature ;
- obligation to avoid ‘disturbances of species’, where such disturbances are significant

DEROGATIONS FROM THE GENERAL PREVENTION REGIME

- EIA applicable to ‘any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects’ (art.6(3)).

Concept of 'plan' and 'project'

- The concept of 'plan' and 'project' must be interpreted broadly operation of a rubbish dump (Belgian C.St., Wellens, n. 96.198) and annual permits to fish molluscs (C-127/02 Waddenzee, para. 48) qualify as 'plans or projects' for the purposes of this provision.

- **The significant' nature of the impact of the plan or project must be interpreted objectively in light of the particular characteristics and environmental conditions of the protected site.**
- **Accordingly, any activity compromising the conservation objectives which apply to the area is assumed to have a significant effect (Waddenzee, para. 48)**

Depth of the EIA

- **Since the impact study regime covers plans and projects ‘likely’ to affect a site the conductor of the impact study must be able to identify, according to the precautionary principle, even those damages which are still uncertain.**

C-127/02 Waddenzee, para. 44.

Scope of the EIA

- Plans and projects covered by Article 6(3) must, finally, be authorised by an express act, subject to various conditions, which determines the rights and obligations of the parties involved.
 - Opinion of AG Kokott in Waddenzee, para. 98.

Geographical range of the EIA

- **not limited only to activities carried on in classified areas but must also cover any plan or project located outwith the site which is likely to have a significant effect on the conservation status of the classified area.**

Content of the EIA

- **EIA must be ‘appropriate’ having regard to the conservation objectives of the particular site (Article 6(3))**
- **identify the specific, and not abstract, effects of the plan or project on every habitat and species for which the site was classified**
- **Cumulative effects/alternative solutions**

Conditions under which the license could be granted

- In order for the project to be authorised, Article 6(3) requires that the competent authority will 'ascertain' that 'it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public'.

Effects of a negative assessment

- Accordingly, ‘where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation’.
 - C-127/02 Waddenzee, paras. 56-57.

If there is **uncertainty over the subsequent manifestation of risks, the term ‘ascertain’ would require, in line with the **precautionary principle**, the competent authority to refrain from issuing the authorisation.**

Direct effect

- This provision has direct effect on account of the way in which it is framed.
 - C-127/02 *Waddenzee*, paras. 62-70.

Derogation mechanism following negative findings in the assessment

- Projects can only be implemented
- (a) where there are no alternative measures
- (b) and where their completion is justified by specific interests.

Where a challenged project is accepted, authorities must :

- A) mitigate its impact
- B) implement compensatory measures.

Absence of alternative solutions

broad interpretation to the obligation to seek out the least damaging alternative for the conservation of the site

Balance of interests

- For non-priority habitats and species
- 'imperative reasons of overriding public interest, including those of a social or economic nature'
- For priority habitats or species
- 'the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest'

Compensatory measures

intended to counteract the negative effects of the project and guarantee compensation exactly equivalent to the negative effects on the relevant habitat or species

Conclusions

- Natura 2000 network will cover little more than a fraction of the most spectacular natural and semi-natural areas of the European continent
- numerous findings against Member States handed down by the Court of Justice on nature conservation represent only the tip of the iceberg.
- Intensification of forestry, agriculture, fishery compound the decline of a broad range of species



QuickTime™ et un
décompresseur TIFF (non compressé)
sont requis pour visionner cette image.

- **NATURA 2000 Directive**, Art. 2.1. Measures taken pursuant to this Directive shall be designed to maintain or restore, at **favourable conservation status**, natural habitats and species of wild fauna and flora of Community interest.
- The conservation status will be taken as "**favourable**" when:
 - - population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
 - - the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
 - - there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

ACHIEVING GOOD WATER QUALITY STATUS

Water framework directive 2000/60/EC

Member States shall protect, enhance and restore all bodies of surface and ground waters

b)).....

- with the aim of achieving **good surface water status** at the latest 15 years after the date of entry into force of this Directive (art. 4, 1, a) a