



## **PORTS & HABITATS : PARTNERS IN DEVELOPMENT**

Report on a Seminar organised by PIANC in cooperation with the European Dredging Association (EuDA) and the Institute for Infrastructure, Environment and Innovation (IMI) and supported by the European Sea Port Organisation (ESPO) on the 20<sup>th</sup> March 2003 in Brussels.

### **1. A bit of background ...**

The responsibility for environmental legislation is part of the tasks that European Member States have largely transferred to the European Union (EU) in their attempts to improve quality of the environment and maintain biodiversity.

The Wild Birds Directive is the EU's oldest piece of nature conservation legislation (1979). It creates a comprehensive scheme of protection for the EU's wild bird species. There are a number of separate but related components to this scheme :

- One relates to habitat conservation and includes a requirement to designate Special Protection Areas (SPAs) for migratory and other vulnerable wild bird species.
- A second consists of a series of bans imposed on activities that directly threaten birds (such as the deliberate destruction of nests and the taking of eggs) and associated activities such as trading in live or dead birds.
- A third component establishes rules to limit the number of species that can be hunted and the periods during which they can be hunted. Rules also define certain permitted methods of hunting.

While this directive has long been a 'lame duck' as far as territorial protection of wild birds was concerned, its provisions have largely been incorporated into the much wider ranging Habitats Directive (1992) that was adopted following the 1990 "Earth Summit" in Rio de Janeiro.

The Habitats Directive provides a comprehensive protection scheme for a range of animals and plants, as well as for a selection of habitat types. It provides for the creation of a network of protected sites known as Natura 2000, which embrace SPAs designated under the Wild Bird Directive and sites proposed by Member States under the Habitats Directive.



The selection of sites must be based on scientific information. All sites in the network must respect the stipulated safeguards. These include the prior assessment of potentially damaging plans and projects, the requirement that these plans and projects be approved only if they represent an overriding interest and if no alternative solution exists, and the option for providing compensatory habitats.

Once fully in place, this network should ensure that the best examples of EU natural habitats, and areas hosting rare and endangered plant and animal species, are properly conserved and protected. The Habitats Directive is the EU's flagship contribution to safeguarding global biodiversity. In addition to the creation of Natura 2000, the Habitats Directive provides for a ban on the downgrading of breeding and resting places for certain animal species.

Legislation adopted at EU level is subsequently implemented at national level. National and regional authorities are responsible for implementation. This particular piece of legislation, well intended as it may be, has far-reaching consequences and features many elements for potential conflict between stakeholders.

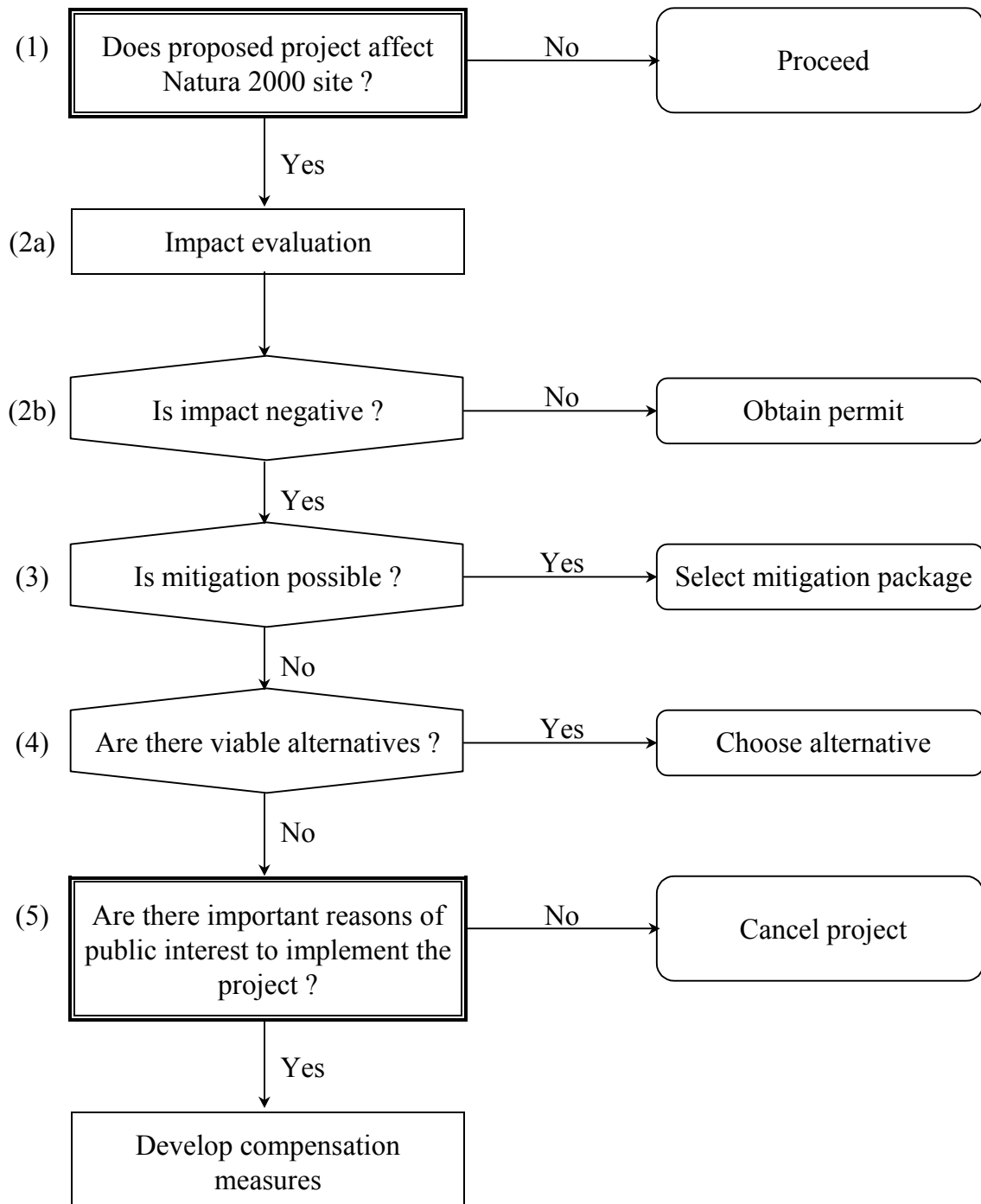
The aim of this particular seminar was to review the implications for ports with active development and expansion projects and situated near Natura 2000 sites.  
(The seminar papers may be found on the PIANC website.)

## **2. A multistage process ...**

The Habitats legislation is built around a rather complex decision-making cycle; it foresees interaction between project developers and regional authorities, but also between the promoters and the European Commission.

A simplified logic is shown in Fig. 1. The successive steps in this decision-making process involve the respective stakeholders to a varying degree. The administrative procedure is not always clear and has already caused a lot of friction. This report attempts to summarise the view of the ports, politicians, environmental organisation and the European Commission. In summarising a one-day seminar some of the nuance is lost of course.

**Fig. 1. : Simplified logic of Art. 6 of the Habitats Directive**



### **3. Ports**

Many ports in Western-Europe are situated near estuaries, deltas or other valuable coastal sites that have been proposed as Natura 2000 sites. A first area of contention arises from the fact that different EU countries have used divergent criteria to establish the site boundaries of conservation areas. This is undoubtedly caused by lack of definition of the “scientific” criteria, but also by the fear that an area declared to be a Natura 2000 site becomes “untouchable”. In simple terms : is it still possible to carry out maintenance dredging in a navigational channel that penetrates a protected estuary?

A further complicating factor is that there are no provisions on how to deal with previously established rights to use a site for industrial purposes. Several European ports had reserved property for future expansion which has in the meantime been declared valuable habitat and proposed as Natura 2000 sites. This planning with foresight now turns against the interest of the ports (without prior warning !) and with the risk of considerable extra expense.

Several ports along the Atlantic Arc presented their specific situation ranging from the Port of Bordeaux - which is struggling not only with establishing reasonable boundaries for conservation areas, but even with figuring out which “scientific” criteria should be applied in what fashion - to the Port of Hamburg. This latter port is amongst those that has chosen to provide compensation for loss of natural habitats in the form of newly created habitat zones. Other ports that are confronted with problems include Rotterdam, Antwerp, Le Havre, Bremen, Felixstowe, Southampton, Göteborg, etc.

### **4. Environmental NGO**

The speaker, Duncan Huggett (BirdLife), illustrated his paper with a host of examples, mainly from the UK, where ports projects lead to the realisation of compensation for lost habitat. Compensation may take the form of newly created mud flats, of restoring salt marshes that had been in use as agricultural land, of stimulating new dunes formation, or even of building artificial islands as a nesting place for rare birds.

It was pointed out that environmental groups should be invited early in the project to participate in the impact assessment; positive solutions may usually be found. The experience with providing compensation for land taken from a Natura 2000 site or other protected area has been largely positive.

Nevertheless, compensation should be in the form of like-for-like, and preferably in the vicinity of the lost habitat zone. Environmental NGO's are not in favour of habitat banking.

## 5. A political perspective

Mr. Dirk Sterckx, a member of the European Parliament, had been invited to give his views as politician. He expressed considerable concern over the Habitats Directive. It has been introduced in a wave of enthusiasm, but there are significant deficiencies in the legislative aspects, which make it necessary to amend and complement the Directive.

Three main concerns are :

- The legislation has no provision on how to deal with pre-existing user's rights; this means that the administrative procedure will necessarily be flawed and could even bring injustice. There are clearly situations that result in poor governance. (This could lead to requests by the project developer for financial compensation.)
- The aim of the EU environmental policy to maintain current levels of biodiversity and the goal of the EU transport policy to stimulate sustainable transport could easily end in conflict : to stimulate (sustainable) waterborne transport implies the creation of new infrastructure along waterways and in ports. This policy orientation should not be “punished” with extra cost for habitat compensation.
- Although the directive has a provision that projects may proceed in case of ‘overriding public interest’, this trigger is not clearly defined either and would have to be shaped via a drawn-out process of establishing case law. The only stated consideration is that there should be elements of public interest, presumably economic, social or spatial development, or threat of human safety and health. Again this is not the model example of administrative orthodoxy.

## 6. Administrative views

The European Commission does not necessarily concur with the concerns expressed. She has published several manuals to provide guidance on how to interpret the Directive. It is emphasised that the goal of the legislation is not primarily conservation, but maintaining biodiversity.

This means that in most cases the common activities at a site, such as maintenance dredging, agricultural use, fishing, etc. in as far as they do not threaten the presence of particular flora, fauna or a rare species, should pose no problem. The intent is not to “lock-up a site”.

There are nevertheless some hic-ups in the implementation process. As mentioned above, interpretation of general criteria for site designation varies, the basis of scientific criteria for site selection is not precise, lower regional authorities typically have a rather fuzzy understanding of the legislation and tend to be prudent in their application.

In short, there is also a communication problem between the European legislator and the local administrations responsible for implementing the rules. Moreover, in a number of specific cases, the European Commission has carved out a role for itself, either to approve, to review or to be consulted. The specific competence of the Commission is not clear in all cases, nor its obligation to respond within a certain time frame.

It became also apparent that Directorates General of Environment and Transport do not entirely share the same views on these issues, in particular where port development and waterborne transport is hampered by conservation and compensation issues.

## **7. What did we learn ?**

The following conclusions were formulated at the end of this seminar :

- Ports need to grow and expand and at the same time environment needs to be protected. A reasonable balance has to be found.
- The implementation of the Habitats Directive has taken shape over the years; industry learned from its failures, but there are still fundamental issues unresolved.
- A pro-active approach based on scientific criteria has led to examples of good solutions for the implementation of the Directive (Bremen, Harwich Haven).
- Information and communication from EU to national and local governments is poor.
- The procedures need more clarification especially at the executive level in Member States; parts of the Directive lack transparency.
- Objections remain regarding the inflexibility of the Directive and its provisions that ignore notably pre-existing historical rights.
- There are still legal and administrative hurdles as well as lack of clarity on the role of ‘public interest’, that cause delays in approval of compensation projects near ports.
- There is insufficient attention for risk management within port organisations.
- Projects become more expensive due to compensation ( $\pm 10-20\%$ ) but real win-win situations are realised (Le Havre : true rehabilitation of the estuary and a very important port development scheme).

## **8. Important recommendations**

### **• To the European Institutions**

- Take legislative initiatives to integrate policies for habitat protection with other policy sectors such as : agriculture, fisheries, transport.
- Promote the use of integrated strategic assessment in order to develop instruments for a balanced decision process.
- Develop further guidance on the concept of habitat banking.

### **• To the scientific community**

- Provide urgently support to establishing (scientific) criteria to understand and assess the complex dynamics of estuaries.

### **• To the ports community**

- Involve stakeholders, including environmental NGO's, early in the decision-making process and in open dialogue.
- Exchange information between ports and use European funds for demonstration or pilot projects.
- Evaluate mitigation measures before studying compensation schemes.

### **• To all stakeholders**

- Contribute to the general and specific understanding of the Natura 2000 concept and its implementation.
- Stand up for clarity and transparency in the implementation cycle.

**Report by Frederik J. Mink**