

**COMPLAINT
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES
CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW**

1. Surname and forename of complainant:

Friends of the Earth (Northern Ireland)

2. Where appropriate, represented by:

Mr John Woods

3. Nationality:

British

4. Address or Registered Office:

7 Donegall Street Place, Belfast Northern Ireland BT1 2FN

5. Telephone/fax/e-mail address:

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E-mail: johnw@foe.co.uk

6. Field and place(s) of activity:

Environmental campaigning organisation working throughout Northern Ireland as part of Friends of the Earth England, Wales and Northern Ireland.

7. Member State or public body alleged by the complainant not to have complied with Community law:

The UK Government acting through the Department of the Environment in Northern Ireland (DOE) and the Department of Agriculture and Rural Development in Northern Ireland (DARD), which are the competent bodies in respect of the subject of this complaint.

8. Fullest possible account of facts giving rise to complaint:

The area of Strangford Lough in Northern Ireland is currently on the UK Government list for designation as a Special Area of Conservation (SAC) under the EC Habitats Directive (92/43/EEC). A major feature of this candidacy is the sublittoral *Modiolus modiolus*, biogenic reefs, known commonly as Horse Mussel beds. Such extensive beds are rare in the British Isles, and the immensely rich nutrient environment provides for numerous other species including Dublin Bay Prawns and mobile suspension feeders such as scallops. Strangford Lough is widely regarded as the "Jewel in Northern Ireland's conservation crown".

There has been widespread concern expressed for many years that fishing activity is damaging the Horse Mussel reefs. This concern culminated recently in the Department of the Environment Northern Ireland commissioning an independent report from Queens University Belfast (QUB). This report, known as the "Strangford Lough Ecological Change Investigation" (SLECI)

aims to identify the current conservation status of the Lough and any factors which may have contributed to change. The full report will be available in February 2004, however the interim report (copy attached), made available in December 2003 already provides evidence of extensive damage to the reefs during the past 15 years. The report is clear in that the Biogenic *Modiolus* reef feature in Strangford Lough is no longer in the 'Favourable Conservation Status' (FCS) as reported to the Commission. Urgent management action is needed to protect the few remaining *Modiolus* beds within Strangford Lough. In addition it is essential that measures are taken to repair the mussel reefs to favourable conservation status, or at the very least, to their status when the site was identified for the Commission under the Habitats Directive.

As evidenced by the QUB report, there has been significant damage to the *Modiolus* communities between 1993 and 2000. The extreme decimation of the Horse Mussel beds has been due to the trawling and dredging of the Lough in the process of fishing for scallops and prawns. Trawling is the preferred method of retrieval with respect to the Queen Scallops 'Queenies', which live amongst the Horse Mussel reefs. Dredging is used in the south part of the Lough for the King Scallops.

Friends of the Earth believe the situation is a clear breach of Articles 2 and 6 of the Habitats Directive.

Although the Department of the Environment (DOE) is responsible for formulating policy and regulation with respect to the Habitats Directive in Northern Ireland, the Department of Agriculture and Rural Development (DARD) is responsible for controlling coastal fisheries, including those of Strangford Lough.

DARD recently introduced a temporary ban on dredging/trawling in Strangford Lough, but only due to the threat by Friends of the Earth (see accompanying letters) of possible Infraction proceedings following any complaint to the Commission. Further, DARD have emphasised the temporary nature of the ban and Friends of the Earth are concerned that it will be lifted shortly resulting in the disappearance of remaining Horse Mussel reefs.

In addition, Friends of the Earth is concerned that neither DOE nor DARD will take appropriate measures to repair the Horse Mussel reefs to their FCS without intervention by the Commission.

Friends of the Earth is of the view that the extensive damage sustained in Strangford Lough is not only a clear breach of the non-deterioration obligation under Article 6 of the Habitats Directive, but also reflects more generally the cavalier attitude of both DOE and DARD towards their EU Law obligations under the Habitats Directive in relation to both candidate SACs and designated SPAs.

We understand that as many as 50% of the candidate SACs in Northern Ireland have experienced significant damage, and we are concerned at what appears to be a profound culture of neglect and lawlessness in Northern Ireland concerning compliance with the Habitats Directive. Evidence in support of Friends of the Earth's concerns, not only in relation to Strangford Lough but also SACs throughout Northern Ireland, is contained in the Report

by the Comptroller and Auditor General (March 2003) on Areas of Special Scientific interest (ASSIs). SACs also have the domestic designation of ASSI.

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

The DOE and DARD are in breach, in practise, of their obligations under Articles 2 and 6 of the Habitats Directive (Council Directive 92/43/EEC). Under article 2 (2), the compensation obligation, the UK Government, as signatory agreed to be bound by the following 'measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of community interest'.

Similarly, under Article 6, the UK Government agreed to the non-deterioration obligation, which clearly and unambiguously requires that Member States; '(shall) take the appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as 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'.

Although it is UK government policy to afford candidate SACs the protection of the Habitats Directive, the authorities in Northern Ireland do not comply with this obligation in practice.

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

Support has been received via the LIFE Programme. The following is a quotation from the Strangford Lough Management Scheme produced by DOE and DARD (October 2001)

The LIFE Programme is the financial instrument used to support European Community environmental policy. LIFE funding matched by funding from the UK's nature conservation bodies supported the 'UK Marine SACs Project'. This Project involved twelve Natura 2000 sites selected as pilot areas for the development of SAC / SPA Management Schemes. Strangford Lough was one of these sites. The Marine SACs Project was a partnership between Environment and Heritage Service, the Countryside Council for Wales, English Nature, Scottish Natural Heritage, the Joint Nature Conservation Committee and the Scottish Association for Marine Science. The Marine SACs Project commenced in May 1996 and ended in May 2001. During this time each site should have developed and established an operational management scheme.

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):
 - Letters dated 25 and 28 November 2003 to Mr Georges Kremlis from Mr John Woods, Friends of the Earth (attached).

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

None.

13. Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

- Letter dated 24 November 2003 to Mr Ian Pearson MP (Minister for DARD) from John Woods, Friends of the Earth (attached).
- Letter dated 27 November 2003 to Mr Ian Pearson MP (Minister for DARD) from John Woods, Friends of the Earth (attached).

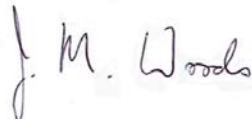
14. Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

- Interim Report 'Strangford Lough Ecological Change Investigation' prepared by Dr D Roberts, School of Biology and Biochemistry, Queen's University Belfast, December 2004. (Full Report to follow in February 2004)
- Strangford Lough Management Scheme, EHS for DOE and DARD, 2001
- Northern Ireland Audit Office, Areas of Special Scientific Interest, Report by Comptroller and Auditor General, March 2003.

15. Confidentiality (tick one box):

- a. "I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Signed



John Woods

Date January 2004