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The Halland County Administrative Board

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Submission statement concerning Greenpeace's intention to place stone blocks in Natura 2000-areas Fladen and Lilla Middelgrund

The Halland County Administrative Board Ref 511-3917-09

The Swedish Environmental Protection Agency has received, for statement, the case under the above heading from Halland County Administrative Board.

Background

Greenpeace has notified Halland County Administrative Board of their intention to carry out conservation measures within Natura 2000-areas Fladen and Lilla Middelgrund.

Greenpeace has thereby stated that permission is not required for the measures since they are directly connected to, or essential for, the management and administration of the concerned areas.

The measures consist of trawling obstructions in the form of 1m² stone blocks, to be placed on the seabed in Natura 2000-areas. In total there are about 300 stones, which will be placed one by one at a distance apart of 40-50 meters.

The Swedish Environmental Protection Agency's standpoint

The Swedish Environmental Protection Agency considers that it is up to Halland County Administrative Board to investigate the need of, also as required to carry out the necessary conservation measures within Natura 2000-areas Fladen and Lilla Middelgrund.

Thus there is no possibility of Greenpeace taking on the County Administrative Board's role in that respect.

The Swedish Environmental Protection Agency, in this matter, makes the assessment that the placing of trawling obstructions in the form of stone blocks can constitute such a significant effect on the environment that a permit is required in accordance with ch. 7 § 28a of the Environmental Code. In this case, that nets and trawls etc., which are at risk of getting caught on the stone blocks may, amongst other things, contribute to an increase in so called ghost

fishing in the respective area. The Swedish Environmental Protection Agency considers that

NATURVÅRDSVERKET 2 (6)

this and other possible undesirable effects of the placed stone blocks must be investigated more closely, to establish if the question on whether the measures require a permit or not, may be finally decided.

In this current case it does not appear to what extent alternative conservation measures have been evaluated besides the possibility of placing stone blocks on the sea bottom. The Swedish Environmental Protection Agency considers it is urgent that such an evaluation be made before the matter is finally decided.

The Swedish Environmental Protection Agency's view

The jurisdiction question affecting Fladen and Lilla Middelgrund

The areas in question are partly located within Sweden's territorial waters, partly within Sweden's economic zone. In accordance with ch.7 § 32 of the Environmental Code, The Environmental Code regulations on specially protected or conservation areas in accordance with the Court of Justice of the EC's directive on conservation of wild birds and conservation of the natural environment, flora and fauna (Natura 2000-area), is applicable to the economic zone. Because Sweden's counties do not include the economic zones, it is established in the regulations in accordance with ch. 7 § 29b first part of the Environmental Code, which County Administrative Board is concerned. It is clear by this paragraph that it is the County Administrative Board in that county where Sweden's territorial waters are nearest to the area in question. By nearest to the area in question, it is understood to be the county where the distance between Sweden's territorial waters and the boundary of the Natura 2000-area is shortest.

As the Environmental Code's regulations on the Natura 2000-area are applicable in the economic zone, the regulations in Ch. 6 of the Environmental Code on what applies to an application for permission in accordance with Ch. 7 § 28a of the Environmental Code, is also applicable in the zone. The same applies to The Environmental Code's supervisory regulations in the question on the Natura 2000-area and the directions, which are stated with the support of the regulations.

In § 3 pt. 1 p1, the law (1992:1140) on Sweden's economic zone, it further appears that the regulation in ch.7 § 30 of the Environmental Code is applicable in the zone. In that regulation it is clear that the directions on the right to travel and be within a Natura 2000-area, and on conducting other business within the area, must be communicated by the government or the authority designated by the government, if it is necessary for the purpose of protection. No such directions have been communicated for the areas in question.

The above means that the rules on Natura 2000 are applicable both in Sweden's territorial waters as well as in Sweden's economic zone. On the other hand other regulations in the Environmental Code are not applicable in the economic zone, so Halland County Administrative Board's plan to, at the latest by 2010, create a nature reserve in the zone(in accordance with the regulations in ch. 7. §§ 4-8 of the Environmental Code)is without legal foundation. A nature reserve can only be created with the support of the Environmental Code, in the area which lies within Sweden's territorial waters.

NATURVÅRDSVERKET 3 (6)

What is intended by necessary conservation measures?

The conservation measures which are best suited for a Natura 2000-area must be individually decided for each such area. The basic idea of conservation measures - to maintain a favourable conservation status - cannot be compromised. The most important thing is that the necessary measure is taken. There is therefore no point in creating nature reserves in all areas if other measures give protection enough. As mentioned above, there is no legal possibility of creating a nature reserve in Sweden's economic zone either, as the regulations in that part of the Environmental Code do not apply in the zone.

In that Natura 2000-areas that consist of lakes and waterways or marine areas, the fishing legislation may be sufficient to regulate the fishing in regards to maintaining a favourable conservation status. The Swedish Environmental Protection Agency recommends, in accordance with "Direction for protection of marine environments with high nature values" Report 5739, that initially, whether the fishing laws may be used adequately to introduce regulations for fishing in protected areas, be considered. It is possible with the support of the Fishing Law, to regulate the fishing with regard to the interests of nature conservation and thus minimise the negative effect. Evaluation of the appropriate legislation must be in cooperation with The Swedish Board of Fisheries.

It is not clear in the current case, to what extent alternative conservation measures have been evaluated besides the possibility of placing stone blocks on the seabed. The Swedish Environmental Protection Agency considers it is urgent that such an evaluation is made before the matter is finally decided.

Responsibility for carrying out necessary conservation measures within Natura 2000-areas

In accordance with §16 decree (1998;1252) on area protection in accordance with the Environmental Code etc. it is up to the authorities to prioritise the protection work for that area which has been designated the Natura 2000-area in accordance with § 15 of the same decree as well as ch. 7. § 27 of the Environmental Code. Thereby within the framework of their jurisdiction and areas of responsibility the authorities will take the necessary or appropriate measures with regard to those protections concerns which led the area to be designated. By

"Authorities" in this context, is understood to be all authorities working with nature protection. This foremost concerns County Councils, Local Authorities and The Swedish Forestry Agency, but may for example, also involve The Swedish Board of Fisheries, The Swedish Board of Agriculture, The National Board of Housing and The Swedish Environmental Protection Agency.

Which authority is the supervisory authority for Natura 2000-areas, is stated in part A in the attachment to the decree (1998:900) on supervision in accordance with the Environmental Code. The County Administrative Board is the operative supervisory authority for operations and measures that may affect the environment in a Natura 2000-area if the operations or

measures are not covered by supervision in accordance with part A1-A25 in the decree on supervision.

NATURVÅRDSVERKET 4 (6)

In accordance with ch.7 § 32 of the Environmental Code, the County Administrative Board is, in that county where Sweden's territorial waters are closest to the Natura 2000-areas in question, the responsible supervisory authority when such an area lies in Sweden's economic zone.

In accordance with §16 decree (1998;1252) on area protection in accordance with the Environmental Code etc. it is thus up to Halland County Administrative Board to see that the necessary conservation measures are carried out in this area

Nothing prevents the County Administrative Board from outsourcing or otherwise contracting outside operators to carry out the conservation measures decided upon. In this case it would therefore be possible to give Greenpeace the assignment to carry out the necessary conservation measures on the instructions of the county council.

There is, on the other hand, no possibility that Greenpeace may act itself in the role of county council in this respect. Thus the intention of Greenpeace to place stone blocks on the seabed cannot be considered as carrying out an operation/measure, which is directly connected to, or is essential for the management and administration of the area in question. Thus the proposed operation/measures may be covered by the regulation on permit requirement in ch. 7 § 28a of the Environmental Code.

Permit requirement in accordance with the rules for Natura 2000

In accordance with ch.7 § 28a of the Environmental Code, permission is required to carry out operations or take measures, which in a significant way may affect the environment in a Natura 2000-area. Permission is not required however for operations and measures which are directly connected to, or are essential for, the management and administration of the area in question.

In this matter the Swedish Environmental Protection Agency makes the assessment that the placing of trawling obstructions in the form of stone blocks can constitute such a significant effect on the environment that permission is required in accordance with ch. 7 § 28a of the Environmental Code. Because nets and trawls etc., which are at risk of getting caught on the stone blocks may, amongst other things, contribute to an increase in ghost fishing in the respective areas. How it will be ensured that the position of the stones will be made known to all fishermen in the area, is not sufficiently specified.

The Swedish Environmental Protection Agency considers that this and other possible undesirable effects of the placed stone blocks must be more closely investigated before the question on whether the measures require permission or not can be finally decided.

Environmental Impact Assessment - EIA

In accordance with ch.6 § 1 of the Environmental Code an environmental impact assessment

must be included in an application for permission in accordance with Ch. 7 § 28a.

In accordance with ch.6 § 7 pt. 4 of the Environmental Code, for operations or measures that can be expected to affect the environment in a Natura 2000-area, an environmental impact assessment must always contain the information which is needed for the hearing in accordance with ch. 7 §§ 28b and 29.

NATURVÅRDSVERKET 5 (6)

If the environmental impact assessment has been drawn up purely for a hearing in accordance with ch.7 §§ 28b and 29, the assessment need only contain the information which is required for the hearing.

In this matter, Greenpeace have produced an EIA for the respective area. The Swedish Environmental Protection Agency states that missing from this document is a description of the consequences of, for example, the undesirable effects of ghost fishing and how it can be ensured that the stones will not be placed in unique seabed environments. Thus the EIA does not contain the information that is needed for the hearing in accordance with ch. 7 §§ 28b and 29.

Other matters

The Swedish Environmental Protection Agency has, by reason of this submission, also investigated whether the considered measures can be affected by other applicable environmentally related legislation.

Without reporting in detail on how The Swedish Environmental Protection Agency has come to their decision in the matter, the agency is satisfied for their part, in making the comments that follow:

The measures do not meet the provisions in ch. 9 of the Environmental Code on environmentally dangerous operations. Said ch. 9 of the Environmental Code is limited to including operations connected to land, buildings and construction.

The measures do not meet the provisions in ch. 10 of the Environmental Code on environmental damage. Said ch. 10 of the Environmental Code only includes operations that are illegal or can cause damage to the health or surroundings of humans.

The measures do not meet the provisions in ch. 11 of the Environmental Code as they do not meet the definition of what is intended by water operations.

The measures do not meet the provision in ch. 15 § 31 of the Environmental Code on dumping as this is not about the disposal of waste.

The application for consultation in accordance with ch. 12 § 6 of the Environmental Code can come into question if the measures are not judged as requiring a permit in accordance with ch. 7 § 28a of the Environmental Code.

The Law of the Sea convention (The United Nations Convention on the Law of the Sea, Montego Bay on the 10th December 1982 and the agreement on the execution of Part XI at the convention in New York on the 28th July 1994) does not include provisions which regulate the operations/measures as proposed.

The Swedish Environmental Protection Agency want to point out to Halland County Administrative Board that the above presented ruling was made out-with The Swedish Environmental Protection Agency's sphere of competence and jurisdiction. Other requirements of international coordination, evaluation of business aspects (mainly concerning fishing), and questions on the risk of accident etc. have not been taken into consideration here.

NATURVÅRDSVERKET 6 (6)

The decision on this statement has been made by deputy general director Eva Smith.

Anna Helena Lindahl, unit head Björne Olsson and environmental rights lawyer Nils Hallberg, also took part in the final hearing of this matter, as well as executive officer Jorid Hammersland, the afore mentioned who submitted the report.

Eva Smith

Jorid Hammersland

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