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Malin hemmingsson  
Tel: 031-743 03 67  
E-mail: [malin.hemmingsson@fiskverket.se](mailto:malin.hemmingsson@fiskverket.se)

The Halland County Administrative Board  
Att. AnnaKarin Sandholm  
Halmstad

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

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**The Subject**

On 26-02-2009 at Halland County Administrative Board, Greenpeace announced the intention to, in accordance with the Environmental Code, ch. 7, § 28 carry out protective measures in Natura 2000-area Fladen and Lilla Middelgrund. The purpose, according to Greenpeace, is to sustain favourable preservation status for the listed nature values in the form of habitat and species within the areas. The measures involve the placing of trawling obstructions in the form of circa 300 stone blocks. The stones will be placed one by one at a distance apart of approximately 40-50 meters. To this end, Greenpeace has drawn up two environmental impact assessments. Greenpeace also arranged an open meeting, which was held in Varberg on 12-03-2009 where, among others, representatives from the fishing industry, Halland County Administrative Board and the Swedish Board of Fisheries took part.

**Statement**

The Swedish Board of Fisheries is of the opinion that the planned water operations require a permit in accordance with Environmental Code ch. 11. § 9. The application for permission for water operations, will therefore be heard by the Environmental Court. In accordance with ch. 11 § 2 of the Environmental Code, the definition of water operation includes changes in the water catchment area that intend to alter the water depth. The Swedish Board of Fisheries consider that the Greenpeace project intends to alter the water depth (seabed structure) at certain points, with the intention of preventing demersal trawling. The operation also requires a permit in accordance with the Environmental Code ch. 7 as it is planned within specially protected areas.

That the planned operation cannot be considered as requiring a permit in accordance with the water operations ch.11 § 19 regulations on water operations etc., is justified by the total surface area where the stones will be placed, occupying an area in excess of 3000 square meters. The placed stones will affect the seabed structure within a total area of between 38-60 hectares (if the stones are laid in a square with distance apart of 40-50 m). The measures also intend to affect general fishing interests. That the justification for the operation is to preserve a favourable conservation status or develop nature values within the areas, does not exempt those responsible for the operation from the obligation to hold the necessary permission for the planned measures.

In accordance with The Environmental Code ch. 6 § 1 the application for permission in accordance with ch. 11 and ch. 7 will contain an environmental impact assessment. The Swedish Board of Fisheries is of the opinion that the applicant should describe in particular how the planned operation may come to affect fish and fishing. By fishing is meant both leisure fishing and the fishing industry. In the environmental impact assessment, an evaluation of a possible increased risk for what is known as ghost fishing, as a result of the placing of the stones, ought to be included. Ghost fishing occurs when fishing tackle is abandoned in the water (discarded or lost for some reason) and brings a prolonged negative effect to marine life.

To make an assessment of the effect on both fish and fishing, it is important that current information on fishing patterns in the areas is obtained. In the Kattegatt, Swedish and Danish fishermen pursue fishing with the support of "The 1932 agreement" up to "a distance of three nautical miles from the other country's coast or outermost lying islet or skerry, which is not constantly washed over by water" (His Majesty's promulgation with *certain regulations regarding fishing conditions in the bordering waters of Sweden and Denmark, Swedish statute book 1933, No.282*). Therefore Danish fishing may be affected by the project to the same extent as the Swedish. Out-with the Swedish territorial border (12 nautical miles), as well as Denmark, other EC member countries and Norway, also have certain fishing rights. To give an accurate picture of the fishing situation at Fladen and Lilla Middelgrund, the fishing operations of other countries must also be mapped and described.

For the reason that Fladen and Lilla Middelgrund are affected by the above mentioned agreement from 1932 on joint fishing in the Kattegatt, the County Administrative Board should consider submitting the question to the government. The Swedish Board of Fisheries will inform the Danish fishing authorities on the matter.

The Swedish Board of Fisheries will also clarify that Lilla Middelgrund lies partly within the protected area for cod in the Kattegatt which was established 29-01-2009 after deliberation and consultation with Denmark (The Swedish Board of Fisheries regulations on fishing in Skagerrak, Kattegatt and the Baltic Sea). The Swedish Board of Fisheries considers that the planned placing of stones is not an appropriate measure for reaching the intended goal. Amongst other things, since these measures may affect the above mentioned bilateral agreement between Sweden and Denmark on the establishment of a protected area for cod.

The Swedish Board of Fisheries wishes to finally offer a reminder of the regulations in the fishing laws (1993:787). In accordance with the fishing law, § 19, it is the government or the authority the government determines (The Swedish Board of Fisheries) who communicates the regulations on fishing conservation and the fishing industry, which forbids or limits fishing including fishing within certain areas or for certain purposes. Further, it is stated in § 20 that the government or the authority the government determines, may set the regulations on which considerations must be taken in the interests of nature conservation, when fishing. The regulations should not however be so intervening as to severely hinder fishing.

### **Justification**

Natura 2000-areas Fladen and Lilla Middelgrund both lie within the Swedish economic zone whereas only parts of the areas lie within Swedish territorial boundaries. Depending, among other things, where within the areas it is intended that the stone placing be carried out, a number of different legislations may come into play.

Out-with territorial boundaries, but within the economic zone the law on Sweden's economic zone is valid. In accordance with this law permission is required to explore, extract or in any other way utilise natural assets or erect or use artificial islands etc. The planned operation cannot be deemed to require a permit in accordance with the laws on Sweden's economic zone. In the question of the rights to explore the continental shelf (geophysical measurements, drillings etc), in the economic zone, and extracting the natural assets, the law (1966:314) on the continental shelf is valid. The planned operation cannot be considered as requiring a permit in accordance with that law either.

For specially protected areas (e.g. Natura 2000-areas) special regulations apply in accordance with ch. 7 of the Environmental Code. This also applies in The Swedish economic zone (ch. 7 § 32). In accordance with ch.7 § 28a permission is required to run operations or take measures which may significantly affect the environment in a specially protected area.

Permission may only be given if the operation cannot damage the living environment or the living environments in the area which it is intended to protect etc. (ch. 7 § 28b). Further, in accordance with §29b that **for an operation which is comprised of a requirement for a permit in accordance with, amongst others ch. 11, the question of permission in accordance with §28a shall be decided by the authority who decides the other permission question, in that case, the Environmental Court.** Since ch. 11 only applies within Swedish territorial boundaries, the matter may, depending on where the stones are placed, require to be split for a ruling by different Courts (the County Administrative Board and the Environmental Court).

In accordance with §31, of the Environmental Code there is a prohibition on dumping of waste within Swedish territorial waters and economic zone. The Swedish Environmental Protection Agency decides on exemptions to the prohibition of dumping. In the current matter it is however not waste which it is intended to dump, which is why The Swedish Board of Fisheries does not consider that the operation can be classed as dumping.

Between Fladen and Lilla Middelgrund, and partly within Natura 2000-areas, is an area which is classed as being of national interest for the fishing industry (area no. 57, F.info 2006:1). The intention with national interest for the fishing industry, is established in the Environmental Code ch. 3 § 5 where it is stated that land and sea areas that have significance for the reindeer industry or the fishing industry or for water use, shall be as far as possible protected against measures that can clearly cause problems for the running of business.

The decision on this statement has been made by departmental head Bengt Strömblom on the presentation of fisheries biologist Malin Hemmingsson and appointed group head Ingemar Andersson. In the handling of this matter, head lawyer Bengt Högberg, researcher Mattias Sköld and unit head Fredrik Nordwall have also been involved.

Bengt Strömblom

Malin Hemmingsson

### **References**

Finfo2006:1