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ENV.B.2 - Nature and Bio-diversity

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NOTE TO THE MEMBERS OF THE HABITATS COMMITTEE

Subject: Updating of the Natura 2000 Standard Data Forms and Database

N.B.: For the purpose of this note, Sites of Community Importance (SCIs) and Special Areas of Conservation (SACs) are considered equivalent, with the term SCIs being used for both groups for simplicity.

The Standard Data Forms for SCIs and Special Protection Areas (SPAs) contain a significant amount of information, beyond what is included in the Commission Decisions for adoption of SCIs or in the pieces of national legislation in the Member States for designation of SPAs. This additional information is essential for the management of the Natura 2000 sites, namely for management planning and impact assessments. It will also be a significant input to the assessment of the contribution of the Natura 2000 network to fulfil the objectives of the Habitats Directive. It is therefore essential that the information that they contain be kept as up to date as practically feasible.

The purpose of this note is to define the procedure for updating the Standard Data Forms, keeping in mind that any modifications will need to be adequately justified on a scientific basis and must not be, in any case, the result of inadequate management of the sites.

The Standard Data Forms and the associated database were compiled when the sites were identified for integration in the Natura 2000 network, on the basis of the best available information at that time.

The information contained in the Standard Data Forms and in the database will, at certain points in time, need to be revised and updated. This can be due to several factors:

1. New studies and inventories (including the surveillance work required under Article 11 of the Habitats Directive) produce updated or more accurate data on the natural values of a site. This is particularly the case, at present, concerning SCIs for which the authorities in the Member States are presently working on the definition of management models. This definition requires more detailed information on the natural values of the site, and the studies necessary to obtain that detailed information often bring to light inaccurate information contained in the original Standard Data Forms.

2. The same work mentioned above will justify, in some cases, modifications to the actual boundaries of the sites or even designation of new sites or deletion of existing sites. This can be due to correction of errors in the original forms but also to natural evolution not resulting from lack of adequate management.

The following rules will have to be respected in such cases:

- Article 9 of the Habitats directive allows for declassification of sites (and arguably parts of sites) “*where this is warranted by natural developments noted as a result of the surveillance provided for in Article 11*”. In consequence such declassification is foreseen by the directive only for the case of “*natural*” developments (in contrary to “*human caused*”) which could not reasonably be avoided or prevented by applying measures in the frame of Article 6(1), 6(2) and 6(3). E.g. changes of semi-natural habitats through natural succession arising from a failure of adequate management measures would not be regarded as “*natural*” causes in this sense, while changes due to e.g. climatic conditions would be regarded as “*natural*”.
- A second situation in which the modification of boundaries might be considered as justified are *demonstrable “genuine” scientific errors* whereby land/water has been incorporated in the SCI which:
 - was not of value for the Annex I/II interest for which the site was classified at the time of designation; a wide perspective may be necessary – e.g. allowing for potential change of breeding sites of a species within a larger area or taking into account certain dynamics of habitat types (*cases where an area has lost its value due to mismanagement or other human induced causes are not covered!*)
and
 - has not reached in the meantime importance as a site regularly hosting other species/habitats not yet mentioned in the data form
and
 - is not necessary for the integrity of the site (e.g. is not a buffer zone or a forthcoming restoration area). Serious caution should be exercised in any consideration of the reduction of the surface area of large SCIs. Member States are advised to alternatively look at a system of “*zonation*” which foresees different levels of protection, management and restriction on land use in relation to conservation needs of the species or habitats for which the site is classified.

This “test” should be to a high standard.

3. Withdrawal of the reserves in the Commission Decisions for the different biogeographic regions will often require designation of new SCIs. Similarly, compensation measures taken in the framework of Article 6(4) of the Habitats Directive might involve recovery of degraded areas that will therefore need to be assured legal protection by their inclusion in the Natura 2000 network.
4. Any such changes, whether or not they imply modifications of site boundaries or deletion or addition of sites, can be done only on the basis of sound scientific reasons. Otherwise there is a serious risk that de-classification could be used to reverse the Article 6 procedure for protection of sites (which, if widely applied would undermine the Natura 2000 network) On this issue, the Annex to this note contains a text agreed in September 2000 in the Ornis Committee concerning

modification of boundaries of existing SPAs. In the Commission's view, the same approach has to be followed also for SCIs.

If modifications are acceptable, there are still practical issues related to the update of Standard Data Forms and associated database. Member States should be aware that, from the point of view of the Commission, there are two basic classes of modifications:

- A. Modifications of boundaries, surface and/or coordinates of SCIs, designation of new SCIs, deletion of existing SCIs, which require a new Commission Decision; and**
- B. Modifications of the technical description of SCIs (e.g. habitat coverage, population evaluations, list of threats) or all modifications that concern SPAs, which do not require a new Commission Decision.**

While for the latter group the issue is reduced to the need to verify the information provided by the Member States and the physical updating of the database, modifications in the former group require a long administrative procedure involving consultation of the Member States and of other Commission services, in addition to the same work of verification and update of the general database.

Given the complexity of this process in some cases and the need to ensure that modifications are scientifically justified in all cases, it is necessary to define a procedure for submission of updated information that ensures the maintenance of the Standard Data Forms and associated database as a useful management tool and at the same time ensures that the whole process is manageable.

For this it is essential that modifications are submitted to the Commission in the form of a file that identifies clearly the changes introduced and substantiates the scientific justification for each one of those changes. A revised version of the national database of Natura 2000 sites, including both SCIs and SPAs and maps (paper and digital) where appropriate, with all the changes already introduced must be submitted to the Commission at the same time.

Given the 6-yearly reporting framework included in the Directive, the Commission considers that the Standard Data Forms should be updated at least with that same frequency. Once every six years, within two years of the end of each Art. 17 reporting period, each Member State should therefore submit an update to the Standard Data Form of each individual site, in the form of a revised national database, or a statement that the information contained in the Standard Data Form is still valid.

Updates can take place more often, with a minimum frequency of one year, to allow the necessary time for the verification of the updates and their integration in the general EU-wide database. Since the Commission requested, at the Habitats Committee meeting of April 2005, that Member States submit their new sites to address reserves in the adopted lists by April 2006, this opportunity should also be used to submit any other modifications resulting from the ongoing work on the preparation of the management tools for the sites.

It is important to note that the Commission can only take into consideration, at this time, the information that was included in the Standard Data Forms when the Commission Decisions adopting Community lists of sites were prepared. Any modifications that

Member States might have introduced to the forms or the database after that date will have to be formally submitted and justified.

A handwritten signature in black ink, appearing to read 'N Hanley', written in a cursive style.

Nicholas Hanley
Head of Unit

Annex: Commission view on modifying boundaries of existing SPAs

ANNEX:**ANNEX C****COMMISSION VIEW ON MODIFYING BOUNDARIES OF EXISTING SPAS**

The following views, to which the Commission's Legal Service has confirmed its agreement, is subject to the definitive role of the Court of Justice in interpreting Community law.

The Lappel Bank judgement (Judgement of the Court of Justice of 11 July 1996 in Case C-44/95) has confirmed that site boundaries must be determined exclusively from the application of ornithological criteria. Together with subsequent judgements (eg Seine Estuary and Marais Poitevin) this has provided legal clarification relating to the issue of the partial classification of sites. According to scientific information (including BirdLife International's latest review of Important Bird Areas – IBA 2000) this appears to still be a problem affecting many SPAs.

The reduction of site boundaries or de-classification of a SPA is legally not foreseen by the Directive (in contrast to the situation under the Habitats Directive, where Article 9 allows for this under the special condition of “natural developments”).

As the classification and delimitation of SPAs must be done exclusively on the basis of ornithological criteria if a site is ornithologically identified as one of ‘the most suitable territories’ it cannot be declassified. A possible exception to this, legally compatible with the directive, would be the result of the application of Article 6(4) of the Habitats Directive, where a part of the site may be destroyed through development. In such cases losses must be offset by full compensatory measures.

However, there may be exceptional circumstances where a scientific error has occurred in the original classification of a SPA, particularly as regards the delimitation of the site, which may justify a reduction in its boundaries. The judgement of the Court of 25 November 1999 in case C-96/98 (Marais Poitevin) recognises that it is possible to reduce the surface area of a SPA when this is a rectification of an error (paragraph 55). It does not consider the correction of such a mistake as a (partial) declassification (paragraph 52).

Reducing the size of an SPA might be considered where there is a demonstrable “genuine” scientific error, (most likely in the delimitation of the boundaries) whereby land/water has been incorporated in the SPA which:

- (1) is not of value for the Annex I and/or migratory bird species for which the site has been classified (considering this in a long perspective may be necessary – e.g. allowing for potential change of breeding sites of a species within a larger area such as may occur with nesting sites for tern species)

- (2) has not reached in the meantime a new importance as a site regularly hosting other Annex I birds/or migratory bird species not yet mentioned in the form
- (3) is not necessary for the integrity of the site (e.g. is not a buffer zone or a potential forthcoming restoration area).

This “test” should be to a high standard. Otherwise there is a serious risk that de-classification could be used to reverse the Article 6 procedure for protection of sites (which, if widely applied would undermine the NATURA 2000 network).

Furthermore, changes in bird habitats can also occur for natural reasons whereby an SPA might lose its ornithological value (e.g. a nesting island may be washed away by the sea). This should be contrasted to cases where habitat changes (through natural succession) arise from failure of adequate management measures (relevant e.g. to semi-natural habitats such as heath land or riverbeds).

The Commission does not officially intervene until after the decision of the Member State, as no prior consultation is foreseen under the Birds Directive. However, it does not prevent the Commission from having contact with the Member State to remind them of their obligations under Article 4(1) and (2).

The Commission would expect to receive, as additional information accompanying a formal reduction in size of revision of boundaries, the following elements:

- a) a clear statement by Permanent Representation that any changes arise exclusively from a need to correct a scientific error or in the frame of natural changes as outlined above (1).
- b) Substantiating scientific technical documentation to demonstrate this, including:
 - (updated) Natura 2000 data form and map.
 - Where appropriate, aerial photos (or other evidence) to show that e.g. “infrastructures” to be excluded are present and an assurance that these were in place before April 1981.
 - Other scientific information showing that excluded parts are not relevant as habitat(s) for Annex I and migratory bird species for which site is a SPA (cf e.g. the 2000 IBA inventory)

Serious caution should be exercised in any consideration of the reduction of the surface area of large SPAs. Member States are advised to alternatively look at a system of “zonation” which foresees different levels of protection, management and restriction on land use in relation to conservation needs of the species for which the site is classified as a SPA.

In assessing the validity of reductions that have been formally notified the Commission will take into consideration any relevant scientific references including IBA 2000 or that arising from complaints on the subject.

In looking at a notification regarding boundary changes, it may be appropriate for the Commission to consider the overall context of the performance of the Member

State/Region regarding SPA classification as well as the quality of information that they have already supplied to the Commission for their SPA network.

