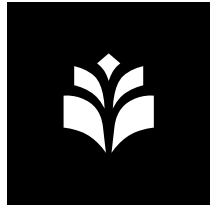




Legal aspects of Cormorant management: EU law and its implementation

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EU legislation and derogations

- Birds Directive (2009/147/EC)
 - States must take the requisite measures to establish a general system of protection for all species of birds (Art. 5)
 - Annex II species may be hunted under national legislation (Art. 7)
 - States may derogate from the protection for the specific reasons if no other satisfactory solution (Art. 9)
- Reasons for derogations (Art. 9)
 - Public health and safety; air safety
 - **Prevention of serious damage to** crops, livestock, forests, **fisheries** and water
 - Protection of flora and fauna
- CJEU: No cases



EU legislation and derogations

- Commission viewpoint (E-011387/2015)
 - MSs can make full use of the derogation possibilities to manage conflicts between Cormorants and fisheries
 - No reason to include Cormorants under Annex II of the Birds Directive
 - COM encourages MSs to make full use of the flexibility under the Directive
- Commission (2013) guidelines (COM2013)
 - Great cormorant: Applying derogations under Art. 9 of the Birds Directive
- Finland
 - Various strategies, reports, guideline documents, derogation decisions and court cases in the last 10 years



Prevention of serious damages to fisheries

- Birds Directive (Art. 9)
 - MSs may derogate...where there is no other satisfactory solution...to prevent serious damage to...fisheries...
- Fisheries
 - Literal meaning: fishing ground, fish farm, commercial (and recreational) fishing
 - Directive: (FIN) kalavedet (fishing grounds); (SWE) fiske (fishing); (DEN) fiskeriområder (fishing areas)
- Fisheries in COM2013
 - Industry or place of catching, processing, and selling fish
 - Aquaculture
 - Recreational fisheries



Prevention of serious damages to fisheries

- Serious damage (COM 2013)
 - Economic damage to fisheries or related recreational interests
 - Seriousness: Depends on value put on the resource and on spatial dimension of fisheries (e.g. ecosystem, resource, enterprise, individual, socio-economic level)
 - Ecology: Ecological importance of the species being affected of the magnitude of the predation
- Serious damage is relative and case-specific (COM2013)
 - Difficult to balance species protection against socio-economic demand
 - Use of the derogations must not lead to a situation where Cormorant population and range becomes unviable, or not maintained at a satisfactory level
 - Derogations are not intended to reduce the population but to prevent serious damages



Proving serious damages

- EU Court (C-557/15)
 - All action affecting the protected species is authorized only on the basis of decisions containing a clear and sufficient statement of reasons → Art. 9(1-2)
 - Authority taking the decision has the burden of proof
 - Derogation application needs to include appropriate assessment and evaluation
- Proving serious damage (COM2013)
 - Proving damage by direct evidence alone is very difficult
 - Absence of clear quantitative evidence does not mean that it is not occurring
 - Necessary to assess cormorant's presence and other factors influencing fish stocks
 - Pragmatic approach may be required: Subjective evaluation by independent experts – solid and scientifically sound justification



Proving serious damages

- Serious damage accepted (COM2013)
 - Significant number of cormorants are foraging at a site
 - Cormorants are the most likely cause of reduced fish catches or injuries to fish
 - Fish stocks at the site are worth protecting
- National management schemes
 - Overarching plan may be useful but local case-specific appraisal of individual conflicts may also be needed (COM2013)
 - Regional management plans?
- No alternative solution (Art. 9)
 - Objectively verifiable factors, scientific and technical evaluation



Using derogations before serious damages?

- Birds Directive (Art. 9)
 - To **prevent** serious damages...
- Likelihood and extent of damage (COM2013)
 - Past experience should demonstrate a high probability of the occurrence of serious damage to an economic interest
 - Strong likelihood that serious damage takes place in the absence of action



Derogations in nature conservation areas

- Natura 2000 network (Habitats Directive)
 - No deterioration of natural habitats and the habitats of species or **disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive** (Art. 6(2))
 - Cormorants / other species
- Management (COM: Sustainable Hunting and Natura 2000)
 - A management plan may be needed
 - Establishment of no-take zones?



Findings

- EU legislation and derogations
 - Strict conditions for derogations but a lot of national level discretion
- Prevention of serious damages to fisheries
 - Economic damages to fisheries or related recreational interests, case-specific assessment required
- Proving serious damages
 - Expert assessment required, national and regional management plans useful
- Using derogations before serious damages?
 - Possible but strong likelihood of serious damage needs to be proved
- Derogations in nature conservation areas
 - Possible if can be reconciled with Natura site conservation