

Terms of Reference
Ramsar Advisory Mission (RAM)
Mühlenberger Loch Ramsar Site, Federal Republic of Germany
24-26 September 2001

Introduction

The Ramsar Convention gives special attention to assisting Contracting Parties in the management and conservation of listed sites whose ecological character is changing or likely to change as a result of technological development, pollution or other human interference. This is carried out through the Ramsar Advisory Missions (RAM), a technical assistance mechanism formally adopted by Recommendation 4.7 of the 1990 Conference of the Parties (formerly known as the Monitoring Procedure and the Management Guidance Procedure). The main objective of this mechanism is to provide assistance to countries in solving the problems at particular Ramsar Sites related to the maintenance of their ecological character.

Background

With letter and attachments dated 23 January 2001, the German Federal Ministry of the Environment, Nature Conservation and Nuclear Safety informed the Ramsar Bureau about its wish to restrict the boundary of the Mühlenberger Loch Ramsar Site, having regard to Article 2.5 of the Convention, and proposed compensatory measures, invoking Article 4.2.

Article 2.5 of the Convention on Wetlands states:

"Any Contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List and shall, at the earliest possible time, inform the organization or government responsible for the continuing bureau duties specified in Article 8 [*i.e. the Ramsar Bureau*] of any such changes."

In the attachment, the Federal State of Hamburg, on which territory Mühlenberger Loch is situated, referred to an opinion of the European Commission (of 19 April 2000), accepting that the boundary restriction can be justified for reasons of "overriding public interest". The Federal Ministry implied that the recognition by the European Commission of the "compelling grounds in the overriding public interest" at the level of "Hamburg, the northern German region and the European aviation industry" reflects "urgent national interest" in the sense of Article 4.2 of the Convention on Wetlands:

"Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat."

The relationship between "overriding public interest" in EU law and "urgent national interest" in the Convention on Wetlands is cause for some debate, and has not been settled by any legal authority.

In 1999, the Contracting Parties adopted Resolution VII.23 on "Issues concerning the boundary definitions of Ramsar sites and compensation of wetland habitats". Paragraph 11 "Requests the Standing Committee, with support from the Bureau, and in consultation with the Scientific and Technical Review Panel, experts familiar with the Habitats Directive of the European Union, appropriate legal and other experts, and interested Contracting Parties, to develop for consideration

and possible adoption at COP8 guidance for the Contracting Parties in interpreting Articles 2.5 and 4.2, if resources allow."

In the context of this request, the Bureau has transmitted to all Contracting Parties, under Diplomatic Notification 2000/8 dated 19 December 2000, a first analysis of the role of "urgent national interest" and "compensation" in wetland protection, prepared by the Environmental Law Centre of IUCN. The Bureau considers it important to bring these very rare cases, where the boundary of a Ramsar Site is restricted because of urgent national interest, to the attention of the next Conference of the Parties (next meeting November 2002).

Paragraph 12 of Resolution VII.23 "Calls upon any Contracting Parties that consider the deletion or restriction of the boundaries of a Ramsar site in the urgent national interest prior to COP8, to exercise the highest levels of environmental, economic and social impact assessment which take into consideration the full range of functions, services and benefits offered by the wetland."

To this end, it was considered useful by the Federal Ministry and the Ramsar Bureau to clarify beforehand some of the concerns about the proposed compensatory measures for the boundary restrictions of Mühlenberger Loch Ramsar Site. Notably, to verify that the compensatory measures, proposed at the sites Hahnöfer Sand, Twielenflether Sand, Haseldorfer Marsch and Hörner Au, correspond to the need (according to Article 4.2) to compensate for the loss of tidal freshwater mudflat ecosystems, of tidal habitat for four rare endemic plants, and of feeding habitat for the listed waterbird populations. Also, to verify whether additional nature reserves for waterfowl and for the protection of an adequate proportion of the original habitat can be created. Hence, in relation to compensation, questions arise in relation to (a) adequacy and (b) feasibility.

The Mühlenberger Loch

This site was designated by the German Government on 6 November 1992 for inclusion in the List of Wetlands of International Importance. The Ramsar Site, covering 675 ha, corresponds to the easternmost part of the Nature Reserve Nesssand (declared in 1952), a fluvial island, and to the Mühlenberger Loch Landscape Protected Area ("Landschaftsschutzgebiet" declared in 1982), an embayment of the tidal section of the river Elbe. In 1997, Mühlenberger Loch (750 ha) was designated by Germany as a Special Protection Area (SPA) according to the requirements of the European Union "Wild Birds Directive" (79/409/EEC). Furthermore, in the same year, 795 ha were proposed as a Site of Community Importance (SCI) according to the "Habitats Directive" (92/43/EEC). As the boundary restriction equally concerns the existing SPA, Germany requested the "Opinion of the Commission" mentioned above.

The Information Sheet on Ramsar Wetlands (RIS) and the Annotated List of Wetlands of International Importance (accessible at ramsar.rgis.ch/profiles_germany.htm) note that extensive mudflats are exposed at low tide. The ecological value of the Mühlenberger Loch derives from its rich primary and secondary bio-production. This makes a vital contribution to the natural cleaning processes of the eutrophicated waters of the river Elbe. The site supports four plant species endemic to freshwater tidal areas (*Deschampsia wibeliana*, *Oenanthe conivides*, *Xanthium albinum*, *Rumex triangulivalis*). The abundance of fish is a striking feature, and Mühlenberger Loch is an important breeding area for many native fish species. It is also an internationally important area for wintering and staging of several species of waterbirds and the most important staging area in Northern Europe for Shoveler (*Anas clypeata*). Human activities are restricted to controlled watersports and a ferry link.

Issues to be considered by the RAM

To examine whether the claim of "urgent national interest" of the development proposal is well-founded by drawing together as full a picture as possible of the reasons adduced by Germany for the "urgent national interest" applying in this case. And to assess whether the requirement in Article 2.5

of the Convention, that restriction of Ramsar site boundaries should occur only in the urgent national interest has been satisfied.

To assess whether the spirit of paragraph 3 of Resolution VII.23 "CONSCIOUS that the Conference of the Contracting Parties does not wish to encourage the deletion or restriction of the boundaries of Listed sites, preferring to see all feasible alternatives examined through rigorous and transparent assessments, in consultation with all stakeholders, before Contracting Parties exercise their right to take such action;" was applied when evaluating any other candidate areas for the proposed development.

To assess whether an appropriate impact assessment (cf. paragraph 12 of Resolution VII.23 cited above, and in the context also of Recommendation 6.2) as to the predicted direct and indirect impacts of the infilling of part of the Mühlenberger Loch (e.g. in terms of changes in hydrology and sedimentation/erosion) was undertaken, and to assess the full extent of the likely loss of values from the Ramsar site for which compensation needs to be provided.

To assess whether any candidate areas other than those put forward have been evaluated for compensatory provision as the basis for selecting those currently proposed as being the most suitable and appropriate for such compensation (i.e. Hahnöfer Sand, Twielenflether Sand and Haseldorfer Marsch).

To evaluate the relevance of the compensation measures proposed for Hörner Au, and whether they address the requirements under Article 4.2 for the creation of additional nature reserves for waterfowl. Hörner Au is already an existing nature reserve with planned management objectives for its habitat, different from that to be lost at Mühlenberger Loch, as part of an ongoing procedure.

To assess whether the total area proposed for compensation, approximately the same as that which is lost in Mühlenberger Loch, is sufficient for compensatory requirements. Since creation of intertidal habitats is difficult and imprecise, any appropriate compensation package should address the issue of uncertainty that the compensatory provision will provide what is necessary. To help in ensuring that the ecological functions will be fully compensated, a substantial margin of caution should be included.

To assess the likelihood of success of the compensation measures for the loss of freshwater mudflat ecosystems, for the loss of tidal habitat for the four endemic rare plant species, and for the loss of feeding and foraging habitat for the listed waterbird populations and other species using the area on migration. This includes assessing how delivery is going to be assured, e.g. through the nature of guarantees of long-term funding, sanctions for under-performance, or contingency plans.

To assess whether the compensation measures provide for monitoring and evaluation measures during and after the period of wetland restoration, in order to be able to conclude whether the compensation measures did succeed, notably in respect of the affected populations of rare endemic plants and waterbirds.

To assess whether the principle that any adequate compensatory provision should be made prior to any loss, as otherwise the carrying capacity of the system will be reduced in the interval, is being applied.

To evaluate if the necessary steps are being undertaken to afford legal protection to the compensation areas in line with the terms of Article 4.2.

Composition of the RAM

It is proposed that the Ramsar Advisory Mission will be composed of the following experts:

- Ramsar Bureau, Coordinator for Europe, Dr Tobias Salathe, leading the mission

- Ramsar Bureau legal expert, David Pritchard, BirdLife International
- Ramsar Bureau expert on mudflats ecology, Dr Mike Pienkowski
- Federal Ministry of the Environment, Germany, Dr Fritz Dieterich
- Environment Authority, Federal State Hamburg, N. N.
- Conservation NGO (NABU/BUND), Dr Uwe Westphal (and probably Manfred Braasch)
- European Commission expert, DG Environment, N.N.
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Planned timetable

Monday, 24 September

morning Arrival of the RAM members in Hamburg

13h00 Meeting in Hamburg: extensive briefing on the project and compensatory measures achieved, ongoing and planned

15h00 Departure for on-site visit Mühlenberger Loch (40 min drive)

16h45 Departure for on-site visit Hahnhöfer Sand (15 min drive)

18h00 Departure for return to Hamburg (60 min drive, arrival at 19h)

Tuesday, 25 September

09h00 Departure for on-site visit Haseldorfer Marsch (60 min drive)

11h00 Departure for on-site visit Hörner Au (60 min drive)

15h00 Departure for return to Hamburg after visit and lunch (90 min drive)

16h30 Arrival Hamburg: discussion and work in view of the preparation of conclusions and recommendations

Wednesday, 26 September

09h00 Final discussion and presentation of draft conclusions and recommendations

12h00 End of the mission

Return of international experts

Follow-up of the RAM

The experts designated by the Ramsar Bureau will write a draft report based on the findings of the mission and submit it to the Bureau. This draft report will then be circulated to all mission members for comments. Subsequently, the Ramsar Bureau will submit the consolidated report and its recommendations to the Federal Ministry of the Environment of Germany for comments.

Recommendation 4.7 on "Mechanisms for improved application of the Ramsar Convention" states in its second operational paragraph that "The Conference of the Contracting Parties DETERMINES that Monitoring Procedure reports shall be public documents once the Contracting Party concerned has had an opportunity to study the reports and comment on them." The Bureau will therefore make available the report on the website of the Convention (at ramsar.rgis.ch/index_ram.htm) and will include its findings and any comments received from the German Government in its report to the 8th Conference of the Contracting Parties (in November 2002)