



2.5.2017

NOTICE TO MEMBERS

Subject: Petition 0335/2010 by Ana Miranda Paz (Spanish), on behalf of ‘Bloque nacionalista gallego’ (Galician Nationalist Block), on the siting of an aquaculture facility on the Costa de la Muerte in Coruña

1. Summary of petition

The petitioner objects to the projected location of an aquaculture facility on a Site of Community Importance SCI ES 1110005 situated on the Cape Touriñán peninsula in the municipality of Muxia, forming part of the Natura 2000 network. She indicates that this wildlife area characterised by its rich biodiversity is being threatened by the construction of an industrial aquaculture facility which would seriously undermine biodiversity along this stretch of the Atlantic coast. She maintains that this is an infringement of the Habitats Directive and that it would encourage unsustainable forms of aquaculture of benefit only to the company concerned and not society as a whole.

2. Admissibility

Declared admissible on 1 July 2010. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 9 December 2010

The petitioner denounces the project to construct an aquaculture farm in the Site of Community importance ES111005 "Costa da Morte". The construction of this aquaculture plant will have an impact on around 35 ha of the site and, among others, it will damage three priority habitat types of Community interest existing in the site. The petitioner challenges the imperative reasons of overriding public interest claimed by the current regional government to go ahead with this project, which had been stopped by the former regional government. The

petitioner claims that this project is not in line with the Communication of the Commission to give new impetus to the sustainable development of European aquaculture.

The Commission's comments on the petition

The Commission notes that the Site of Community Importance ES111005 "Costa da morte", located in the province of A Coruña, Spain, has been designated under the provisions of the Habitats Directive¹. The Habitats Directive does not prohibit economic development within the Natura 2000 network. However, and according to the provisions of Article 6 of this directive, any plan or project likely to have a significant impact on the site shall be subject to the appropriate assessment of its implications for the site as regards its conservation objectives.

The Commission wants to stress that before authorising the project of a new fish farm affecting this Site of Community Importance, the competent authorities will need to ensure that the requirements of Article 6 and, in particular, paragraphs 6.3 and 6.4, of the Habitats Directive are fulfilled. On the basis of the required appropriate assessment (which must take into account the cumulative impacts from other plans or projects as well), the competent authorities are required to determine whether there will be a significant impact on the site or not. In the case of significant impact, the project may only be authorised in the absence of alternative solutions if it is of overriding public interest and on the condition that the appropriate compensatory measures are provided in order to protect the coherence of the Natura 2000 network.

On the other hand, Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended², (known as the Environmental Impact Assessment or EIA Directive) could also be applicable to this case. Intensive fish farming projects are included in Annex II, point 1 f) of the EIA Directive. For projects listed in Annex II, Member States are required to determine whether an environmental impact assessment is required. Criteria such as the characteristics of the project, its location and the characteristics of the potential impact are to be taken into account. It should be noted that the EIA procedure could also be the tool to apply the requirements of the Habitats Directive.

Conclusions

According to the information available to the Commission, the aquaculture plant in question still has to be approved by the competent Spanish authorities and a final decision has not yet been taken. Therefore, the Commission is not in a position, at this stage, to assess whether or not the requirements set out by the Habitats and EIA Directives are being respected.

4. Commission reply (REV), received on 30 March 2016

¹ Council Directive 92/43/EC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.

² Directive 85/337/EEC (OJ L 175, 05.07.1985) as amended by Directive 97/11/EC (OJ L 073, 14.03.1997), Directive 2003/35/EC (OJ L 156, 25.06.2003) and Directive 2009/31/EC (OJ L 140, 05.06.2009).

In its communication of December 2010, the Commission stated that it did not find at that stage any breach of EU environmental legislation. Since then, the Commission has not received any further information from the petitioner concerning this case.

According to the information publicly available¹, it appears that the project which is the subject of this petition will finally not be developed.

Considering the above, the Commission cannot identify any breach of EU environmental legislation and it will therefore not give further follow-up to this petition.

5. Commission reply (REV II), received on 2 May 2017

In light of the additional information submitted in March 2017 the petitioner considers that potential risks still persist as regards the possible approval and implementation of projects for the construction of aquaculture farms along the Galician coast. She claims that the Galician Government has undertaken a number of measures over the last years in order to provide for the possibility of developing large aquaculture farms along the Galician coast.

The petitioner expressed concerns about a potential re-launching of the Galician Plan for Aquaculture, which would aim at promoting the construction of twenty two aquaculture farms along the Galician coastline, including within Natura 2000 sites. However, as indicated by the petitioner, it appears that the above plan was withdrawn some years ago. The Commission does not currently possess any information indicating that this plan could be adopted and does not have evidence of any ongoing project for the construction of an aquaculture farm within the site ES111005 "Costa da morte", designated as a Special Conservation Area under the Habitats Directive².

As stressed in its previous communications, the Commission recalls that before authorising any potential new aquaculture project affecting a Special Conservation Area, the competent authorities shall fulfil the requirements under Articles 6(3) and, where relevant, 6(4) of the Habitats Directive. Therefore, on the basis of an appropriate assessment, the competent authorities are required to determine whether there will be a significant impact on the site or not. In case of significant impact, the project may only be authorised in the absence of alternative solutions, if it is of overriding public interest and on the condition that the appropriate compensatory measures are provided in order to protect the coherence of the Natura 2000 network.

Conclusions

According to the information available to the Commission, the Galician Plan for Aquaculture has been withdrawn, and the project which is the subject of this petition will not be developed. In this regard, the Commission does not have, at this stage, any information indicating the possible adoption of a new plan or the authorisation for a project.

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<http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7317828&links=touri%C3%B1an&optimize=20150309&publicinterface=true>

² Council Directive 92/43/EC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora (OJ L 206 of 22.7.1992)

Considering the above, the Commission cannot identify any breach of EU environmental legislation.