

CARMARTHEN BAY & ESTUARIES EUROPEAN MARINE SITE MANAGEMENT SCHEME: SCOPE, PURPOSE & APPEARANCE

The meaning of the term “management scheme” in the context of the EC Habitats Directive¹ and European marine sites is widely differently understood, misunderstood or confused; the scope and purpose of management schemes is, consequently, also frequently unclear. This lack of clarity, if not actually generated by the differing uses, explanations and interpretations in legal documents, guidance and advice, some of which are self-contradictory, is certainly compounded by them.

This note summarises the background to the concept of management schemes and the consensus on their scope and purpose.

An EMS management scheme is the sum of many parts that are generally brought together for a specific purpose, in a document of a length, and in such detail, as is deemed most appropriate for the site to which the scheme applies. But, the generation of a management scheme often appears to have become an end in itself, rather than being considered to be what it should be - a tool to deliver the requirements of the Habitats Directive. The management scheme *document* is almost the most trivial element; it is the *process* and all the related component tasks and actions that are most important.

THE HABITATS DIRECTIVE

The term management scheme is neither used in the Habitats Directive nor in European Commission guidance on the interpretation and implementation of the Directive. These documents refer to management *plans*.

Article 6(1) of the Directive states:

“For special areas of conservation, Member States ***shall establish the necessary conservation measures involving, if need be, appropriate management plans*** specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.”

- which clearly identifies the key task as the establishment of *necessary conservation measures*, and that this task may be achieved with a range of tools including, as appropriate, a management plan. These measures must be designed to achieve the “favourable conservation status”, as defined in Article 1 of the Directive, of the features of the site.

Article 7 of the Habitats Directive extends the provisions of the Directive to encompass the conservation management of Special Protection Areas designated under *Directive 79/409/EEC on the conservation of wild birds* (the Birds Directive), by including them as an integral part of the Natura 2000² network and by specifically making the Article 6(2), (3) and (4) of the Habitats Directive applicable to SPAs³.

¹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7) http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/habitats_directive/index_en.htm

² Habitats Directive, Article 3: “A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000.

³ *Ibid*, Article 3: “The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.”

The European Commission issued specific and detailed guidance on the management of Natura 2000 sites in 2000⁴. The introduction to this document states that:

“The *management* of the Natura 2000 sites *is essential for their conservation*. But to be successful it requires, in the first instance, the active involvement of the people who live in and depend upon these areas. The measures for managing *Natura 2000* sites are given in Article 6 of the ‘Habitats’ directive. However, as this is a concise legal text, many of the key concepts are not easy to understand.”

The guidance document expands on Article 6(1), stating that:

“Member States can establish management plans which superimpose themselves on the other categories of measures. They are not always necessary but, if they are used, they should take into account the characteristics specific to each site and all foreseen activities. They may be stand-alone documents or incorporated into other development plans when those exist.”

The confirmation that management plans may not always be necessary is nevertheless tempered by subsequent advice that clearly identifies the indispensability of plans.

In recognition of the variation between sites and their management requirements the document further advises: “no indication of the specific contents of management plans can be given”.

Relationships with other plans

Management plans must be “appropriate and specifically designed for the sites”; *ie* they must be targeted toward the conservation requirement identified in Article 6(1) of the sites of the Natura 2000 network. Integration of Natura 2000 management requirements with other plans, must clearly establish and make clear the precedence and priorities of the various plans.

Article 6(3) of the Habitats Directive states:

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.”

Managing Natura 2000 sites advises:

“The word ‘plan’ has a potentially very broad meaning. This point has already been noted in an Advocate-General opinion.

Of obvious relevance are **land-use plans** land-use plans should be considered covered by Article 6(3) to the extent that they are likely to have relevant significant effects on a Natura 2000 site.

Sectoral plans can also be considered as within the scope of Article 6(3), again in so far as they are likely to have a significant effect on a Natura 2000 site. Examples might include transport network plans, waste management plans and water management plans.

From the context and purpose of Article 6, it is apparent that the term ‘management’ is to be treated as referring to the ‘conservation’ management of a site, i.e. the term ‘management’ is to be seen in the sense in which it is used in Article 6(1).

⁴ European Commission (2000). *Managing Natura 2000 sites: the provisions of Article 6 of the Habitats Directive 92/43/EEC*. DGXI, Brussels.
http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/index_en.htm

The words ‘*not directly connected with or necessary to ...*’ ensure that a non-conservation component of a plan or project which includes conservation management amongst its objectives may still require assessment.

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From the foregoing it is clear that other plans, whether independent of, or integrated with an EMS management plan, must take into account and meet the conservation requirements of the Habitats Directive; *ie* in most cases (there are specified exceptions), the conservation requirements of the Habitats Directive take precedence. It is also clear that an obligation is placed on the bodies responsible for other plans to ensure that their plans take into account and meet the conservation requirements of the Habitats Directive, and that the task of integration is not limited to that undertaken by the developers of Natura 2000 management schemes.

THE UK HABITATS REGULATIONS

The implementation of both the Habitats and Birds Directives has been translated into UK legislation by the Conservation (Natural Habitats, &c.) Regulations 1994 (the “Habitats Regulations”) ⁵. These Regulations set out the powers and duties of UK statutory bodies towards compliance with the requirements of the Habitats Directive. Under these Regulations, SACs together with Special Protection Areas (SPAs) classified under the 1979 EC Birds Directive, are called “European sites” and those that include marine areas are called “European marine sites” ⁶.

The term ‘management scheme’ for EMS is introduced in section 34 of the Regulations:

Management scheme for European marine site

34.—(1) The relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) shall be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

However, the Regulations do not define the meaning of the term.

Regulation 34 is important in that it:

- clearly specifies the purpose of management schemes (“to secure in relation to that site compliance with the requirements of the Habitats Directive”)
- permits only one management scheme per site
- allows for review and amendment of management schemes,

⁵ SI 1994/2716, HMSO, London. http://www.legislation.hmso.gov.uk/si/si1994/uksi_19942716_en_1.htm

⁶ “Marine area” is defined in Regulation 2 of the Habitats Regulations as “any land covered continuously or intermittently by tidal waters, or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters”.

but is potentially confusing in that it implies it may be possible for any one relevant authority to independently establish a management scheme.

Regulation 34 also carries forward the suggested optional nature of a management scheme / plan from the Directive, although Regulation 35 make it clear that a management scheme may be deemed essential:

Direction to establish or amend management scheme

35.—(1) The relevant Minister may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular-

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the Minister is required before the scheme is established; and
- (e) require any relevant authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

Government guidance on the development of management schemes, *European marine sites in England and Wales: a guide to the Conservation (Natural Habitats, &c.) Regulations 1994 and to the preparation and application of management schemes*, was published jointly in 1998 by the then Department of the Environment, Transport & the Regions (DETR) and the Welsh Office⁷. However, the document is now out of print and not available on-line.

Although this document clarified some issues, because of the self-contradictions it contained, it both perpetuated some confusions and introduced others. In particular, the document describes and explains “management scheme” in three, possibly four, different ways, ranging from simply being a document, through to being an integrated management structure and process; however, it is apparent from the requirements that are detailed in the document that the latter meaning is that which has been adopted.

Nevertheless, the document is clear that Regulation 34(2) (a single management scheme for each European marine site) means that where multiple sites overlap, or are nested one within another (as in the case of the Carmarthen Bay and Estuaries SAC and the two encompassed SPAs), that they be considered a single EMS, and that any management scheme should be prepared for and applied to them jointly (para 3.12). However, in recognition, of the differences in management requirements necessary to deliver the requirements of the Habitats and Birds Directives for different features in different areas, the guidance document goes on to recommend zoning (though it does not use the term) of management measures (para 4.3).

BEST PRACTICE: THE EC LIFE II FUNDED UK MARINE SACS PROJECT

The EC *Life II* funded UK marine SACs project developed a range of advice, guidance and practice for the management of marine sites, including the development of management schemes for twelve pilot sites. The outputs from the project are available on-line at www.ukmarinesac.org.uk.

⁷ ISBN 1851129874

Amongst these outputs are a summary report *Indications of Good Practice for establishing management schemes on EMS*⁸, and the paper *Managing sites: turning science and partnership into action* in the final project conference report, *UK Marine SACs Project: Partnerships in Action*⁹.

A key, but perhaps not surprising, finding of the project was that, although they shared many good practices, each of the twelve demonstration management schemes was different and that there was no single, common, “best” formula. It was concluded that, subject to inclusion of the fundamental components, the structure and detail of management schemes, and of management scheme documents, had to be site specific and suited to the requirements of each site.

However, important points of principle and practice were identified; the following extracts from *Managing sites: turning science and partnership into action* are particularly significant for relevant authorities tasked with development and implementation of management schemes (emphasis added in bold italics):

“Whose management schemes are they?”

Relevant authorities are collectively responsible for the scheme – or more accurately ***they are individually responsible for their parts of it***. In practice, ***a management scheme tends to be a compilation of the separate undertakings of each relevant authority***.

But ***there has to be*** some common ground: ***a shared agreement on the need for management action***. Although the advice of the nature conservation agency is intended to inform the relevant authorities, ***the undertakings of each authority ultimately depend upon its understanding of what it needs to do to comply with the legislation***. Hence the earlier point about the need for each authority to understand what actually are the requirements of the Directive.

So management schemes can be thought of more like a timeshare than a freehold. And for the partners, the benefits of participating in a scheme are:

- it helps initiate the management process;
- it should lead to better informed decisions;
- it helps promote an “identity” for the site;
- it provides a mechanism for involving local communities and NGOs.

What should a scheme look like?

There are a number of core elements that can be found in all the management scheme documents developed in the UK marine SACs Project:

- acknowledgment of the statutory purpose;
- site-specific conservation objectives;
- appraisal of existing site use and management against the objectives;
- a series of actions for meeting gaps in management;
- a framework for monitoring of achievement of objectives and of compliance with actions.

A management scheme (as opposed to a document or “plan”) is:

- a consultation structure;
- set of “rules” and constraints;
- a register of assigned actions (management, research, information gathering...);

⁸ www.ukmarinesac.org.uk/pdfs/good_prac1.pdf

⁹ www.ukmarinesac.org.uk/pdfs/cproceed.pdf

