

# The North Sea Regional Advisory Council

NSRAC Secretariat  
Woodhill House  
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Scotland



## NSRAC

### PAPER 3

Mr Fokion Fotiadis  
Director-General for Fisheries and Maritime Affairs  
European Commission  
B-1049 Brussels  
Belgium

28 January 2008

Sent by e-mail

Dear Mr Fotiadis

By 2008, a European network of Marine Protected Areas should be in place in accordance with the Natura 2000 Directives. The designation process is of great interest to the North Sea RAC (NSRAC) in view of its advisory role on fisheries management to the European Commission.

The NSRAC notes that the speed at which Member States are undertaking site designation, and the consequent development of management plans, vary significantly. Some Member States appear to be well ahead of others. Recognising the status of Natura 2000 site designation in European fishing grounds and the possible consequences for fisheries management in these sites, the NSRAC Executive Committee would like to bring the following points to your attention, informed by its experience of the ICES-project "EMPAS".

#### Key observations are:

- There are Member States which have designated more than 30% of their EEZ, whereas others with not too different habitat structures have only designated less than 10%.
- It seems unclear whether the habitat definitions, especially the categories 'reef' and 'sandbank', are interpreted and used in the same way in all Member States. This impression arises especially if – as has been the case in the German EEZ - a habitat ends exactly at the frontier of a State or a Federal State.
- In general, existing human activities in designated Natura 2000 sites may be continued if it can be demonstrated that they are not negatively affecting the conservation objectives of the protected sites. This could mean that fisheries have to demonstrate that they do not negatively affect the conservation goals. At present, there are no guidelines or criteria for demonstrating this kind of "no negative effect".
- At present there are already national legal regulations for two Special Protection Areas (SPAs) which are part of the Natura 2000 network of the German EEZ. In the EEZ, it is considered that only the EU can make regulations for commercial fisheries which may affect also other EU Member States. In these regulations there is already a ban on all kinds of aquaculture in the whole SPA.

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- ICES was asked to prepare independent advice on fisheries management in the designated areas (EMPAS project). Representatives from the fishing industry are invited to EMPAS meetings so that the project can benefit from industry knowledge. To develop their advice, ICES asked the Member States to submit VMS data to identify areas of high fishing activity. This caused problems because of national data protection laws and the unwillingness of fishermen in some Member States to accept the use of VMS data as a basis for restrictions in their fishing grounds.

Based on the present experience, we would like to raise a number of issues:

The NSRAC welcomes the initiative to involve ICES to clarify scientific issues related to the Natura 2000 process and to help the Member States to reach harmonised European solutions.

From our point of view, however, there is an urgent need to clarify the following elements before it is possible to discuss fisheries management measures and/or restrictions:

- Size and location of the sites in different Member States
- Adequate description of the conservation status of the habitats and species for each of these sites
- Conservation goals of the sites

### **Recommendation 1:**

If examination of these elements should show that the conservation status of habitats or Annex-species is not as it should be according to the Natura 2000 Directives, an analysis into the causes of this disparity needs to be carried out. Based on such an analysis, it has to be discussed whether or not the conservation status could be maintained or (as necessary) restored by fisheries management. At this point there may be a need for additional data on the fisheries in the area.

In saying this, however, we are not suggesting that the speed of implementing the whole Natura 2000 network should be dependent on the slowest Member State, i.e. we fully accept that agreeing and setting measures for each site should not wait until the whole Community Natura 2000 network is complete.

We would also particularly draw your attention to the different implementation provisions of Natura 2000 across Member States. This disparity starts with the degree of knowledge about potential sites, varying proportional prioritisation of sites, and different interpretation of conservation status and therefore the measures needed to achieve 'favourable conservation status'.

In the Netherlands, for example, fisheries in nature conservation areas are defined as a plan or a project under the Habitats Directive. This means that the industry has to carry out Appropriate Assessments in order to obtain annual licences to fish in these areas. Furthermore, the annual licensing procedure is part of a public appeal process from which court cases may result. This is not the case in other Member States. As a result of different national implementation provisions, a

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level playing field for the European fishing industry cannot be ensured. This is of increasing concern to us now that the national Natura 2000 designations extend to Community waters. The Marine Strategy Directive and the Maritime Green Paper indicate that the Commission aspires to having all maritime industries on a 'level playing field', so Member States need guidance from the Commission on the 'best practice' approach.

### **Recommendation 2:**

The NSRAC asks the Commission to make sure that the demands and implementation of the Natura 2000 regulations are fulfilled by all Member States in such a way as to achieve a 'level playing field' for all fishermen.

### **Recommendation 3:**

The NSRAC asks the Commission to ensure that any fisheries management measures necessary in marine Natura 2000 areas are applied in accordance with the provisions of the Common Fisheries Policy. In particular, since Member States are not entitled to apply fisheries management measures outside the 12nm zone to vessels flagged to another Member State, the fisheries management plan for any Natura 2000 site outside 12nm will have to be approved by the Council of Ministers.

We will be exploring some of these issues at a forthcoming workshop in Edinburgh, 5-6 March, but in the meantime, as some of the issues raised here are already a matter of urgent consultation, the NSRAC looks forward to the Commission's response to these recommendations.

Yours sincerely



Hugo Andersson  
NSRAC Chair

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