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JOINT NATURE CONSERVATION COMMITTEE

EC HABITATS DIRECTIVE: FAVOURABLE CONSERVATION STATUS

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1. Introduction

- 1.1 The concept of *favourable conservation status* is central to the EC Habitats Directive. To emphasise its importance, Article 2 which sets out the aim of the Directive, states that:

'Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.'

- 1.2 Habitats and species of 'Community interest' are the habitats listed on Annex I and the species listed on Annexes II, IV and V of the Directive.
- 1.3 The explicit references to conservation status and to favourable conservation status in the Directive provide insight to its interpretation and intended operation. The reference in Article 2 has been set out above, other references are summarised below:
- a. Article 1 provides the formal definitions of both *conservation status* and also *favourable conservation status* of habitats and species. These definitions are set out in full in Section 2 below.
 - b. Article 3 requires the setting up of the Natura 2000 site network to enable habitats listed on Annex I and the habitats of species listed on Annex II to be maintained at, or where appropriate restored to, a favourable conservation status. It is clear from other provisions of the Directive and from European Commission guidance, that the Natura 2000 network is intended to be a major contributor to the achievement of favourable conservation status. While individual sites will each make a significant contribution to favourable conservation status for the feature for which they are designated, the Directive leads us to assume that other measures are likely to be needed.
 - c. Article 8 requires Member States to provide the European Commission with their estimates relating to Community co-financing measures, to enable them to undertake conservation measures to secure favourable conservation status on special areas of conservation. The Commission

will also identify, with the agreement of the Member State, those measures which are essential to secure favourable conservation status of priority habitat types and priority species on the sites.

- d. Article 11 requires Member States to undertake surveillance of the conservation status of habitats and species of wild fauna and flora of Community interest. Particular regard to priority habitats and species is required.
- e. Article 16, enables derogations to be made from the species protection measures required by the Directive, for reasons specified in the Article provided that there is no satisfactory alternative and that the derogation *is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.*

The phrasing in italics is somewhat ambiguous in that it is not entirely clear whether 'species' is used here in the singular or plural. If singular, then the Article would imply that there could be one or more populations of that species, and that the 'test' concerning favourable conservation status is to be applied to that population potentially affected by the derogation. The wording of the definition of favourable conservation status for species in Article 1(i) (see Section 2 below) appears to support this interpretation.

- f. Article 17 requires Member States to report on the implementation of measures undertaken under the Directive. The report is to include information on measures taken on special areas of conservation and an evaluation of the effect of these measures to secure the conservation status of Annex I habitats and Annex II species. The report also requires that national reports include the main results of the surveillance referred to in Article 11.
- g. Article 22 requires Member States to study the desirability of reintroducing species listed on Annex IV that are native to their territory where this is necessary to re-establish the species at a favourable conservation status.

2. Definitions of Conservation Status and Favourable Conservation Status

- 2.1 'Conservation status' for habitats is defined in Article 1(e) as:

Conservation status of natural habitats means the sum of influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.[The European territory of the Member States to which the Treaty applies.]

It will be seen from this definition that 'Conservation Status' is seen as the result of influences which include the present state of the habitat, together with current environmental and human influences (both positive and negative), that

may influence its long-term survival.

The conservation status of natural habitats will be taken as 'favourable' when:

- i. *its natural range and areas it covers within that range are stable or increasing, and*
- ii. *the species structure and functions which are necessary for its long term maintenance exist and are likely to continue to exist for the foreseeable future, and*
- iii. *the conservation status of its typical species is favourable as defined in Article 1(i).*

The emphasis here has moved to the contemporary state of the habitat together with a supporting environment capable of maintaining it in the long-term.

2.2 Conservation status for species is defined in Article 1(i) as:

- i. *Conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2.*
- ii. Similar remarks apply here as to habitats above. Attention is drawn to the reference to populations of a species, implying that more than one population is likely to be concerned here. This is, potentially, an important point.
- iii. The conservation status of species will be taken as 'favourable' when:
 - a. *population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
 - b. *the natural range of the species is neither being reduced for the foreseeable future, and*
 - c. *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.*

Similar remarks apply here as to habitats.

3. Process for applying the concept of favourable conservation status in the implementation of the Habitats Directive

3.1 While the JNCC and country agencies have, over the years, made a number of attempts to address the issue of how to apply the concept of favourable conservation status, definitive conclusions have not yet been reached. Furthermore, no guidance on this issue has yet been prepared by the European

Commission.

- 3.2 In order to make progress and secure a common understanding, an inter-agency workshop was held on 7 November 2002 to consider the issue and develop interim conclusions. These conclusions were then discussed at a workshop chaired by Defra held the following day and which was attended by representatives from the Department, the devolved administrations and the agencies. The workshop on 8 November 2002 refined the conclusions, and identified a number of 'next steps'.
- 3.3 This paper summarises these conclusions and next steps. Issues are considered under the following headings:
- i. the concept of a conservation status baseline
 - ii. favourable conservation status in a geographical context
 - iii. the application of favourable conservation status to the Birds Directive
 - iv. the role of the Natura 2000 network
 - v. interpretation of the definition of favourable conservation status as regards habitats
 - vi. interpretation of the definition of favourable conservation status as regards species
 - vii. the application of favourable conservation status to derogations
 - viii. surveillance issues
 - xv. reporting
 - x. next steps

4. Main conclusion

4.1 The concept of a conservation status baseline

- i. The references to range, to habitat extent, and to species maintaining themselves, in the definitions of favourable conservation status provided in Article 1(e) and 1 (i) clearly point to the general intention of the Directive, as being that of maintaining the habitats and species at their contemporary levels. If there is a date for such a 'baseline' it is likely to be that of the coming into force of the Directive (ie 1994), but, in practice the baseline will relate to the date nearest to that for which satisfactory information is available.
- ii. However, it is also clear that the status of the habitat or species at baseline may not be currently at favourable conservation status,

because the influences acting on it will not enable it to be maintained in the long term. The supporting environmental influences will need to be altered in these circumstances if favourable conservation status is to be achieved.

- iii. Furthermore, it needs to be recognised that data at one point in time will represent only a snapshot in time. Data obtained at other times will be necessary in order to set the baseline in context.
- iv. The Directive contemplates some exceptions to the generality of this baseline concept, (e.g. the restoration of degraded raised mires and the re-introductions of Annex IV species), but these ‘aspirational’ elements are viewed as exceptions to the general rule.

4.2 *Favourable conservation status in a geographical context*

- i. The relevant geographical context within which favourable conservation status needs to be considered is a complex issue. The Article 1 definitions refer to the ‘*European territory of the Member States to which the Treaty applies*’.
- ii. This is interpreted by Defra as meaning territory of the European Union as a whole and not of the individual Member States. This is a logical conclusion when considering the overall purpose of the Directive. However, the identification of Natura sites is undertaken (by reason of Annex III) at the bio-geographical region level, and surveillance of conservation status is to be undertaken at the Member State level. There appears to be no requirement to aggregate the data at a higher (than Member State) level but this is clearly desirable. Derogations are the responsibility of Member States having due regard to the status of the species concerned at a European Union level. There are also favourable conservation implications at the site level.
- iii. The conclusion is that favourable conservation status can be considered as operating at a range of nested levels. At the primary level, favourable conservation status of the habitat or species is determined at Community level. Favourable conservation status is also contributed to at individual Member State level and finally at population and the site levels.
- iv. In relation to action and decision-taking, the two most significant of these levels are the Member State level and the metapopulation level (a metapopulation of a species being defined as the population within which genetic exchange normally takes place). Issues at a site level are better dealt with within the specific obligations in relation to special areas of conservation set out in Article 6.

4.3 *The application of favourable conservation status to the Birds Directive*

- i. Favourable conservation status does not apply directly to the Birds

Directive, where somewhat analogous, though rather less specific, concepts are applied. If it were to be applied to the Birds Directive (e.g. for setting conservation objectives for sites, and for surveillance), probably all the needs of these analogous concepts would be fulfilled. However, the provisions of the Birds Directive in relation to some of its Articles, e.g. in relation to derogations, are different from those in the Habitats Directive, and, in these cases, it is the provisions of the Birds Directive which need to be implemented.

- ii. It should also be noted that the Birds Directive applies to all birds, not those of 'Community interest'.
- iii. Therefore, in relation to the Birds Directive, favourable conservation status is best seen as a tool for determining the ecological requirements of the various bird species (e.g. the purpose of setting conservation objectives and undertaking surveillance), but the concept cannot be applied to the Birds Directive uncritically.

4.4 *Role of special areas of conservation*

- i. The Natura 2000 network is intended to make a substantial contribution towards securing favourable conservation status for Annex I and II habitats and species. The contribution which the Natura 2000 sites make to the conservation status of habitats and species varies from feature to feature in accordance with the proportion of the feature within the site network. Areas and populations outside the site series will also make a contribution proportional to the extent of the feature outside with the network.
- ii. Under Article 1(k), a site of Community importance is defined as a site that contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II. In Article 1(l) a special area of conservation is defined as a site of Community importance where necessary measures are applied to maintain, or restore, to favourable conservation status, the habitats or populations of the species for which the site is designated. It can be argued therefore, with some force, that favourable conservation status applies directly at the site level. There is a counter-argument that the definitions of favourable conservation status in Article 1 are of such a nature that they cannot all be applied directly in the site context. However, in practice, the measures required by Article 6 in relation to special areas of conservation are so specific and rigorous that, effectively, it is these measures which deliver the desired outcome.
- iii. The way forward is seen as setting conservation objectives for the site which reflect as nearly as practicable the elements set out in Articles 1(e) and 1(i), and to operate the measures set out in Article 6 with a view to achieving those objectives.

- iv. In assessing the impact of plans and projects on the site (Article 6(3)), the benchmark for the assessment is the nature conservation objectives for the site. The test that must be satisfied, subject to the provisions of Article 6(4), is that consent for a plan or project can be given only having ascertained no adverse effect on the integrity of the site. The integrity of the site is defined by government policy, in the Commission's guidance and accepted by the courts (Cairngorms Judicial Review case) as being
- v. *'the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified/designated.'*

This is consistent with the definitions of favourable conservation status in Article 1 of the Directive.

4.5 *Interpretation of the definition of favourable conservation status as regards habitats*

Range - The current range (mid 1990s) is the most practical starting point.

Range should acknowledge that current range is semi-natural not natural, and changes due to climate change should be accommodated within the concept of natural range;

Extent - Both the concepts of overall feature extent and also the existing areas occupied by the feature need to be incorporated within this element.

Structure - This includes the underlying geology, hydrology, soils and biogenic components, such vegetation structures etc.

Function - This includes the natural physical, chemical and biological processes. It also includes anthropogenic influences (these may be positive or negative).

Typical species - These include species which 'type' or characterise the feature; these can often be identified at the European Union level. However, because of geographical variation, some typical species are better identified at Member State level. In the main, these species are those which either make up the basic structure of the habitat, or which are deterministic of it in some way. This is distinct from the host of species which make up the habitat in its entirety. The latter concept could be accommodated through inclusion within 'typical species' of species which characterise 'local distinctiveness' or which are indicators of a wider group of species.

Normally, speaking, typical species listed in the 'Interpretation Manual' as being characteristic of that species should be considered typical species, where they occur.

4.6 *Interpretation of the definition of favourable conservation status as regards species*

Population data - This element explicitly includes data as part of its concept, and is very dependent on the availability of such data. In an ideal world, such data would cover population size, survivability/mortality and recruitment. However, the relevance of such concepts to different species groups varies enormously, and the element is best considered on a species by species basis. In the absence of reliable data, best scientific judgement could be utilised.

Range - As for habitats.

Supporting habitat - Our knowledge of the needs of species in habitat terms is variable and often quite limited. Habitat can range from extensive areas of sea exploited by wide-ranging species for feeding, to host plants of invertebrates, to fish hosts e.g. pearl mussel. The concept, to the level that it can be taken into account, is best considered on a species by species basis.

4.7 *Derogations* - The geographical context of applying favourable conservation status is quite problematic in relation to derogations, Overall, however, the conclusion is that Member States should consider derogations in the context that they should not be detrimental to maintaining the 'metapopulation' of the species at favourable conservation status within its range.

4.8 *Surveillance*

- i. Article 11 applies to Annex I habitats and species listed in Annexes II, IV, and V. It relates to the surveillance of conservation status rather than to favourable conservation status. Since the obligation is placed on Member States, surveillance is probably best undertaken at the Member State level.
- ii. Surveillance should have regard to the need to inform the decisions to be taken. Because Article 11 requires Member States to pay particular regard to the surveillance needs of priority habitats and species, it is concluded that sea levels of surveillance required are intended to be related to the needs and priorities of the particular features.
- iii. Monitoring of the incidental take of Annex IV species is also required under Article 12.

4.9 *Reporting*

- i. In the design of surveillance programmes, and in the handling of resultant data, regard should be had to the needs of reporting and aggregating the results of surveillance, including at the European Community level.

5. Next steps and implications

5.1 The main conclusions of the workshops on the next steps were:

- i. We need to draw together information relevant to favourable conservation status on a feature-by-feature basis. This should be in two stages:
 - a. summary of conservation status at the UK level
 - b. indication of the level of shortfall from favourable conservation status

This exercise could take account of specific requirements of the Directive relevant to the particular features (a matrix of favourable conservation status to Articles at the feature level). A pilot of *ca* 6 features might be the first stage in this to test the suitability of the approach.

- ii. An assessment of the existing surveillance/monitoring programmes needs to be undertaken, feature-by-feature, gaps assessed against current programmes, and options for filling these gaps identified.
- iii. Full account should be taken of other surveillance programmes (e.g. under the Water Framework Directive) that can contribute to the Article 11 surveillance exercise.
- iv. Legal Advice/or the development of a common understanding needs to be obtained/achieved on issues where interpretation is important and in doubt. This is likely to include further consideration of the assumptions set out in paras 4.1, 4.2, 4.3, and 4.4 above.
- v. We need to determine what is currently being undertaken to implement the monitoring programme of incidental take (Article 12 (4)), and identify gaps.
- vi. We should aim to develop a clear UK approach to favourable conservation status by March 2003.
- vii. The conclusions of the workshop(s) should be communicated to the EC Habitats/Ornis Committees.
- viii. Guidance will need to be developed in line with the requirements of favourable conservation status, for the various types of derogations relating to Annex IV species (including planning and other authorisations, as well as licensing under the Directives) so that the relevant regulatory bodies are able to make decisions compliant with the Directive.