



Habitats Regulations—implications for coastal and maritime development

Reporter *J. Kingham*

The seminar on the Habitats Regulations and their implications for coastal and maritime developments brought together speakers and members of the audience from a variety of disciplines working in the marine community. The objective of the meeting was to share their experience, frustrations, achievements and thoughts on the practical applications of working with the EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora.

The Habitats Directive became part of the legislation in England and Wales in 1994 with the introduction of the Conservation (Natural Habitats etc.) Regulations (the Habitats Regulations). The directive provides a framework for the management of habitats and species, whereas the regulations supply the procedure for protecting the European designated sites of special areas of conservation and special protection areas for birds and the nationally designated Ramsar sites in Britain.

The regulations potentially affect new activities and developments ranging in scale from the construction of a short length of river wall to a major port development, and require consideration by both developer and regulator of potential impacts on the designated interest features of European sites. Developments that are unlikely to affect the ecological integrity of a site may proceed as normal. Projects that are likely to affect a site may be carried out providing strict criteria are followed. Developers are required to demonstrate that any necessary mitigation has been provided, there are no less damaging alternatives to the scheme, the importance of the project outweighs the conservation importance of the site, and that adequate compensation is provided. The regulations also require consideration of the 'in combination' effects of the proposed development with any other planned and ongoing developments in the vicinity.

Discussions during the day highlighted that, increasingly, developers are considering the provision of new or enhanced habitats, or 'land banks' in order to offset potential damage caused by their proposals. Mitigation measures are often integrated into the project, and may for financial or practical reasons be phased in. However, any compensatory measures will only mature and become ecologically valuable after the completion of the project, which often becomes a cause for concern. The group concluded that environmental enhancement of a site should ideally be seen as a continuous project in its

own right. However, it is difficult to achieve this if compensatory measures are attached to each project. Ideally, compensation sites should be created in advance, in accordance with a planned programme; however, there is currently no legal framework to enable this to be undertaken without increasing the risk to investors.

All the speakers and audience were in agreement that the complexity of the Habitats Regulations has huge implications on regulators, consultees, potential developers, consultancies and legal establishments. The regulations place considerable demands on the regulatory process and the information required in order to ensure that the various procedural steps set out in the regulations are met. This has led to an increase in cost with respect to both time and resources and hence the potential loss of competitiveness. The majority of developments require considerable resources during the early planning stages prior to the consent procedure, presenting a high risk to developers in the preliminary phase of the project. The regulations also require the coordination and collaboration of regulatory bodies to avoid duplication of effort.

Before a coastal development project may be permitted under the current process, the developer is confronted with a list of consent procedures; it was the belief of those present that this process needs to be resolved. The seminar introduced a number of implemented and potential solutions to improve the consent process resulting from the practical implications of the Habitats Regulations.

From 1 April, a consents coordinating team will be established within the DETR to act as a single point of contact for applications and consultations under both the Food and Environmental Protection Act and the Coast Protection Act. This should reduce the duplication of information and advice required by both the developer and regulator.

Associated British Ports proposed a consent certificate that would involve the developer assembling together the prospective regulatory authorities, explaining the details of the proposed development, and receiving a response to the information that is required within a specified time-scale. This will not remove the responsibilities, statutory powers and duties from the regulatory authorities, but should provide the developer with a programme of information required within a

specified time-scale. It may also remove the duplication of effort by the regulators during the consultation process. It is proposed that the developer tracks progress on a certificate, checking off the consents and any conditions applied during the progression of the project. The DETR are currently exploring this along with other practical means of simplifying the consent processes.

English Nature has established an internal panel to assess projects, ensuring consistency with respect to the determination of significant, adverse and cumulative effects across the country.

The discussions concluded that dynamic coastlines should prevail, and the regulatory system in the UK must facilitate this if coastal management decisions are to achieve sustainable results. Those present were in general agreement that progression would require an improvement to the current situation. The directive has already altered the evaluation of activities which affect nature conservation in the UK, and is helping to move this country and other member states towards greater sustainability. Regulators have few independent advisors and a

need was identified to develop a resource of scientific skills within the regulatory system. It was also suggested that a universally accessible database of previous consents applicable to particular designated sites might be helpful in assisting the coordination of the consultation process.

In order to ensure appropriate development along the coastline, thorough policy and best practice guidance is required, incorporating not only the Habitats Regulations in isolation, but guidance based on past experience. However, at the present time there is a need for early and thorough consultation and coordination between multidisciplinary and integrated teams in order to maximise the opportunities provided by the regulations.

Finally, during the past seven years, nature conservation effort and the designation of European sites has concentrated on the inshore environment. Following a recent High Court case, however, and as more knowledge is gathered about deep sea habitats, increased regulation and consent procedures will be required for proposed offshore activities.