

EU Nature Conservation Policy and UK Inshore Fishing: Overview of Issues



1 Introduction

Over the last two decades, fisheries managers and the fisheries sector have come under increasing pressure to take account of and address the full impacts of fishing on the natural environment. As a consequence, a new role is emerging for fisheries managers, at the heart of which is the sustainable management of marine resources.

As with many areas of UK policy, nature conservation is regulated at both the UK and EU level, with the 1992 EU habitats Directive now forming the cornerstone of nature conservation policy. Proposed by the European Commission in the late 1980s, the habitats Directive was to respond to a continuing deterioration of European natural habitats and an increasing number of seriously threatened wild species.

The habitats Directive remains the single most important EU instrument for safeguarding biodiversity across the Union, complemented by its sister Directive – the 1979 EU birds Directive.

Together, these Directives aim to establish a European network of protected areas known as Natura 2000, as well as protecting vulnerable species outside of these areas. European marine areas and species are an integral part of this network. However, the fact that marine species and habitat types are underrepresented in the habitats Directive has been criticised, and may be addressed in a future review of its legislation.

The Bigger Picture – Biodiversity Conservation and Sustainable Fisheries Management

The habitats and birds Directives need to be seen in the broader context of national and international commitments and targets relating to biodiversity conservation and

The habitats Directive remains the single most important EU instrument for safeguarding biodiversity across the Union, complemented by its sister directive – the 1979 EU birds Directive.

sustainable development; most importantly perhaps, the UK and EU commitment to **halting biodiversity decline by 2010**.

This 2010 target, while ambitious, is firmly nested within a series of international conventions which the UK and EU² are party to, including the 1992 Convention on Biodiversity and the 1979 pan-European Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). Together, the birds and habitats Directives serve to implement – at least in part – these international obligations.

For the marine environment in general, and the fishing sector in particular, delivering on these targets requires a shift towards the use of environmentally responsible harvesting practices and a more sustainable approach to resource use. These requirements have been widely recognised at the UK, EU and international levels, as reflected in the 1995 FAO Code of Conduct for Responsible Fisheries and the UN Agreement on Straddling Stocks and Highly Migratory Stocks. The need for change was also reflected in the reform of the EU Common Fisheries Policy (CFP). The new basic Regulation (2371/2002) commits the EU fisheries

For the marine environment in general, and the fishing sector in particular, delivering on the 2010 target requires a shift towards the use of environmentally responsible harvesting practices and a more sustainable approach to resource use.

sector to the protection of the marine environment, notably by requiring a gradual move towards adopting an ecosystem-based approach to management.

2 The EU Birds and Habitats Directives – a Basic Framework for Species and Habitat Conservation

The birds and habitats Directives essentially provide a framework for conserving and managing Europe's wildlife, using a combination of site designation and wider measures, as well as other supporting instruments.

The 1979 birds Directive aims to protect wild bird species and their habitats within the EU. It requires the classification of Special Protection Areas (SPAs) to conserve important bird habitats, as well as offering protection to all wild birds outside these sites. In particular, it protects migratory birds, many of which rely upon coastal and marine habitats at least part of their life.

The habitats Directive complements and builds on the birds Directive in several ways. In particular, Member States are to maintain or restore

² We are using the term EU, although it is formally the European Community (EC) that is party to international conventions.

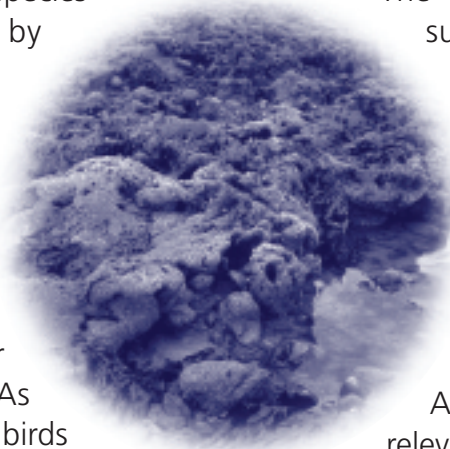
natural habitats and wild species of Community interest by establishing:

- i) the European Natura 2000 network – made up of **sites** designated under the habitats Directive (Special Areas of Conservation or SACs) as well as SPAs designated under the birds Directive; and
- ii) a system of strict protection for non-bird **species** of European importance throughout their natural range.

Both Directives also contain a number of general provisions concerning surveillance, the re-introduction of native and introductions of non-native species, monitoring, research and education.

National Implementation

As with any EU Directive, the birds and the habitats Directives have to be transposed into national law and then implemented on the ground, before they take effect. In the UK, national transposition has been approached by means of a series of regulations and acts. In the case of the habitats Directive, this includes the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) which apply in Great Britain. Northern Ireland has its own regulations (SR 1995/380), which place the main requirements of the Directives within a national context, and identify relative roles and responsibilities for their implementation.



The 1994 Regulations and subsequent amendments have also affected provisions specific to the UK fishing sector. The Sea Fisheries (Wildlife Conservation) Act 1992 requires that, when discharging functions under the Sea Fisheries Acts, the Minister(s) or other relevant bodies such as the Sea Fisheries Committees must have regard to the conservation of marine flora and fauna, with a view to strike a reasonable balance between conservation and other issues.

In discharging their functions under the Sea Fisheries Acts relevant bodies such as the Sea Fisheries Committees must have regard to the conservation of marine flora and fauna, with a view to strike a reasonable balance between conservation and other issues.

3 Key Provisions of the Habitats and Birds Directives

In order to ensure that species and habitats are indeed protected and/or managed, the two Directives impose a number of obligations on the Member States. For the creation of the Natura 2000 network, basic requirements have been introduced regarding the selection, designation, management and protection of sites. The species provisions contain additional requirements for plant and animal

species to ensure that individual populations and the species as a whole are properly protected.

Natura 2000 – European Network of Sites

The main aim of the Natura 2000 network is to maintain, or restore, important habitats at a 'favourable conservation status'. In practice, this requires maintaining or restoring the natural range of species and habitats listed in the Directives, and safeguarding specific structures and functions necessary for their long-term existence. Measures taken to implement the habitats Directive, however, have to take account of economic, social and cultural requirements, as well as regional and local characteristics. Once completed, the Natura 2000 network will form an ecologically coherent system of representative sites, on land and in the marine environment, throughout the EU.

In its annexes, the habitats Directive lists 169 habitat types and 623 species for which Member States must designate representative SACs. These include priority species and habitat types in danger of disappearance for which the Community has particular responsibility, and which must be covered by SAC designation. Of the seventy-six listed habitat types found in the UK, seven occur in areas where fishing activities may take place. These are

The Natura 2000 network will form an ecologically coherent system of representative sites, on land and in the marine environment, throughout the EU.

subtidal sandbanks, estuaries, mud- and sandflats, coastal lagoons, large shallow inlets or bays, reefs and submarine structures made by leaking gases. Fifty-one of the species for which sites need to be designated have been recorded in the UK, but only a fraction of these are present in the marine environment (see Briefings 2 and 3).

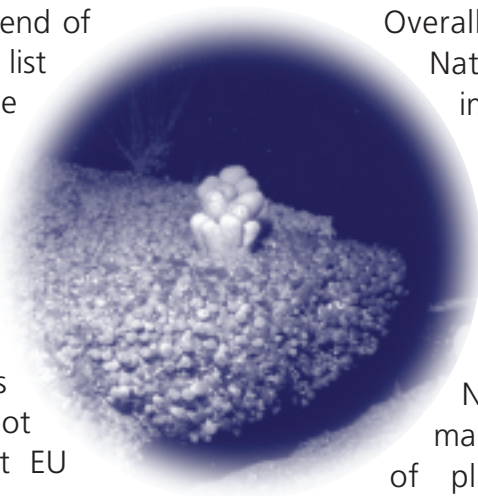
In order to comply with the habitats Directive, the management or regulatory bodies active in a SAC have to determine whether activities within their remit have a significant impact on the site's favourable conservation status. While this should normally be less onerous than a full impact assessment, as needed in the case of plans and projects, it nonetheless requires a qualified assessment of the environmental implications of any given activity.

SACs and SPAs jointly make up Natura 2000 and may even overlap in certain areas. The procedure from site selection and designation to protection can be summarised as follows:

- The **selection** of SACs is based on strict scientific criteria set out in the Directive. Sites then go through a process of moderation at the EU level to ensure overall balance and coherence of the network across all



Member States. At the end of this process, a European list of sites is adopted by the European Commission. The sites then have to be fully designated as SACs by the Member States. In contrast, SPAs are classified by the Member States directly and do not undergo moderation at EU level.



- Once designated, the administration and **management** of sites may require considerable input from site managers, including an assessment of the significance of impacts of all human activities within or in the vicinity of a site. For marine sites, management is likely to focus on monitoring, surveillance and enforcement. Measures in support of site restoration may also be required. Given the relative inaccessibility of some marine areas, measures may be comparatively resource intensive.
- Importantly, any **plans or projects** likely to have a significant effect on the status of the site have to be subject to 'appropriate assessment'. Some plans or projects may go ahead even if they are likely to have a negative impact, but they have to be justifiable on grounds of 'overriding public interest'. It is not clear at present whether, and to what extent, fishing operations constitute plans and projects in accordance with the provisions of the Directive.

Overall, the establishment of Natura 2000 is aimed at improving the consistency and connectivity between different protected areas – linking marine and terrestrial ecosystems across the regions. The detailed provisions of Natura 2000, including site management and assessment of plans and projects, are discussed in more detail in subsequent briefings.

Currently, most marine Natura 2000 sites in the UK are situated close to shore. These sites are subject to a wide range of commercial and recreational activities, including fishing. Site designation does not necessarily preclude the exploitation of natural resources on-site. Fishing can continue as long as there is no significant damage to the site and the features which it has been designated to protect – ie as long as a favourable conservation status is maintained. Depending on the circumstances, it is nonetheless likely that certain measures will need to be taken to maintain sites or enable their restoration. This may include gear restrictions, spatial closures, or other measures to minimise destruction and disturbance.

Any plans or projects likely to have a significant effect on the status of the site have to be subject to 'appropriate assessment'.

4 Species Protection

The habitats Directive also lists a number of European marine species for which systems of strict protection have to be established (see Briefing 3). These include for instance all cetaceans and marine turtles listed in the Directive.

A subset of the listed species occur in UK waters, including all cetaceans and marine turtles. The sturgeon used to be native to the UK, but is now considered nationally extinct. All wild birds, as well as their eggs and nests, are protected under the birds Directive, including many sea birds such as the guillemot, razorbill, puffin, gannet, shag and kittiwake.

As regards species protected under the habitats and birds Directives, Member States have to prohibit:

- i) all forms of deliberate capture or killing in the wild;
- ii) deliberate disturbance, particularly during the period of breeding, rearing, hibernation and migration;
- iii) deliberate destruction or taking of eggs from the wild; and
- iv) deterioration or destruction of breeding sites or resting places.

In addition, Member States are obliged to establish a system to monitor the incidental capture and killing of any 'non-bird' animals subject to strict protection, such as dolphins. If there is an indication of significant negative

Member States are obliged to establish a system to monitor the incidental capture and killing of any 'non-bird' animals subject to strict protection, such as dolphins.

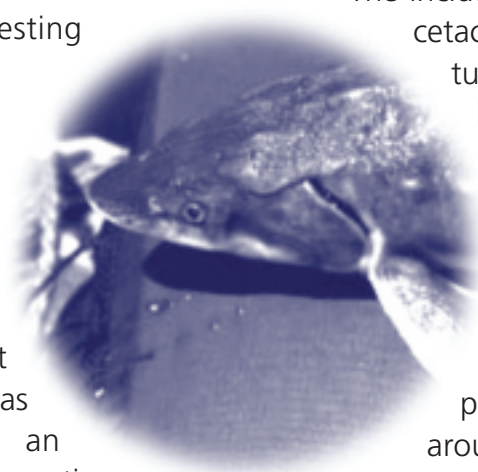
impact on the species' conservation status, further measures have to be taken to prevent such incidental impact. The habitats Directive also sets out similar provisions for plant species of Community interest.

In addition to these strict protection measures, Annex V of the habitats Directive lists animal and plant species whose taking in the wild and exploitation is permitted but only if subject to management measures (eg monitoring and/or quotas). Member States have to ensure that any exploitation is compatible with the species being maintained at a favourable conservation status. The birds Directive also contains provisions concerning the hunting of certain species.

Protecting Species from the Impacts of Fishing

The incidental capture and killing of cetaceans and to a lesser extent turtles, currently appears to be the most obvious species protection issue with regards to UK sea fishing.

The bycatch of cetaceans, especially of the harbour porpoise, in fishing nets has aroused great concern, and some steps have been taken to



monitor and avoid the loss of animals. In the UK, dolphin bycatch in the English Channel pelagic pair trawl bass fishery has been a particular issue.

Recent trials of marine mammal exclusion devices on Scottish vessels did not appear sufficient to reduce bycatch, with at least 169 dolphins caught despite the use of separator grids between November 2003 and April 2004. In July 2004, as a result of the observed high levels of bycatch, the UK Government announced its intention to ask the European Commission to take emergency measures under the CFP to close the pelagic trawl fishery for sea bass in order to protect the common dolphin.

In March 2004, the EU Council of Fisheries Ministers adopted a Regulation aimed at reducing the bycatch of cetaceans in fishing gear. Its requirements include:

- extending restrictions on drift net fisheries to the Baltic;
- mandatory use of pingers in bottom-set gillnet, entangling net and other gillnet fisheries in the Baltic Sea, North Sea and south western approaches for vessels of 12 meters or more;
- use of on-board observers for vessels of 15 meters or above (excluding fisheries using pingers); and

The incidental capture and killing of cetaceans and to a lesser extent turtles, currently appears to be the most obvious species protection issue with regards to UK sea fishing.



- alternative monitoring systems for these vessels below 15 meters.

The UK has to make sure these measures are applied by 2005-2007, depending on the specified deadline.

Although EU fisheries are normally managed under the CFP, Member States have the powers to regulate fishing in inshore waters (0-12 nm), as long as they follow the provisions set out under the CFP.

5 Implications for the Sector

In a significant number of European marine sites, fishing activities may potentially cause site deterioration and/or species disturbance. Consequently, fishing activities will need to be assessed and, if necessary, controlled as part of the site management scheme.

Although EU fisheries are normally managed under the CFP, Member States have the powers to regulate fishing in inshore waters (0-12 nm), as long as they follow the provisions set out under the CFP. The new EU framework Regulation (2371/2002) includes the possibility, in principle, of closing areas or managing activities, even if these involve vessels registered in other countries, and as long as affected Member States and the European Commission have been

consulted. Member States should therefore be able to ensure compliance with the habitats and birds Directives in their coastal waters.

Current UK inshore fisheries management arrangements are restricted to the 0-6 nautical mile (nm) zone, reflecting CFP provisions prior to the 2002 reforms. The Government is consulting on ways of extending management throughout the 12 nm zone, and in so doing will need to give full considerations to the requirements of the habitats and birds Directives.

One of the criticisms of the existing UK inshore fisheries management regime, is the length of time needed for new management measures to be introduced. However, the UK can also use its emergency powers under the CFP if there is 'evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem'. These measures are limited to a three-month period, and can only be introduced following consultation with affected Member States and the European Commission.

Type of management measures

In the case of fishing-related impacts on marine sites, management measures are likely to take the form of restrictive measures or standards. This may include gear restrictions, spatial and/or temporal closures, and effort reduction measures.



It contrasts with the predominantly active management of terrestrial sites, such as the maintenance of meadows and hedgerows.

Species protection measures will largely relate to the bycatch of protected species. Bycatch limits may, for instance, be used to trigger closures should they be exceeded. That said, activities such as bottom-trawling may also have to be regulated to avoid direct damage to certain species. Again, mitigation measures would primarily involve gear restrictions or modifications, and closed areas.

Technical standards or thresholds may be set out in EU regulations, statutory instruments, bylaws or orders. They may be implemented through licence conditions, and/or be agreed on a voluntary basis, and implemented through codes of conduct. Voluntary codes of conduct are currently used in the case of bait collecting and angling, for example. More generally, fishing effort reduction, as well as increased monitoring and reporting, may be necessary.

While most measures will be restrictive, there is some scope to involve fishermen in active management activities, for example, in assisting monitoring and enforcement. The involvement of user groups in site management may be relatively cost-efficient, and may help to raise awareness and to engage stakeholders in

environmental and resource management issues.

Management incentives

Financial incentives to encourage fishermen to go beyond legal requirements in adopting more environmentally sensitive fishing practices and approaches are available under the Financial Instrument for Fisheries Guidance (FIFG).

At present these tend to consist of grants to support, for example, the voluntary introduction of marine mammal exclusion devices or the use of pingers. Moreover, compensation can also be paid to fishermen forced to change their gear or reduce effort as a result of changes in EU law.

While the use of FIFG in the implementation of the habitats and birds Directives in inshore waters has been limited, efforts are being made to generate greater take-up in future.

Compensation can be paid to fishermen forced to change their gear or reduce effort as a result of changes in EU law.



6 Future Developments

The limited number of marine habitats and species listed under the habitats Directive has been identified as a key weakness, and is unlikely to provide adequate protection of the marine environment in the EU (see Briefings 2 and 3). Other steps will likely be needed. A revision of the lists is becoming increasingly likely, and could potentially result in the incorporation of more marine species, such as the European eel and several skate species.

There is also a growing debate about additional ways to cover the costs associated with nature conservation, particularly the creation of the Natura 2000 network and its maintenance. A Commission communication outlining future funding options for Natura 2000 is expected in 2004. Already, payments are being offered to farmers operating within Natura 2000 sites, and similar approaches could be developed for coastal and marine users.

Summary of Briefing

- The provisions of the habitats and birds Directives also apply to the marine environment.
 - The number of marine habitats and species currently protected under the habitats Directive is limited, but it is likely that the Directive will in due course be revised to address these shortcomings.
 - Since fishing activities have impacts on the coastal environment, implementation of the two Directives is likely to affect inshore fishing.
 - In the UK, fisheries management organisations carry obligations under the Directive.
 - The full implications of the Directives for the inshore fishing sector will only become apparent when there is a decision on whether fishing operations constitute ‘plans and projects’ in accordance with the provisions of the Directive.
 - The most likely measures to be imposed upon fishermen are gear restrictions, temporal and spatial closures, effort reduction measures, and increased monitoring and reporting requirements.
 - While restrictions may be imposed through regulation, there is also scope to use voluntary measures and to encourage better practice by offering financial incentives.
 - Fishermen could potentially also be rewarded for participating in site management activities, such as monitoring and/or enforcement.
-



Information Sources:

DETR (1998) *European Marine Sites in England & Wales – A guide to the Conservation (Natural Habitats &c.) Regulation 1994 and to the Preparation and Application of Management Schemes*

English Nature (2002) *Inshore Fisheries management in England and Wales – facing up to the Challenges of the 21st Century*. English Nature Report 448, Peterborough.

European Commission (1998) *Implementing the Habitats Directive in Marine and Coastal Areas*. <http://europa.eu.int/comm/environment/nature/imphmc.pdf>

The Irish Sea Pilot - JNCC web page on the pilot study, which is charged with trialing a proposed new marine nature conservation framework in the Irish Sea. http://www.jncc.gov.uk/Marine/irishsea_pilot/default.htm

European Commission (2001) *Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites – Methodological Guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EEC*. Impacts Assessment Unit, School of Planning, Oxford Brookes University, England.
http://europa.eu.int/comm/environment/nature/natura_2000_assess_en.pdf

CCW (2003) *Sea Fisheries Policy*. Countryside Council for Wales, Bangor.

For further detail please contact:

Saskia Richartz srichartz@ieeplondon.org.uk
Institute for European Environmental Policy
18 Avenues des Gaulois
B – 1040 Brussels

T +32 (0)2 738 74 77

F +32 (0)2 732 40 04

This Briefing has been prepared as part of IEEP's sustainable fisheries programme, funded by the Esmée Fairbairn Foundation. For more information please see <http://www.ieep.org.uk/>.

This is the first in a series of IEEP briefings,¹ examining key provisions of EU nature conservation policy set out in the habitats and birds Directives, and how these relate to the UK inshore fishing sector (ie within 12 nm). It gives a **general introduction**, exploring the main provisions.

The habitats and birds Directives have potentially far-reaching implications for various economic sectors, and the fisheries sector is no exception. The purpose of these briefings is to outline the possible consequences for the UK inshore fishing sector. In due course, the briefings will be followed by good practice examples from the UK and other European countries, demonstrating innovative ways of managing fisheries in support of EU nature conservation policy.

¹ published so far are:

1. EU Nature Conservation and the UK Fishing Sector – Overview of Issues
2. Natura 2000 in the marine environment
3. Species Protection and the Inshore Fishing Sector
4. Appropriate Assessment of Activities Affecting European Marine Sites
5. Managing European Marine Sites



Institute for
European
Environmental
Policy

28 Queen Anne's Gate
London
SW1H 9AB

T +44 (0)20 7799 2244
F +44 (0)20 7799 2600

central@ieeplondon.org.uk
www.ieep.org.uk

18 Avenue des Gaulois
B-1040 Brussels
Belgium

T +32 2 738 74 77
F +32 2 732 40 04

Cover photograph: Sea Sponges © Kate Lock
(<http://www.pembrokeshiremarinesac.org.uk/english/episac.htm>)

DESIGNED BY SEACOURT LTD TEL: 01865 770140 V.O.1 B28541

September 2004