

# Climate change: Rethinking Restoration

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## Research question

- Are legal regimes with regard to restoration sufficiently equipped to address objectives imposed by climate change?
- Focus on international law and European Union law

## Two objectives

1. Show that in many European states restoration is key issue despite ill treatment in EU law (Natura 2000) and other international legal instruments
2. Discuss consequences of climate change for restoration, especially with regard to legal regime

## Restoration & Climate Change in International Instruments

- Limited attention for restoration
- Biodiversity Convention
  - ‘As far as possible and as appropriate restore’
  - Series of decisions on climate change (networks, corridors)
- Ramsar Convention (wetlands)
  - Compensation (= designating other existing site)
  - Numerous decisions on restoration and climate change

## Current results Natura 2000 legal perspective (I)

- Some positive effect (Donald et al. 2007)
- 21 MS: sufficient for 80% species/habitats
- 8 MS: 100% (B, DK, Fin, Ger, Gr, I, NL, Sw)
- 17% of EU land area under Natura 2000
- 5 MS: implementation complete for Birds and Habitats Directive (B, DK, Ger, I, NL)
- Conservation status unfavourable:
  - 40-85% habitats
  - 40-70% species

## Current results Natura 2000 legal perspective (II)

- ‘...for a majority of species we are a long way from achieving healthy, sustainable populations’ (European Commission 2009)
- Effect of legal instruments in general relatively poor
- Open ended exceptions of Habitats Directive are invoked
- European Commission does not test the derogations sufficiently

## Restoration in the Birds and Habitats Directives

- Although restoration is mentioned as a priority, it has not explicitly been regulated
- However, in practice the most important provisions often boil down to restoration
- Four main duties (Article 6 Hab Dir.)

# 1. Take conservation measures

- MS have to establish conservation status in order for habitats and species to be in a favourable conservation status (Art. 6(1))
- EU: 40-85% of terrestrial habitat types of Annex I unfavourable
- So: massive restoration is in order



## 2. Take steps to avoid deterioration

- When (threat of) deterioration, incl. disturbance of species when significant for conservation status: appropriate steps to avoid that (Article 6(2))
- Limited attention, but some cases before EU Court of Justice (Spain, Ireland, UK): restoration may be necessary
- Even steps to avoid deterioration because of ‘natural developments’ (C-6/04, Gibraltar case) → climate change?

### **3. Allow only projects without adverse effects**

- Plans or projects may only be allowed after appropriate assessment shows integrity of site not adversely affected
- No reasonable scientific doubt may remain (C-127/02 Waddenzee)
- Much attention, practice varies a lot
- Mitigation as a means to achieve no adverse effects ('ecological surplus')
- Not regulated, Commission seems to approve

#### 4. Compensate projects necessary for imperative reasons public interest (I)

- Derogation clause:
  - No alternative solutions
  - Imperative reasons overriding public interest
  - Compensatory measures coherence N2000
  - Inform European Commission
- Not used much because hard to meet, practice varies a lot
  - 2004-2006: 42 cases reported to Comm, 25 from Portugal and Germany
  - Mitigation and compensation mixed up

#### **4. Compensate projects necessary for imperative reasons public interest (II)**

- In most cases compensation consists of restoration
  - Expropriation and/or purchase of lands, restoration of degraded habitats, reforestation, land reclamation plus habitat creation, etc.
  - Sometimes far-reaching (2,134 ha expropriation in Spain for Iberian Lynx in reservoir project)
  - Sometimes very poor, Commission not always critical (but in general sufficiently so)
- In practice: restoration central element of derogation clause



## **Consequences of climate change for restoration + legal regime N2000 (I)**

- ‘build resilience to future change into restoration...wider range of species... broader landscape perspective.. Incorporate connectivity as a key characteristic...’ (Harris et al. 2006)
- The Natura 2000 legal regime does not sufficiently support this because of three shortcomings

## Consequences of climate change for restoration + legal regime N2000 (II)

- Three shortcomings:
  - Aimed at specific habitat types/species
    - ‘past is not an accurate indicator for the future’
    - Gibraltar case
    - Czech presidency (2009): broader scope?  
However: rely on existing provisions...
  - No binding connectivity requirements
    - Landscape perspective only voluntary (Art. 10, guidance document European Commission)
    - New regulations necessary, make obligatory

## **Consequences of climate change for restoration + legal regime N2000 (III)**

- Little attention for restoration
  - No indication or robust restoration policies in member states
  - Central provisions necessitate such policy
  - Climate change amplifies this
  - No big amendments; make more explicit



## Conclusions (I)

- Implementation is now rapidly improving
- Conservation status unfavourable
- Massive restoration policies are in order
  - To comply with the main provisions of the Bird and Habitats Directives
  - To help biodiversity adapt to climate change
- The current text of the Birds and Habitats Directive does not hinder MS to proceed as necessary, but only voluntary

## Conclusions (II)

- Legal regime should be adapted to facilitate restoration for climate change adaptation by requiring member states that they
  - take a broader perspective than just current Annex I/II habitats/species
  - put connectivity measures in place
  - regulate restoration (expropriation, focus of restoration, supervision by authorities, time schedule, etc.)
- International instruments should be adapted similarly