

Annex B

Severn Tidal Power Feasibility Study Working Paper: New Site Designation as a Compensatory Measure under Article 6

A technical contribution to the work of the study by the HRA working group

This paper considers the feasibility of new notification in terms of site selection and network coherence and sets out a process (section 5) which might be applied to assess a new site's contribution to coherence. The paper does not consider practical, policy and legal issues which would also need to be addressed to be confident that this was an acceptable approach.

1 Introduction

- 1.1 Article 6 sets out the framework for site conservation and protection and includes proactive, preventive and procedural requirements. The provisions of Article 6 involve the need to promote biodiversity by maintaining or restoring listed habitats and species at 'favourable conservation status' (FCS) within the context of Natura 2000 sites, while taking into account economic, social, cultural and regional requirements, as a means to achieve sustainable development (EC, 2000). The provisions of 6 (2), (3) and (4) are applicable to SACs but also SPAs designated under the Birds Directive. One requirement under 6(4) is that compensatory measures for plans or projects that adversely affect the integrity and thus future prospects of a protected site must ensure that the overall coherence of Natura 2000 is protected. Compensatory measures are considered additional to any other measures that are carried out to mitigate against the effects of a plan or project.
- 1.2 A guidance document on interpreting Article 6 has been produced by the European Commission (EC,2000) and guidance on the interpretation of Article 6 (4) has been subsequently updated (EC, 2007) . According to the guidance one of the possible compensatory measures that can be considered under 6(4) is to designate a new site to replace loss or degradation of an existing one. This paper looks at issues that arise as a consequence of considering new site designation as a potential compensatory measure.

2 Different types of new site designation

There are two potential types of new site designation:

- a). New site designation as an 'accompaniment' to compensatory habitat creation/enhancement, to ensure that the new compensatory habitat is adequately protected within the N2K network. Any newly created/enhanced compensatory habitat could be exposed to risk of damage by further development, so there is a strong argument that the new/enhanced habitat should be within the N2K network. Therefore, if it isn't already within N2K sites, new/extended N2K designation is required. This is more or less the position stated in the EC guidance.

- b). New site designation itself as a compensatory measure, i.e. to add some **existing** (not newly created/enhanced) habitat into the N2K network. The aim of this is to provide compensation without any specific habitat or species enhancement, in that an undesignated site may be found with the right ecological characteristics to compensate for damage to the integrity of the original site and thus bringing it into the N2K network should be able to replace whatever loss to coherence of the network has occurred at the original site.

This paper will concentrate on examining the issues arising from type b designation, although there are some considerations for type a designation that may require a separate discussion.

3 Interpretation of the Directive and the Commission Guidance: relationship between network coherence, conservation status and new site designation

- 3.1 The main Articles of the Directive that have relevance to new site designation are Articles 2, 3, 6 and 10. The Commission guidance (EC, 2000, p17) makes a strong link between the provisions of Article 2, maintaining and restoring listed habitats and species at FCS, and Article 3, setting up a coherent ecological network that enables the natural habitat types and the species' habitats concerned to be "maintained or, where appropriate, restored at a FCS in their natural range".
- 3.2 It is recognised throughout the Habitats Directive that delivery of FCS is much wider than the Natura network, which only represents a percentage (usually between 20%-60%, but could be as much as 100% of a rare habitat or species) of any individual Member States resource of a listed habitat or species, and which makes very little contribution to FCS for many Annex IV species. However, the guidance does seem to indicate that the Natura network plays a significant role in delivering FCS for Annex I habitats and habitat-supporting-an-Annex II-species at all levels (Member State, biogeographic region and pan-European), and states that 'the ecological coherence of the network will depend on the contribution of each individual site to it and, hence on the conservation status of the habitat types and species it hosts' (EC, 2000, p18). Thus, network coherence is strongly linked to measures of conservation status and individual sites are seen as playing an important role in this context.
- 3.3 In Article 3 and further in Article 10, the Directive highlights the importance of improving the ecological coherence of the Natura 2000 network through developing and managing ecological features of importance for wild flora and fauna, thus improving connectivity of protected sites. It suggests (though does not explicitly state) that the functional role of individual sites needs to be considered in relation to nearby sites and to the network as a whole and highlights the importance of features outside the protected network, specifically mentioning linear features and stepping stones, but must also include Annex I habitats and habitats of Annex II species that are not sited within the protected network.

4 Issues regarding new site designation

With reference to site loss/degradation and new site designation, based on Articles in the Directive and information in the guidance certain issues have been identified.

- 4.1 The contribution an existing site makes to network coherence is a function of its conservation objectives, the number and conservation status of habitats and species on the site and its functional role in terms of distribution within the range and variation of habitats and species concerned (p12 EC guidance). Loss or degradation of any site will have a detrimental effect on coherence, but the degree of that effect will depend on the importance of the individual site to overall coherence.
- 4.2 New site designation will contribute to restoring the ecological coherence of the network, but unless a site with exactly the same features can be found to replace the one being lost, new site designation will be insufficient on its own to compensate for loss of the original site. This is noted in the guidance where it specifies that any new site should be of comparable quality to the one being lost or degraded. Only a proportion of the total MS/EU resource of a given Annex 1 habitat type, or habitat-supporting-an-Annex II-species, is already within the network. Therefore, there should be habitat which is theoretically available for designation. However, in practice finding undesignated habitat in large amounts that would qualify (under the selection guidelines for SACs) is likely to be very difficult. It is likely that any new sites would be subject to the same selection rigour as the current network, involving an assessment and public consultation process.
- 4.3 New site designation from the existing resource outside the protected network without any attendant new habitat creation will affect overall (UK) conservation status of the Annex I habitats and habitat-supporting-an-AnnexII-species that occur on the site that has been lost. This is because the ecological loss represented by the damage to the integrity of the original site is not offset by any material ecological gain, only by a "designation gain". This suggests that net coherence of the Natura network can be maintained while sustaining a loss from overall (F)CS and is mentioned as such in the Commission guidance on Article 6(4) (p 14). It is not obvious how clearly this has been thought through in the Commission guidance, given the importance placed on conservation status as a measure of coherence. It is worth noting that a group has been set up at European level (work package 3 of the Expert Reporting Group under the Coordination Group for Biodiversity and Nature (CGBN)) to carry out an evaluation of Natura 2000 impact on conservation status i.e. the contribution the Natura network makes to overall FCS. Depending on the decisions of the working group it may be that compensatory measures taken to maintain the coherence of the Natura network that have a negative effect on overall FCS will not be a good idea.
- 4.4 In the marine (and maritime) environment 'like for like' compensatory measures are extremely unlikely to be feasible. However, it could be argued that special measures (non-site) might be considered as a 'non-site' compensatory measure. For example, for wide-ranging aquatic species FCS is likely to be better achieved by focussing on removing the human pressures rather than designating sites for the management of a likely highly transient group of individuals.
- 4.5 New site designation is not applicable for SPAs, because all areas that qualify as SPAs should already be designated in order to comply with the Birds Directive. Therefore a new SPA (or even an extended existing one) without any accompanying

habitat/species enhancement, has to be seen as the normal expected compliance with the birds directive, not an additional measure taken to compensate for Article 6.4 damage to a site.

5 Assessing the contribution an individual site makes to network coherence

- 5.1 Assessing the contribution an individual site makes to coherence is very relevant in terms of measuring the importance of a lost/degraded site and the value of a new one. It is also important to understand the relationship between network coherence and assessment of FCS given that FCS effectively comprises the full resource - both within and beyond designated sites. If new designations are part of the strategy to offset impacts then the following questions need to be addressed:
- 5.2 What, specifically, does the existing site contribute to "range and variation"?
- What Annex I habitats and Annex II species exist on the site for an SAC and similar Birds Directive species for SPAs.
 - Which other protected species are listed as occurring on the site?
 - How rare are the habitat/habitats and species?
 - What is their current conservation status?
 - How important is the site resource to the overall UK resource – what percentage contribution does each protected feature make to the overall UK resource (area, representivity, quality etc.)?
 - How important is the MS resource of these habitats and species to the overall European resource (biogeographic region and EU) – again a percentage measurement and comparison of conservation status of UK resource with overall resource?
 - What are the site's structure and function and the respective role of the site's ecological assets in the MS and overall Natura network?
- 5.2 What change to the overall package of range and variation arises from the impact of the suggested development on and around the site?
- 5.3 Can the losses from within range and variation be restored by designating additional sites? - quantify and identify shortfalls.
- 5.4. Can shortfalls be addressed either by restoration measures or by habitat creation? If so, where and how?

6 References

European Commission, 2000. 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.

European Commission, 2007. Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC.