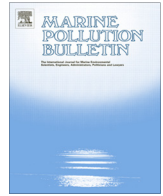


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## Viewpoint

# A legal and ecological perspective of 'site integrity' to inform policy development and management of Special Areas of Conservation in Europe

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## ABSTRACT

The European Union Habitats Directive (92/43/EEC) provides for the designation and management of Special Areas of Conservation (SACs) and requires that impacting activities are subject to 'an appropriate assessment' of their implications for the 'integrity' of the site. We define the term 'site integrity' from a legal and an ecological perspective. We demonstrate that 'site integrity' is the maintenance of ecological processes and functions that support the wider delivery of ecosystem services. 'Site integrity' can be influenced by SAC management. Management that seeks to support 'site integrity' may include the use of buffer zones or connecting areas that extend beyond the SAC site's designated features. We conclude that 'site integrity' and 'favourable conservation status' are powerful legal terms that if fully transposed into the law and policy of Member States can enable the achievement of broader European and International goals for marine conservation.

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## 1. Introduction and legal perspective

Widespread and intensive human activity in the world's oceans and the subsequent loss of marine populations and species are believed to be impairing the ability of marine ecosystems to provide the essential ecosystem services that contribute to human well-being (CBD, 2010; Chapin III et al., 2000; Halpern et al., 2008; Hooper et al., 2005; Worm et al., 2006). Bearing in mind that MPA management remain adaptive to developments in scientific understanding of the spatial element of ecosystem service delivery (Smith et al., 2009; Smith and Wilen, 2003), networks of Marine Protected Areas (MPAs), designated through a system of marine spatial planning, are recognised as being the mechanism through which marine ecosystem services may be conserved, as 'they are the only approach to marine resource management specifically designed to protect the integrity of marine ecosystems and preserve intact portions and examples of them' (Sobel and Dahlgren, 2004).

In terms of public policy and law, the European Union (EU) (92/43/EEC) (the Habitats Directive) currently exerts great influence over MPA planning at a European scale. The Habitats Directive requires EU Member States to set up 'Natura 2000', a 'coherent European ecological network of Special Areas of Conservation' (SAC), comprising sites hosting the habitat types and species listed in its Annexes I and II (The Council of the European Communities, 1992). Within the network of SACs, Article 6.1 of the Habitats Directive requires the establishment of necessary 'conservation measures' corresponding to the ecological requirements of the Annex I habitats and the Annex II species present at the sites (The Council of the European Communities, 1992). Article 6.2 requires Member States to '... take appropriate steps to avoid, in the Special Areas of Conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of [the] Directive' (The Council of the European Communities, 1992). In regard to proposals for the management of activities within an SAC, Article 6.3 of the Habitats Directive requires an 'appropriate assessment' of the implications of 'plans or projects' for the site, in view of its conservation objectives. In light of the conclusions of that assessment, the plan or project may only be granted permission to proceed if it can be 'ascertained that it will not adversely affect the integrity of the site concerned' (The Council of the European Communities, 1992).

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The Habitats Directive is considered to be Europe's strongest legal tool for nature conservation (Hochkirch et al., 2013). However, despite such legal provisions the conservation status of 70% of European coastal habitats and 50% of European marine ecosystems is considered to be in an unfavourable condition (Conde et al., 2010). In the United Kingdom (UK), this unfavourable status is linked to SAC site management. Most SACs remain multiple use sites that are managed individually with a narrow remit of fixed habitat or species specific conservation objectives. There is no focus on the ecological function of the site and therefore no consideration of the contribution towards the ecological integrity of the site (Gaston et al., 2006). Notwithstanding the requirements of Article 6.2 of the Habitats Directive, the UK regulatory authorities have taken the view that on-going activities that pre-date SAC designation (including licenced fishing) need not be subject to an 'appropriate assessment'. Continued degradation of SAC site features is revealed as a result of the onus placed on Member States by Article 11 of the Habitats Directive to 'undertake surveillance of the conservation status' of habitats and species within SACs (The Council of the European Communities, 1992). Despite a growing body of evidence that demonstrates that some methods of fishing can impact upon sensitive SAC marine features (Fossa et al., 2002; Hall-Spencer, 1998; Hall-Spencer and Moore, 2000; Hinz et al., 2011; Riesen and Reise, 1982; Thrush et al., 1998) there has been limited commitment from the UK and devolved governments to act upon evidence. The few evidence based campaigns that have been successful in proving the damaging effects of fishing to sensitive marine features have proved to be costly, drawn-out and highly contentious (Rees et al., 2010a).

Recent rulings of the European Court of Justice (ECJ, CJUE) clearly demonstrate that the protection offered to SACs by Articles 6.2. and 6.3 of the Habitats Directive is equal ('the Waddenzee case' Case C-127/02, 2004; *Commission v French Republic Case C-241/08*, 2010; *Commission v Ireland Case C-418/04*, 2007). It is thus increasingly clear that the precautionary principle, which is clearly embedded in Article 6.3 in relation to proposed 'plans or projects' must also be applied when looking at existing activities and the status quo within SACs. In light of this, UK Non-Governmental Organisations (NGOs) are currently placing pressure on UK Government to review its implementation of the Habitats Directive, arguing that the UK Government is in breach of Article 6.2 for failing to deal with damaging fishing activity within SACs that leads to 'deterioration of natural habitats' and Article 6.3 for failing to subject fishing license grants and renewals to 'appropriate assessments' (Client Earth and Marine Conservation Society, 2011).

The equal stringency of the Habitats Directive's approach to both future and existing activities in SACs ought to have implications for the management of SACs across the EU, and should bring to the fore the issue of 'site integrity'. To support development of forthcoming guidance in the EU to integrate 'site integrity' into SAC management and therefore achieve the overarching goals of the Habitats Directive, this paper aims to:

- Clarify 'site integrity' from a legal perspective.
- Clarify 'site integrity' from an ecological perspective.
- Consider the importance of the 'typical' species of designated habitats in assessing conservation status.

Using a case study example we will:

- Demonstrate how 'site integrity' is linked to marine features.
- Demonstrate how 'site integrity' can be influenced by management.

## 2. A legal definition of 'site integrity'

The term 'integrity' is only used once in the Habitats Directive, in Article 6.3, in connection with the requirement only to give consent to plans or projects following an 'appropriate assessment' that allows it to be ascertained that they will not 'adversely affect the integrity of the site concerned' (The Council of the European Communities, 1992). It is notable that it is 'site integrity', rather than the integrity of specific habitats or species, that must not be adversely affected. 'Site' is defined as 'a geographically defined area whose extent is clearly delineated' (Article 1(j) of the Habitats Directive). The Habitats Directive does not define 'integrity'. However, the EC's guidance 'Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC, European Commission (2000)' (the EC Guidance) states at 4.6.3 that 'It is clear from the context and from the purpose of the directive that the 'integrity of the site' relates to the site's conservation objectives'. The EC Guidance notes that integrity also relates spatially to the site and that activities are 'not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State' (European Commission, 2000). Importantly, the EC Guidance states that integrity can be considered as a quality or condition of being whole or complete. In a dynamic ecological context, it can also be considered as having the sense of resilience and ability to evolve in ways that are favourable to conservation (European Commission, 2000).

The EC Guidance (2000) states that the 'integrity of the site' may be defined as 'the coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified'. A site can be described as having a high degree of integrity where the inherent potential for meeting site conservation objectives is realised, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required' (European Commission, 2000; Her Majesty's Government, 1994).

The recent Opinion of the Advocate General to the CJEU in the case of Sweetman and others – v – An Bord Pleanála (Case C-258/11, 2012) stresses a temporal element and includes the following: 'in order to establish whether a plan or project ... has an adverse effect on the integrity of the site, it is necessary to determine whether that plan or project will have a negative effect on the constitutive elements of the site concerned, having regard to the reasons for which the site was designated and their associated conservation objectives. An effect which is permanent or long-lasting must be regarded as an adverse one. In reaching such a determination, the precautionary principle will apply.'

The link between 'site integrity' and the 'conservation objectives' for the site is made in Article 6.3 of the Habitats Directive and, necessarily, in the EC Guidance and in case law. The overarching requirement of the Habitats Directive is to achieve 'favourable conservation status' of Annex I habitats and Annex II species (Articles 3.1 and 4.4). Therefore, the primary conservation objective for those habitats and species within SACs designated for their protection must be the achievement of 'favourable conservation status' for those habitats and species within that site. The Habitats Directive specifically defines 'conservation status of a natural habitat' and 'conservation status of a species' (Article 1(e) and (i)) and goes on to set out the circumstances in which those statuses may be considered 'favourable' (The Council of the European Communities, 1992). Of considerable significance is the precondition in Article 1(e) that the conservation status of a designated habitat will only be taken to be favourable when the conservation status of its

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