

Legal frameworks for EU marine protected areas

This briefing highlights the main international commitments and EU legislation that are relevant to the creation and management of marine protected areas (MPAs) across Union waters.

International commitments

OSPAR (Oslo & Paris) Convention. This convention between 15 European countries covers the NE Atlantic. One of its specific aims is to help signatories establish an ecologically coherent network of MPAs by 2012, and to have that network well-managed by 2016.

Convention on Biological Diversity (CBD). The EU is a signatory to the CBD, which includes as part of the Aichi Biodiversity Targets a Strategic Goal for improving the status of biodiversity by safeguarding ecosystems, species and genetic diversity. This includes a target to protect 10% of coastal and marine areas by 2020 (extended from 2012) to help achieve this goal.

Convention on Wetlands of International Importance (RAMSAR). This Convention is less relevant in terms of designated marine sites in the EU but it can include shallow sub-tidal areas.

EU legislation

Marine Strategy Framework Directive (MSFD).

The overarching goal of the MSFD is to achieve ‘**good environmental status**’ throughout all of Europe’s marine areas by 2020. The Directive additionally requires that spatial protection measures are put in place to build a coherent and representative network of marine protected areas by 2016. MPAs established under international, European and national legislation will all contribute to this network.

Natura 2000: Birds Directive (SPAs), & Habitats Directive (SACs).

The Natura 2000 network consists of Special Areas of Conservation (SACs, Habitats Directive) and Special Protection Areas (SPAs, Birds Directive), and aims to establish an ecologically coherent network of protected areas across Europe. The main intention of the Natura 2000 network is to protect the most critically threatened habitats and species across the EU. To achieve this Member States must designate areas that contain the features listed for protection, and then ensure that the habitat types and the habitats of the protected species the sites were chosen for, are restored to, or maintained at, ‘**favourable conservation status**’.

Natura 2000 sites in the marine environment are not intended to be “fenced-off” reserves where all human activities are prohibited. However, activities may need to be strictly regulated to comply with the Directive. For example, Article 6(2) requires Member States to ‘take appropriate steps to avoid... **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.' The wording of Article 6(2) stresses the anticipatory nature of the measure to be taken. It is not acceptable to wait until deterioration or disturbances occur before taking management decisions.

'Appropriate assessments' must be carried out for any plan or project likely to have a significant effect on a Natura 2000 site (Article 6(3)). A plan or project – which case law has established includes potentially damaging fishing activities¹ – may only be granted permission to proceed if it can be shown that it will not harm the site, taking into consideration the species and habitat feature(s) the site was designated to protect, and the species associated with those habitats. A plan or project failing its appropriate assessment can **only go ahead if there are imperative reasons of overriding public interest**. In relation to priority species or habitats, such public interest reasons are **restricted to human health or public safety**. In those rare cases, compensatory measures must be undertaken to ensure that the overall coherence of the Natura 2000 network is protected.

Case study: The Waddenzee case² established that the granting of fishing licences which would permit fishing in an SPA is a plan or project within Article 6(3) of the Habitats Directive. This article sets out that Annex I species and Annex II habitats must be maintained or restored at a favourable conservation status, and cannot be exposed to threats of degradation or destruction. The issuing of annual cockle fishing licences was therefore subject to the relevant scientific tests under Article 6 to assess whether damage was taking place to the designated species or habitats. In this instance it could not be proven that cockle dredging would not adversely affect the integrity of the site, and therefore the activity was not allowed to continue.

The Lisbon Treaty & the Precautionary Principle

It is with reference to the precautionary principle established through the Lisbon Treaty that Article 6 of the Habitats Directive must be applied. This means that competent authorities are required to undertake appropriate assessments and make their decisions on the basis of the best scientific knowledge available. **If there is not sufficient evidence to make a decision that the integrity of the site will not be affected, then a precautionary approach must be taken and the plan/project cannot be authorised.**

Case study: Transposed EU laws must be followed precisely, otherwise Member States leave themselves vulnerable to infraction proceedings. For example, pot fishing activities in the horse mussel (*Modiolus modiolus*) beds in Strangford Lough SAC, Northern Ireland, meant that the authority was in breach of the Habitats Directive due to deterioration in extent and condition. Failure to introduce adequate restrictions on the activities could have resulted in the UK receiving an initial fine of £7m, potentially followed by a daily fine of £500,000 until appropriate action was taken.³

¹ Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels –v– Staatssecretaris van Landbouw, Natuurbeheer en Visserij [2004] ECR I-07405.

² *ibid*

³ EXPLANATORY MEMORANDUM TO 'The Strangford Lough (Sea Fishing Exclusion Zones) Regulations (Northern Ireland)', 2012 SR no. 441.

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