

17th Meeting, 1 December 2021
Document N°: Doc Nadeg 21-12-05-04

SUBJECT: FINALISED NOTE ON REMOVAL OF HABITATS AND SPECIES FROM THE SUBJECT OF PROTECTION IN NATURA 2000 SITES - CONDITIONS & JUSTIFICATIONS (*Doc Nadeg 21-12-05-04*)

1. Background

A first draft note was presented in the NADEG meeting of 27-28 April 2021 (Doc Nadeg 21-04-04). Following the meeting, comments were received from Bulgaria, Denmark, France, Ireland, Germany, and Slovenia.

This document presents the final note on the subject, which takes into account the comments received.

2. Purpose of this note

The conditions for modification of boundaries of existing Special Protection Areas (SPAs) designated under Directive 2009/147/EC¹ and Sites of Community Importance (SCIs) designated under Directive 92/43/EEC² have been addressed in a previous note Doc Nadeg 19-05-03³.

This note focuses on the conditions and justifications for the removal of habitats listed in Annex I and species listed in Annex II of the Habitats Directive from the subject of protection of Sites of Community Interest/Special Areas of Conservation (SCIs/SACs) and of bird species that are either Annex I species or regularly occurring migratory species from the subject of protection of Special Protection Areas (SPAs) under the Birds Directive.

The Standard Data Form (SDF) is the official documentation of the Natura 2000 network and, among others, the basis for the European Commission to coordinate and regularly review the network. The SDF shall therefore be kept up to date. Species and habitat types with significant presence in the each site are the subjects of protection of the site and their conservation objectives and measures have to be set out or referred to in legally binding

¹ Directive 2009/147/EC on the conservation of wild birds - OJ L 20 of 26.01.2010. p. 7.

² Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora - OJ L 206 of 22.7.1992, p. 7.

³ <https://circabc.europa.eu/ui/group/fcb355ee-7434-4448-a53d-5dc5d1dac678/library/8555aa28-9fb6-411f-8228-f8c99b296564/details>

acts⁴. Their removal from the Standard Data Form constitutes a change of the legal scope of the protection of the site, similarly to the removal of an area of land or sea and shall therefore be guided on the basis of the same principles as those that apply to the modification of boundaries of these sites.

This analogy is based on the premise that the removal of a certain feature from the subject of protection of a SCI/SAC/SPA constitutes a modification of the Natura 2000 coverage of the removed feature.

The habitats and species subject of protection in each Natura 2000 site are also listed or referred to in the “official act” identifying the site (SCI identification act (*where it exists*), SAC designation act, and SPA classification act). The lists in the SDF and those in the “official act” (directly or referenced to) shall be consistent. This ensures legal certainty as to what the subjects of protection in the site are. Given the dynamic changes that may occur especially for species, updates of the official acts might therefore be needed in certain circumstances, for example when a newly arriving species has settled in a site.

The Natura 2000 network has a key role in enabling “*the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range*”. It is therefore essential to focus on managing the sites effectively in view of protecting and conserving the habitats/species present therein in view of maintaining/improving their condition in order to contribute best possible to their favourable conservation status. If monitoring shows that a habitat/species subject of protection in the site and therefore listed in the SDF/“official act” is no longer present in the site, this habitat/species shall be registered as ‘non present’⁵ in the SDF, according to the Commission Implementing Decision 2011/484/EU of 11 July 2011. This habitat/species should remain subject of protection in the site and not be deleted from the SDF/“official act”. At the same time, appropriate measures should be put in place to restore the habitat/species in the site. For that purpose, the site-specific conservation objectives and measures might need to be revised, in order to take into account the restoration needs in the site.

The de-listing (i.e. deleting) of habitats/species from SDFs/“official act” that entails that those habitat/species are no longer protected in the site may occur exceptionally and only in the circumstances explained below.

⁴ See Commission notes on SAC designation, on setting site-specific conservation objectives and on establishing conservation measures, available at https://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

⁵ The SDF decisions states in relation to habitats « *Non-presence (NP)(optional): In cases where an Annex I habitat type for which the site was originally designated (i.e. which was formerly present) no longer exists on the site, it is strongly recommended to indicate this by entering ‘x’ in the column NP (alternative to the deletion of the information for this habitat type from the SDF)*” and for species “*Non-presence (NP) (optional): In cases where a species for which the site was originally designated for (e.g. which was formerly present in the site) is no longer present in the site, it is strongly recommended to indicate this by entering ‘x’ in the column NP (alternative to the deletion of the information for this species from the SDF). Species which have not been present on the site since the Directive came into force as well as ‘historic occurrences’ should not be noted*”.

3. In which circumstances can habitats and species be removed from the subjects of protection of a Natura 2000 site?

By analogy with what explained in the note Doc Nadeq 19-05-03 in relation to the circumstances under which de-designation of Natura 2000 sites or parts of sites is lawful, habitats listed in Annex I and species listed in Annex II of the Habitats Directive can be removed from the subjects of protection of SCIs/SACs, and bird species referred to in Article 4 of the Birds Directive can be removed from the subjects of protection of SPAs, only under the following circumstances:

- a) a proven, genuine scientific error
- b) natural developments
- c) as a consequence of the application of Article 6(4) of the Habitats Directive

a) Scientific errors – summary of conditions to be met

Evidence can be provided that the habitats/species of EU-interest⁶ proposed for removal from the subjects of protection of a certain site was never present in that site since the initial proposal of the site (for SCIs) / classification (for SPAs).

Proposed changes in habitat types codes/names to correct a previous wrong classification of a habitat present in the site on the basis of the interpretation manual are to be treated under “scientific error”.

b) Natural developments - summary of conditions to be met

Natural developments are those that are not man-made or global phenomena that cannot be mastered only locally such as like climate change and whose negative impact on habitats/species of EU interest cannot be prevented. For example, the loss of habitats by sea-level rise would fall under this category. Should such natural developments occur that justify the removal of habitats/species subject of protection from a site, it should be assessed in how far the impact of such losses could be balanced by proposing a new site(s) or by enlarging a site(s) for protecting the “lost” habitat / habitat of the species.

What cannot be regarded as natural developments are situations where habitat types and/or habitats of species and/or species populations of EU interest disappear from a site through man-made activities (inside or outside of Natura 2000 sites) or through the absence of adequate management (e.g. in the case of semi-natural grasslands).

c) Consequence of a correct application of Article 6(4) of the Habitats Directive

⁶ Habitat types listed in Annex I, species listed in Annex II of the Habitats Directive and bird species referred to in Article 4 of the Birds Directive.

In cases where habitat types and/or habitats of species and/or species populations of EU-interest disappear from a site based on a correct application of Article 6(4), removal of these habitats/species of EU interest from the subjects of protection of a site can be justified. It is recalled that the correct application of Article 6(4) requires Member States to take adequate compensation measures (see relevant guidance documents on http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm), which can include the designation and management of a new site for the protection and conservation of the same habitats/species of EU interest.

4. Justifications to be provided by Member States proposing the removal of habitats and species from the subjects of protection of a Natura 2000 site

A proposal for removal of a habitat/species from the subject of protection of a site is of exceptional nature and must be justified case-by-case. It requires sound and conclusive scientific evidence capable of proving that the above-required conditions are met.

Mere claims about fulfilment of the conditions presented above that are not evidence-based are not sufficient.

Evidence shall be submitted when the decision is taken at Member State level to propose such removal from the SDF and “official act”, before revising this act officially, together with the updated Natura 2000 database reflecting the proposed change.

The following information should be sent to the Commission:

1. The habitat/species that is proposed to be deleted from the subject of protection in the site;
2. A site-based explanation describing the reasoning for proposing a removal of the habitat/species from the subjects of protection in the site. The description shall answer following questions:
 - Was the habitat/species proposed for removal present in the site at the time of SCI proposal / SPA classification, permanently or occasionally?
 - Has the habitat/species proposed for removal been present in the site since the time of SCI proposal/ SPA classification, permanently or occasionally?
 - What kind and frequency of monitoring / surveillance is carried out in the site of concern in general and for the specific habitat/species proposed for removal in particular? What is the quality of available data? (*Please provide information from inventories and monitoring of the site as well as geospatial information, resulting from in-situ or remote observations, about the habitats, habitats of species, species occurrences supporting evidence of a scientific error or a natural development. Habitats maps, scientific surveys, management plans, air-borne and space-borne imagery constitute typical examples of source of supporting evidence, although other source of geospatial information could be considered depending on the case.*)
 - What protection and conservation, including restoration, measures have been established and implemented for the habitat/species proposed for deletion in the site since SCI proposal/SPA classification? (*The provision or link to existing and previous management plans as background documents is recommended, with a clear indication of the page numbers where the measures applicable to the habitat/species proposed for removal are presented*).

- For the case of natural developments: describe the characteristics of the natural development, the changes it has brought about in the site and explain whether measures have or could have taken to avoid a loss of the habitat/species proposed for removal in the site.
 - For the case of ‘consequences of an Article 6(4) procedure’: provide a summary of the appropriate assessment (and the full version if this has not been already transmitted to the Commission), the justification for each of the conditions set in Article 6(4) and the compensatory measures taken.
3. As the site for which the deletion of a habitat/species from the subjects of protection is proposed had been considered as a contribution to the coherence and sufficiency of the national/biogeographic network for that specific feature of EU-interest, an assessment of the situation is requested discussing also the potential need for adding another site(s) or expanding existing sites for protecting that specific habitat/species as replacement. Therefore for each of the proposed removals, an analysis is needed for the potential impact on sufficiency of the remaining network of sites in terms of protection of the habitat/species concerned, including in light of their conservation status at national biogeographical level.

In assessing the validity of the proposed changes, the Commission will also take into consideration any relevant scientific references (e.g. IBAs, scientific literature, etc.).

The information described above needs to be provided in order for the Commission to ensure that the above-mentioned conditions are fulfilled and all necessary evidence is available.

The information described above does not need to be provided in the cases where the proposed changes only relate to habitat types codes/names to correct a previous wrong classification of a habitat present in the site on the basis of the interpretation manual. However, in these cases, a brief explanation of the reasons of the proposed changes, as well as an analysis of the potential impact on sufficiency of the remaining network of sites in terms of protection of the habitat concerned, including in light of its conservation status at national biogeographical level, should be sent to the Commission.

5. The case of taxonomical changes

Several species protected under the nature directives have been revised from a taxonomical point of view since the directives came into force and are now considered to be two or more species. At the same time, other species are now included in other newly defined species often losing their specific or even sub-specific status. A common taxonomic understanding of the taxa by all Member States concerned is essential for the implementation of the nature directives. EEA and ETC-BD examine such taxonomic changes and regularly update the species code lists to be used by Member States for the SDF and other reporting tasks, bearing in mind how a species was understood by the legislator at the time when the Annexes of the directives were established or amended.

Proposed changes in species codes/names to align them to updated species code lists are not considered as proposals for removing the concerned species from the subject of protection of a site and therefore need no particular justification.

6. Conclusions

Removal of a habitat/species of EU interest from the subjects of protection of a SCI/SAC/SPA is of exceptional nature and can only be justified under the following circumstances: a proven, genuine scientific error, natural developments, as a consequence of the application of Article 6(4) of the Habitats Directive.

If monitoring shows that habitats/species no longer occur in a site, they should be recorded as 'non present' in the relevant SDF and not be removed from the subjects of protection in the site (unless any of the above circumstances apply). At the same time, appropriate measures should be put in place to restore the habitat/species in the site. For that purpose, the site-specific conservation objectives and measures might need to be revised, in order to take into account the restoration needs in the site.