

Resume of the 12 case studies collected and analysed during the project Naturally-Est LIFE

(LIFE16 GIE/EE/000665)



Abbreviations

SPA – Special Protection Area established for the implementation of the Birds Directive

SAC – Special Conservation Area established for the implementation of the Habitats Directive

1. Restu Dam

Restu dam on Väike-Emajõe river is located in Natura 2000 network area (Otepää SPA and SAC). The river is listed as salmon habitat under national law. The dam constitutes an obstacle for migration of fish. However, removal of the dam would eliminate the reservoir which had been established in medieval times and functions as habitat type 3150 (eutrophic lake). Restoration of the river could also affect Natura habitat types (such as 6450 alluvial meadows) and protected species (such as *Agrimonia pilosa*) in the site. The issue is further complicated by the fact that the dam constitutes a road and bridge. The maintenance of the structure is the responsibility of the national Transport Administration.

Owner of the dam and water mill sought council because of plans to restore the river habitat. The owner argued that the migration of fish could be ensured without removal of the dam by building screw fish-passage. Building of the passage requires water permit issued by the Environmental Board. The Board requested approval of the project by the Transport Administration as a prerequisite for issuing the permit. However, the Transport Administration set out a number of demands for the approval, some of which could not be fulfilled by the landowner. EELC helped the landowner to draft information requests and documents for the permit procedure. The issue could not be solved in the time-frames of the project. At the time of writing the present case study, the Environmental Board has terminated the permit procedure without issuing the permit. However, the plan to remove the dam has been put on hold.

2. Land parcels of Männasaare and Mõurasaare

The land parcels (ca 150 ha) are located in Alutaguse national park, which includes several SACs and SPAs. Landowner sought council because the owner wished to use gather firewood and build outdoor toilet for its own use but could not obtain the consent of the manager of the

national park (the Environmental Board) for the activities. According to the Board the activities could not be allowed due to the protection regime. The owner wished to alleviate the protection regime or alternatively sell the land to the state. EELC helped the landowner to draft the letters and documents for changing the zoning of the land to alleviate the protection regime. EELC also participated in a number of meetings with the authorities to help to reach a compromise. However, ultimately the landowner's request was denied. The Environmental Board came to the conclusion that although some of the land is not particularly valuable from the viewpoint of nature conservation it would not be possible to ensure effective nature protection if the area is fragmented by less strict protection regime. EELC also helped the landowner to draft the letters and documents for selling the land to the state. The Nature Protection Act § 20 allows such sales, however, in general, the state does not buy land that was obtained after the establishment of the protection regime if the buyer was aware of the fact. There are exceptions to the rule, such as obtaining the land in land reform before 07.06.1996. In 1940 the Republic of Estonia was occupied by the Soviet Union and all private land was nationalized. After reclaiming independence in 1991 land reform was initiated to restore land to prior owners or their descendants. In the present case, the land parcels were obtained in land reform. Initially, the state refused to restore the land because of the nature protection regime. The present owner successfully contested the refusal in court and became owner in 2009. The owner then tried to sell the land to the state. The request was denied because the land had been obtained in land-reform after 1996 and the owner was aware of the protection regime at the time of obtaining the land. The request was denied again in the present case despite the best efforts to find a compromise. The landowner contested the denial in court. EELC does not represent the owner in court because the aims of the project were to find solutions without litigation. The case is pending before the court at the time of writing of the present case study.

3. Land draining at the banks of river Koiva

Most of river Koiva is located in Latvia but a section of it forms border between Estonia and Latvia. This section of the river and its banks in Estonia are part of Koiva-Mustjõe SPA and SAC. The area was included to the Natura 2000 network primarily for the protection of habitat types and species dependent on the river, such as 9080 deciduous swamp woods. The State Forest Management Centre (a company for managing state forest land, hereinafter RMK) initiated a project to reconstruct drainage system on forest land near the river. The system covers ca 250 ha of land and drains into river Koiva via multiple outlets. Owners of the land hosting one of the outlets sought council. They had bought the land specifically in Natura 2000 area and next to its borders in hopes that it would ensure the preservation of the land in its natural state. The owners were not aware of the existence of the outlet of the drainage system. Parts of the system had not been maintained for long time. The outlet looked like a natural brook: it was meandering, had several beaver dams etc. According to the drainage project all beaver dams were to be removed and forest cut on the banks to allow removal of sediment from the brook by heavy machinery. Also, RMK wished to dig a settling basin (25x21 m²) on the land in question to mitigate the effects of the draining system on river Koiva. The owners learnt of the project when their approval was requested in the drafting of the project.

EELC helped the landowners to draft the replies. The owners objected that it had not been proven that the brook is an outlet of the draining system and that they have the obligation to suffer its existence on their land. Also, appropriate assessment had not been carried out for the draining project to ensure that the project would not have adverse effect on the Natura site. The Agriculture and Food Board, who is the agency responsible for issuing permits for reconstruction of drainage systems, did not see merit in the arguments. Inter alia, the agency claimed that owners not only have to suffer the existence of the drainage system but are obliged to maintain it at their own expense for the benefit of RMK. The agency also claimed that appropriate assessment needs not to be carried out in drafting of the project but later in the permit procedure. Nonetheless, RMK excluded the land in question on its own initiative from the project due to the objections of the landowners. At the time of writing of the case study the drainage project has been completed. Appropriate assessment was not carried out in the permit procedure. The reasons for the decision are not public on the grounds that access to it would endanger protected habitats and species.

4. Tohlu ditch

Island Saaremaa (ca 2600 km²) is connected to Island Muhumaa (ca 200 km²) via earth embankment (road dam), which is ca 3 km in length. The structure divides the strait Väike Väin located between the islands. Väike-Väin and the shores of the islands are part of Väikese Väina SAC and Väinamere SPA. The road was completed in 1896 and it has largely blocked water flow through the strait. At the moment, there is only one 4m opening in the dam at Muhumaa's end of the dam. Tohlu "ditch" is a former narrow shallow sea channel (length ca 1 km) in Saaremaa close to the dam, which effectively separated a small part of Saaremaa island from the rest of it and increased flow of water in the strait. Both ends of the channel have been deepened by ditches. One of the ditches passes under the dam. However, the middle of the former channel is currently low-lying dry land, which is occasionally flooded. The sea channel has disappeared in the last 100 years due to post-glacial rebound of land. According to national database the area surrounding the ditch is part of habitat 1630* coastal meadows.

Väikese Väina Selts, a local NGO, wishes to deepen the middle section of the channel to create an additional connection of sea areas divided by the dam. The main purpose of the work is to improve the condition of fish fauna. Historically fish was abundant in the strait but the populations declined significantly after construction of the dam. The condition of fish fauna could also be achieved by constructing additional openings to the dam. Such works have been considered on several occasions but the projects have not been implemented due to relatively high cost. In contrast, deepening the middle section of former sea channel is significantly cheaper option.

The local NGO sought council because the manager of the protected area (the Environmental Board) did not approve the planned works. EELC advised the NGO in years 2018-2019, helped to organize roundtable meetings and site visits. EELC also helped to draft replies of the NGO to the Environmental Board.

The board argued that the project cannot go ahead because deepening the ditch constitutes construction works but the whole area is within building exclusion zone. Also, the ditch would have adverse impacts on coastal meadows (reduction of the surface area of the habitat, change in water regime, difficulty for maintaining the meadows) and protected birds. The NGO asked for expert opinions on the effect on the protected habitat and species. The experts concluded that the former sea channel does not constitute habitat type 1630* and deepening it would not significantly affect the water regime or make maintaining more difficult. The effect on birds is not entirely clear for protected birds but in general the effect should be neutral or positive rather than negative. The NGO also argued that deepening of the channel does not constitute a construction works prohibited by the building exclusion zone. Nonetheless, the Environmental Board did not approve the works.

At the time of writing the case study the results of a thorough investigation (2014-2020) on the strait have been published, which conclude that fish migration should be restored through Tohlu “ditch”. The NGO once more unsuccessfully sought approval for the works. This time, the Environmental Board took the position that the work needs building permit, which is issued by the local government, i.e. the issue is within the competence of another public authority.

5. Hellenurme water mill

The case study summarizes the findings of the key decision on Natura 2000 network of the Supreme Court: RKHKo 28.01.2021 nr 3-17-1739. The decision concerns Hellenurme dam. The dam was constructed for water mill in the 19th century. Later the installation was also used for producing electricity. The mill functions as a museum since 2002. The installation is protected as cultural heritage.

The mill is located on Elva river. This section of the river is part of Elva SAC and protected nationally as a salmon river. According to the water management plan the status of the river is poor because the river has several dams, which impede fish migration. The National Heritage Board claims that Hellenurme dam cannot be removed or fish passage constructed because it would damage the protected heritage. In 2016 the operator applied for a renewal of water permit in order to impound the river and operate mill. By this time all dams downriver from the mill had been opened for fish migration.

The issuer of water permit (Environmental Board) required environmental impact assessment, including appropriate assessment, of the activity. According to the national law, the cost of such assessment has to be borne by the applicant of the permit. The operator objected by arguing that the river impoundment and mill had existed for over 150 years. The impacts had been assessed in prior permit application procedures and there is no need for additional assessment. In any event the cost of the assessment would not be proportional. Eventually, the operator contested the decision in court.

The court of first instance and the appellate court did not grant the action. However, the Supreme Court took a different view. The most important findings of the court are as follows:

- 1) Environmental impact assessment can be initiated only when a new project is planned. In the present case, the river impoundment had existed for a long time and thus could not be considered to be a new project despite the new circumstances (i.e. fish migration is possible downriver). However, production of electricity is a new project because the production has not been continuous (i.e. was not allowed by the previous permit).
- 2) The Habitat Directive Article 6(2) may require appropriate assessment of existing activities. However, the procedure is not regulated under national law. Consequently, the authorities have to bear the cost of such assessments.
- 3) The Habitat Directive Article 6(2) does not allow prohibition of an existing activity just because it would be most favourable for protected habitats and species. Instead, an activity can be prohibited only if it jeopardizes the achievement of nature protection goals. The Supreme Court emphasized that the goals for improvement of Natura 2000 sites must be proportional and clear, especially if they restrict basic rights.
- 4) In applying Article 6(4) exemption only realistic and reasonable alternatives have to be considered. Alternatives have to be construed from the aims of the applicant of the permit. The applicant wishes to produce electricity in the specific mill by using historical equipment. Consequently, then production of electricity elsewhere by other means is not an alternative.
- 5) The protection of the mill as cultural heritage does not mean that the permit must be issued. In case the impoundment and operation of the mill have adverse impacts on the Natura site, then cultural heritage can be taken into account only in the framework of applying Article 6(4) of the Habitats Directive.

6. Rail Baltic

The case study summarizes the findings of the key decision on Natura 2000 network of the Supreme Court: RKHKo 19.05.2020 nr 3-18-529. Rail Baltic is a railway line, which was originally planned to connect Finland, Estonia, Latvia and Poland. The project is part of establishing EU TEN-T network.

The section of the railway in Estonia was planned not to follow existing railway lines. The planned route did not cross any Natura 2000 network sites but it passed very close by some of them including Luitemaa SPA. The SPA has been established, inter alia, for the protection of white-tailed eagle, black stork and capercaillie. The appropriate assessment was carried out for several SACs and SPAs but not for Luitemaa SPA. The SPA was only included to the preliminary assessment. However, mitigation measures were planned for the site. The planning decisions were contested in court by a NGOs and a local government. One of the arguments of the complainants was that appropriate assessment had not been carried out for Luitemaa SPA.

The court of first instance and the appellate court did not grant the action. However, the Supreme Court took a different view. The most important findings of the court are as follows:

- 1) The appropriate assessment has to be carried out unless: a) it is clear without doubts that the planned activity does not affect the characteristics of the site, which are important from the viewpoint of conservation objectives; or b) such effects exist but the effect is clearly not significant taking into account the circumstances on the site and the vulnerabilities of protected habitats and species.
- 2) The effects of mitigating measures cannot be taken into account in deciding whether a project has adverse impacts on Natura site. The fact that such measures are planned demonstrates that adverse impacts are likely and that full assessment needs to be undertaken.
- 3) Indirect impacts are not less important than direct impacts. Inter alia, it is possible that a railway line crossing a Natura site has less adverse impacts than one passing close by. Also it is important to take into account effects on habitats and species located outside of Natura sites if the impacts may jeopardize achieving the conservation objectives of the sites.
- 4) The results of the assessment have to be complete, precise and final. Important investigations cannot be postponed. In order to make the strategic choices, the relevant information has to be gathered at earliest stage possible.
- 5) Appropriate assessment cannot be carried out in the court procedure due to separation of powers.

7. Hiiu Tuul

The case study summarizes the findings of the key decision on Natura 2000 network of the Supreme Court: RKHKo 8.08.2018 nr 3-16-1472. The case concerns planning of a sea area, primarily for the purpose of development of wind farms. The sea area includes several Natura sites. It also is part of important migration route of birds. The plan defined areas for development of off-shore windfarms in the sea area. The plan was subject only to preliminary assessment because of the abstract nature of the plan and because the national guidance did not require full assessment for such plans. Appropriate assessment was supposed to be carried out in a later stage in the implementation of the plan. The planning decision was contested in court by a NGO, local municipality and some local individuals. The complainants argued, inter alia, that appropriate assessment had to be carried out because the preliminary assessment concluded that implementing the plan may result in adverse impacts on Natura sites.

The court of first instance and the appellate court did not grant the action. However, the Supreme Court took a different view. Note that under national law appropriate assessment of

plans is carried out as part of the strategic environmental impact assessment (SEA). Several findings of the Supreme Court explicitly only apply to SEA, however, implicitly they also are relevant for appropriate assessment. The most important findings of the court are as follows:

- 1) SEA must provide information to the decision maker whether the planning solution is acceptable in principle and whether it is the best solution. The assessment has to be carried out despite the fact that details of implementation are not known. The assessment has to be based on activities, which are allowed by the plan in principle, the planned location and extent of the activities. For instance, investigation could and should have been carried out on bird, fish and bat fauna instead of postponing them to the stage of development of individual wind farms. The investigations described in the planning documents have wide geographical scope and require considering wide cumulative effects, which can be found out on the basis of existing environmental conditions and do not depend on details of implementation. Such investigations have to be carried out precisely in the planning stage because they cannot be taken effectively into account in planning of a specific wind farm, which only concerns part of the sea area.
- 2) It would not be possible to achieve the useful effect of SEA Directive and to ensure high level of protection of environment if only existing information is taken into account in the assessment because the information on sea areas is quite limited. The assessment needs to include information that can be reasonable obtained in the planning procedure.
- 3) The abstract nature of plans does not mean that appropriate assessment needs not to be carried out. The national guidance is not line with the national and EU law and practice of the Court of Justice of the European Union. In order to effectively prevent adverse impacts, the effects on Natura sites have to be considered in early planning stage when selecting suitable areas for wind-farm development.

8. Kanarbiku cottage

The case study summarizes the findings of the key decision on Natura 2000 network of the Supreme Court: RKHKo 28.11.2019 nr 3-17-740. The case concerns building a cottage in habitat type 5130 *Juniperus communis* formations in Kahtla-Kübarsaare SAC and SPA. Landowner applied for building design documentation, which are issued by local government and are a prerequisite for obtaining building permit. The local government must consult with the Environmental Board before issuing building design documentation in areas under nature protection. The Board did not approve the project because the land in question is covered by habitat type 5130, which would be destroyed under the cottage and near it, especially considering that the conservation objective of the site calls for increase of the surface area of the habitat type. The landowner argued that the building area only include 10% of his lands and his lands include only an insignificant fraction of the whole site. Moreover, his lands

include areas that are overgrown and no longer correspond to the characteristics of habitat type 5130. The landowner contested the rejection of approval in court.

The court of first instance granted the action but the appellate court took the opposite view. The most important findings of the Supreme Court are as follows:

- 1) The Habitats Directive does not preclude any negative impact on Natura site but those that jeopardize achieving the conservation objective of the site. In case of doubt, the impacts must be appropriately assessed.
- 2) The Environmental Board has is mistaken by assuming that any reduction of area covered by plants (by building) would result in significant impact. Such impacts do not exist if the impacts of an activity have very limited scale and intensity unless the circumstances dictate otherwise, e.g. the habitat type is especially bad condition or significant cumulative effects. The Environmental Board should have established to what extent the protected habitat is affected and the progress towards the conservation objective. In sum, the Board should have established whether the building would preclude increasing the surface area of the habitat type or made it significantly more difficult.

9. Frequently asked questions for the Natura 2000 area municipal official

There are Natura 2000 areas on our territory. What activities must be restricted and what allowed?

There is no definite list of actions that are either allowed or restricted. Rather every decision shall be weighed on the case by case basis and all such activities (including construction of new buildings or roads) that do not harm species or habitat types for which protected areas are created can be allowed. At the same time it must be taken into account that the negative impact on the Natura 2000 area conservation goals can also come from outside the boundaries of the nature reserve. Therefore decisions made on the neighboring areas must also be weighed.

It is necessary to carry out a preliminary or *ex-ante* assessment in addition to the Natura assessment. Natura assessment is required when the impact of the planned activity on the Natura 2000 network area and for the conservation purpose cannot be objectively excluded. The planned activity is to be assessed with the interaction with other activities that can have a cumulative effect.

The first thing that should be found out is whether the activity can affect the conservation objectives of the area - protected species or habitat condition. This means that the local government must give the so-called preliminary assessment of whether the effects of the activity should be more precise to evaluate. The preliminary assessment must be based on the precautionary principle. A more comprehensive Natura assessment must be carried out, when it is not possible to rule out the impact on the conservation objective of the nature reserve.

Important principle to follow is that negative effects cannot be assessed with mitigating or exclusionary mitigation measures. If, based on the above, it turns out that a more comprehensive impact assessment is necessary, an environmental impact assessment or strategic environmental assessment must be carried out. During the impact assessment, an answer must be given to the question whether the planned activity will adversely affect the Natura nature reserve integrity or protection purpose. If no adverse effect is obtained exclude, the activity must not be allowed.

10. Frequently asked questions for the Natura 2000 area landowner

What is Natura 2000? What is the difference between Natura 2000 and other protected areas? How do I know if my property is included in Natura 2000?

Natura 2000 is a Europe wide network of protected areas and Natura 2000 sites have been designated specifically to protect core areas for species or habitat types listed in the European Habitats and Birds Directives. They are deemed to be of European importance because they are endangered, vulnerable, rare or endemic. Nature reserves, national parks or other protected sites are, on the other hand, established exclusively under national or regional law, which can vary from country to country. Sites may be designated for a range of different purposes and may also concern species/ habitats other than those targeted by the Natura 2000 network. There is a public on-line GIS mapping system – called the Natura 2000 viewer - which gives the precise location of each Natura 2000 site in the EU Network. The user can search for any site anywhere in the EU. Thanks to the large scale of the maps, site boundaries and key landscape features are easily visible. Additionally Estonian Land Board has also Geoportal with special set of maps on Natura 2000 and Estonian Nature Information System will give overview about nature's values in Estonia

What can I or cannot do on my land? Can I build, do melioration or cut forest on my property? Can I apply for subsidies for managing my property?

It is suggested that before planning any activity that might impact natural values you should contact the Environmental Board who will help to find an expert who assesses a possible negative impact of this action towards species or habitats or if the integrity of the protected area is threatened. When it is established that there is no negative impact, the activity can be carried out. Thus it means that usually you need to plan more time for activities, because according to the Nature Conservation Act § 33, the notification of the planned activity (including the description, volume and schedule of the planned work, and a map of the area where the work is to be performed) should be submitted to the manager of the limited-conservation area (usually the Environmental Board). The notification will be submitted at least one month before commencement of the work. It is important to remember that all cases are weighed individually by the Environmental Board and the results may vary as different areas, species or habitats have different conditions.

Forest management is usually not allowed in the conservation zones. In the limited management zones, forest management depends on the protected species found from the area. Forest management restrictions can also derive from the protection rules or management plans.

Various subsidies can be applied for managing or not managing the property that is included into Natura 2000 area.

11. Case study: Seminatural habitat restoration and management

A conflict emerged between the Environmental Board and a landowner restoring the wooded meadow. EB accused the landowner for removing too many trees and thus being too “greedy” and “business-oriented”. The conflict evolved via media and social media - there was no direct communication.

ELF had previous experience that conflict is more easily resolved in the fields and not behind the table. The meeting was organized on the wooded meadow under the question and each party could explain their standpoints on the actual spot. Wooded meadows can be restored and managed differently there is no single right way to do it. As a solution it was agreed that experts are marking all the trees that can be removed. As a result both the landowner and the EB gained more confidence that a suitable situation will be created.

Lessons learned:

- Preparation for a possibly loaded meeting is of utmost importance.
- The inviter should be a party that has power to make a decision
- The invitation must include neutral and objective background information
- All the invitees must get the same information
- All the invitees should feel that they are invited to co-create the solution
- Remember that all people are first and foremost the individuals and even the best experts can act and speak emotionally and not rationally
- Let everyone speak first in the introductory circle - it helps to unload the emotions and it gives you an overview of people and their problems. Worst case scenario is when people and the moderator are trying to solve different problems.

12. Resume of the case study: communication needs of the ‘lay people’ in nature protection

By implementing the project's communication activities and studying their results, we got to know several target groups and their needs in solving situations caused or inspired by nature conservation. To systematize the shortcomings of nature conservation communication that we encountered during the several years of the project, we used design thinking exercises based on the needs of the target group. We limited ourselves to the communication needs of private individuals, because there was not enough contact with representatives of entrepreneurs and institutions during the project.

To find out the gaps in nature conservation communication, we sought answers to the following questions:

- What are the target groups that arise in various encounters with nature conservation?
- What information do they need and in what form? What are their personal abilities to handle situations?
- Which institutions and activities already satisfy their information needs?
- Which target groups and needs are being overlooked?

For this we:

- We reviewed the lessons learned during the project. Based on them, we formulated situational information needs for different kinds of contacts with nature protection and based on these needs we defined target groups (functional target groups). We described several personas for each target group, because in the same situation can find themselves people with different abilities and backgrounds.

- Based on project fieldwork we brainstormed to outline the specific information needs of each prototype.

- We formulated existing and missing communication activities that help to satisfy these needs in a way suitable for the target group.

- We defined institutions whose scope both existing and non-existing activities fit.

The groups whose communication needs are addressed in the analysis:

1. A person who unexpectedly meets a natural species and needs support to continue his activities and to consider the needs of nature (a woodpecker pierces the wall of a house, the peace of bats is disturbed during construction work, a badger comes to live under the building foundation, etc.)

2. A community activist who notices when something is wrong in nature or someone harms nature and wants to solve the situation

3. A landowner whose land is planned for a nature reserve, protected habitat, or other landscape changes (forest drainage, restoration of swamps, etc.)

4. A landowner who wants to do something on his plot of land that has an impact on nature (building, digging, grazing, etc.), which needs to be reduced or turned to the benefit of nature

5. Active people who have no specific interest in nature, knowledge of nature or land ownership, but who can facilitate or mediate nature protection activities in their circles

6. People who are exposed to the natural environment, but who usually visit nature rarely or by chance, or who are just taking the first steps to get to know nature

During the design exercises, we identified several shortcomings in the organization of nature conservation communication. We depict these operational needs in the following figure. These activities are the responsibility of different institutions.