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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 1-4 December 2020

Other complaints

**Border fence construction between Denmark
and Germany**

- REPORT BY THE GOVERNMENT -

*Document prepared by the
Ministry of the Environment and Food, Denmark*

NOTAT



Arter og Naturbeskyttelse
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Comments of The Danish EPA to the complaint by WWF Denmark and WWF Germany regarding the construction of the wild boar fence at the border between Denmark and Germany

1. Introduction

On 15 January 2020, the Secretariat of the Bern Convention forwarded a complaint submitted jointly by WWF Denmark and WWF Germany to the Focal Point to the Bern Convention for Denmark under the Ministry of Environment and Food of Denmark. The complaint has been forwarded to The Danish Environmental Protection Agency (The Danish EPA) for comments.

In the complaint, WWF Denmark and WWF Germany (the complainants) express their concern for the migration and conservation of species covered by the Bern Convention, referring to article 4.1, 4.3, and 4.4 and article 6 in the Convention. They find that the Danish wild boar fence will affect species covered by the convention negatively and that areas protected by national legislation and by part of the Natura 2000 network and the UNESCO World Heritage Site (the Wadden Sea) will be affected.

This note consists of The Danish EPA's comments to the complaint submitted by the WWF Denmark and WWF Germany. In the following section, the Danish EPA firstly outlines the background for the construction of the wild boar fence. Hereafter follows the comments to the different themes in the complaint.

2. The background to the construction of the wild boar fence

On 25 April 2018, the Government of Denmark presented a proposal for an act on a wild boar fence along the border between Germany and Denmark to the Danish Parliament, which is one of the initiatives to hinder the African swine fever spreading via wild boar into Denmark. The proposal for the act states that the Danish Nature Agency is responsible for the planning of the fence and before the construction; the Danish Nature Agency must apply for a permission. The Danish EPA is responsible for the assessment of the application and in this respect; the Danish EPA must ensure that the project will be carried out in accordance with national and international environmental legislation. The Danish EPA must also ensure that possible impacts on rivers, streams, lakes, wetlands, protected nature and species are assessed. Based on that assessment the Danish EPA can issue a permission. According to the act a permission can only be issued, if it can be excluded that the project will affect Natura 2000 sites.

The timeline for the decision of the wild boar fence is as follows:

On 1 June 2018, the Danish Nature Agency forwards an application for a wild boar fence to the Danish EPA and on 4 June 2018, the Danish EPA sends the application to other national authorities and the relevant municipal authorities for comments.

On 4 June 2018, the Danish Espoo Point of Contact courteously inform the German Espoo Point of Contact of the Danish project to set up a fence along the German-Danish border. Further, they inform that the Danish authorities is of the understanding that the fence is not covered by appendix I to the Espoo Convention which lists constructions where contracting parties should inform other relevant contracting parties.

On 8 June 2018, the Danish Parliament adopts the Act on the Wild Boar Fence.

On 22 June 2018, the Danish EPA sends a draft permission to construct the fence in public consultation until 18 July 2018. After the deadline the received comments are examined carefully, and the Danish EPA revise the permission where necessary to address the comments received. The Danish-German Border River Commission has also been consulted in the process.

On 2 August 2018, a meeting between German and Danish authorities is held at Rødekro in the south of Jutland, near the border. The Danish authorities inform the German authorities on the planned technical construction of the fence and on the thorough assessment of the possible consequences for habitat types and relevant species along the fence line. The Danish authorities forward the application and later the permission translated to the German language to the German authorities.

On 13 August 2018, the Danish EPA issues the final permission to the Danish Nature Agency to construct the wild boar fence.

On 29 August 2018, the German ESPOO authorities inform the Danish EPA that they share the view that the construction of the fence at the Danish-German border is unlikely to have any significant adverse cross-border effects on German territory.

On 23 January 2019, the Danish Nature Agency starts the construction of test tracks and on 15 March 2019, the test tracks were approved. Therefore, construction of the wild boar fence was started.

On 2 December 2019, the construction of the fence was finished.

3. Comments to questions regarding the design, construction and maintenance of the wild boar fence

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form:

- How will the planned small “fauna passages” (20x20 cm holes at ground level at every 100 meters) be maintained free of vegetation and how will this ongoing maintenance disturb e.g. sensitive breeding species such as Eurasian bittern and Common crane – especially inside or in nearby protected areas?
- How will the construction of the fence disturb resting and breeding sites of species on the appendices of the Bern Convention?
- Human disturbance of sensitive habitats important for wintering, staging, feeding, breeding and moulting when construction and maintaining the fence and its functions.
- Inspection and maintenance will increase human traffic and use of machinery at e.g. breeding sites of water birds and cranes.
- We also urge the Bern Convention to lay upon the Danish authorities to develop a clear plan for ongoing evaluation and ask for annual reporting to the convention on the effects of this Danish border fence on species in concern, populations and protected habitats

- Why has relevant and available information from the Danish road authority on barrier effects from fences on wildlife not been included in the Natura 2000 screening?
- According to our information the Danish Road Directorate (<https://www.vejdirektoratet.dk/>) have relevant information from Denmark on barrier effects on native wildlife of road fences and similar constructions. This information has not been used in the Natura 2000 screening.

The Danish EPA can inform that the wild boar fence is 68 km long. Approximately half of the fence is 1.5 m high. Approximately 23.8 km of the fence is 1.20 m high and approximately 5.6 km of the fence is 1 m high.

The mesh size of the fence is 5 cm x 20 cm. However, the Danish Nature Agency is currently adjusting the design of the fence which includes approximately 600 m of the fence in which the mesh size of the top 60 cm of the fence will be 2,25 cm x 20 cm in order to ensure deer being able to jump across the fence freely.

In order to allow other species to pass the fence, the fence have 20x20 cm openings for each 50-100 meters. The Danish Nature Agency will according to the conditions of the permission, maintain the fence including the 20 x 20 fauna passages. Woody vegetation, which may grow along the fence, will be removed during the life span of the fence, where this becomes an obstruction to animal passage through the openings. Grasses and herbaceous vegetation will be allowed to develop along the fence. This is because various animal species will move through this vegetation and to some extent; this may become a protective cover. The Danish Nature Agency has during the monitoring of the fence observed that animal tracks already has been established through these openings, potentially tracks from medium sized mammals, such as fox and hare.

The fence is placed on the Danish territory at least 1-2 meters from riversides and lakes in order to take account of potential impacts on rivers, streams and lakes, wetlands and protected nature and species. There are openings in the fence, where roads, railways and rivers cross and openings in urban areas. The fence stops 2-50 meters from the roads, 5-10 meters from railways, 1-2 meters from rivers and in urban areas the fence stops at the cadastral boundaries of properties.

The construction phase for the fence along the norther side of Magisterkog was carried out outside the main bird-breeding season (15 March 2019 – 15 July 2019). The potential disturbance from the construction of the fence was assessed to cause local short-term disturbance of insignificant effect.

Maintenance of the fence will be carried out when required. Potential disturbance from maintenance are characterized by being of very short-term and thus have minor local disturbance. However, in specific cases, additional assessments in accordance with the Habitats Directive, will be carried out.

To ensure the function of the fence is upheld and as part of the structural maintenance of the fence, the Danish Nature Agency carries out surveys of the fence. The aim of the monitoring include detecting wild boar crossings, where repairs may be required and identifying sections with potential issues such as animal welfare.

The construction line of the fence avoid areas of importance to birds in general and where appropriate follow existing fence lines, dykes, roads and canals in the landscape. The fence line runs north of Frøslev Mose, Rudbøl Sø and Magisterkogen and thus avoids these areas.

Defensive measures such as special choice of machines, tire pressure and steel plates were used when needed. Approximately 8 km of the fence has been placed by hand.

The Danish Nature Agency used relevant and available information in their application. This includes a guideline on fauna passages from the Danish Road Directorate¹ (see chapter 4.4 of the application). The Danish Road Directorate (Vejdirektoratet) and the Danish Transport, Construction and Housing Authority (Trafik-, Bygge- og Boligstyrelsen) were included in the hearing of relevant authorities. The Danish Transport, Construction and Housing Authority did not provide any comments. The Danish Road Directorate responded during the hearing with remarks covering mainly the distance between roads and the fence line from a road safety aspect, due to the risk of vehicle collision with crossing animals. The Danish Road Directorate granted dispensation from The Danish Road Legislation² allowing fencing near public roads. A local dialog was held with the relevant municipal authorities, in their role as the local road authorities for minor roads.

4. Comments to questions regarding the Natura 2000 screening

The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) was adopted on 19 September 1979 in Bern, Switzerland. In Denmark, the Bern Convention entered into force on 1 January 1983. As stated in article 1, subsection 1) and 2) of the Bern Convention, the aims of the Convention are to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation. Particular emphasis is given to endangered and vulnerable species, including endangered and vulnerable migratory species.

The contracting parties has agreed to e.g., take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level, which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally (article 2 of the Bern Convention). Furthermore contracting parties has agreed to take steps to promote national policies for the conservation of wild flora, wild fauna and natural habitats, with particular attention to endangered and vulnerable species, especially endemic ones, and endangered habitats, in accordance with the provisions of this Convention (article 3.1).

The contracting parties has also agreed to e.g., take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats (article 4.1). Furthermore, undertake to give special attention to the protection of areas that are of importance for the migratory species specified in Appendices II and III and which are appropriately situated in relation to migration routes, as wintering, staging, feeding, breeding or moulting areas (article 4.3. Moreover, undertake to co-ordinate as appropriate their efforts for the protection of the natural habitats referred to in this article when these are situated in frontier areas (article 4.4). The contracting parties has also agreed to e.g., take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II (article 6).

The appendices of the Bern Convention provide the lists of wild flora and animal species that are protected by the Convention. Appendix I lists the strictly protected flora species. Appendix II lists the strictly protected fauna species. Appendix III lists the protected fauna species and Appendix IV states prohibited means and methods of killing, capture and other forms of exploitation.

Later in section 5 of this paper, the Danish EPA will comment on the specific complaints concerning the specific species covered by Appendix II and III of the Convention.

¹ Vejdirektoratet 2011. "Fauna- og menneskepassager - en vejledning". Vejregel 30th June 2011

² Vejloven § 40 Lov nr 1520 af 27. dec. 2014

The Bern Convention has been implemented at the EU level by both Birds Directive³ and the Habitats Directive⁴, and provide a common framework for the conservation of wildlife and habitats within the EU and are the key EU legal instruments for maintaining the biodiversity of the Members States. The directives represent a legal framework for the EU Natura 2000 network. Thus, the procedure in relation to issue the permission to construct the wild boar fence has followed the permit procedure set out in the Habitats Directive article 6.3. According to the Danish act on the wild boar fence adopted on 8 June 2018 in the Danish Parliament, a permission to construct the fence can only be issued, if it can be excluded that the project will affect Natura 2000 sites.

In the following, the Danish EPA submit its comments to the complaint outlined below.

Complaint form:

- To the best of our knowledge, the Natura 2000 screening does not assess these conditions of the Bern Convention to a fulfilling and scientifically based level, no matter that this is required by the relevant EU Guidelines.
- How will the fence affect habitats and species in the globally important Wadden Sea (UNESCO World Heritage Site, N2000), and the EU-protected areas Tøndermarsken (N2000) and Frøslev Mose/Jaardelunder Moor (N2000) ?
- Although this Natura 2000 screening was incomplete and did not use available scientific information, it concluded in all circumstances that the fence will have no effects on wildlife or habitats. Thus, an appropriate assessment has not been made. WWF Denmark and WWF Germany disagree with the conclusions of the Natura 2000 screening and still call for an appropriate assessment.

The Danish EPA is of the opinion that; the Natura 2000 screening in question does assess the conditions of the Bern Convention. The Danish Nature Agency has conducted a very thorough Natura 2000 screening in accordance with the Habitats Directive – including Birds Directive. Hence, the Natura 2000 screening is comprehensive and contains the level of assessment, which normally is included in an appropriate assessment according to article 6.3 in the Habitats Directive. In that regard the content of the application from the Danish Nature Agency, include:

- 1) A description of the planned design of the fence and a description of the construction line.
- 2) A description and assessment of the potential effects of the fence in the relevant Natura 2000 sites – related to all species and all habitat types, which the areas are designated to protect.
- 3) A description and assessment of the potential effects on all relevant species on Annex IV to the Habitats Directive.
- 4) A description and assessment on the potential effects on nationally protected nature areas
- 5) The descriptions of the potential effects covers the construction phase as well as the phase after it is installed.

Thus, all the species and nature types are considered and assessed in each of the habitat sites. In addition, the permission has evaluated these assessments in relation to potential adverse effects and in relation to the conservation objectives in the Danish Natura 2000 management plans for the individual site. Moreover, it is assessed that the construction of the fence will not impair the possibility to obtain

³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

the conservation measures and the overall goal of getting favourable conservation status. The Danish EPA has in the permission assessed that the fence does not have a significant effect on the Natura 2000 sites concerned, either individually or in combination with other plans or projects and thus, in line with the precautionary principle.

Hence, habitats and species in the globally important Wadden Sea, Tøndermarsken and Frøslev Mose/Jaardelunder Moor have been assessed thoroughly. As for the Wadden Sea, UNESCO World Heritage Site, this particular protection consists of the protection of the Habitats Directive and covers no additional particular protection of species and habitat types.

5. The specific species addressed in the complaint

The 14 species mentioned in the complaint are: Grey wolf, Eurasian otter, The Eurasian bittern, Common crane, Beech marten, Pine marten, Eurasian badger, Stoat, Western polecat, all species of deer Cervidae (European roe deer, Fallow deer, Red deer) and Lynx. These species will be commented on in the following subsections.

5.1 Grey wolf ⁵

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form:

- What is the scientific evidence for free passage of e.g. wolf *Canis lupus* og deer Cervidae
- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- To what extend will a wolf jump over a very visible fence of this type? Conclusions must be based on scientific evidence and not the anecdotal assumptions as they are made in current Natura 2000 screening.
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?
- Separation of populations of larger mammals caused by the physical barrier of the fence. Badger, otter, wolf will most likely not jump over a fence due to its solid visual impression.
- Increased traffic mortality of mammals – also other species on the Habitats Directive – if as expected by WWF Denmark, the fence lead animals towards openings at roads and high ways. As an example, of four Danish wolf cubs from the 2018 litter two have already been documented killed in traffic, in Germany. Traffic mortality is therefore a potential risk for the still very small Danish wolf population (6-8 animals and presumed new cubs in 2019). It is well documented that the is an ongoing migration of wolves from Germany to Denmark and vice versa.
- In addition, the mortality of the Danish wolf population is already unnatural high, probably due to poaching, so any increase of mortality risk will be unfavorable to the species conservation in Denmark.

Appendix II under the Bern Convention (strictly protected fauna species) protects the Grey wolf. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on wolves, the Danish EPA has taken article 6 of the Bern Convention into account (Appendix II).

Annex II and Annex IV under the Habitats Directive also protects the Grey wolf.

⁵ *Canis lupus/Ulv*

The application of the Danish Nature Agency (chapter 7.7) consist of an assessment of the impact of the fence on wolves, in which it is concluded that construction and operation of a wild boar fence as described will not cause a significant disturbance on wolves, who may stay or wander through areas near the fence. Cross border migration and movement is thus possible via the openings of the fence at crossing roads, railways etc.

The fence have more than 20 openings at crossing roads, railways etc. and will not hinder the free passage of wolf. Wolves are considered a highly mobile mammal and German studies have concluded that wolves are able to travel up to approximately 70 km a day. Thus, it is the assessment of the Danish EPA that stray wolves will be able to use the fence as a guideline to the nearest opening at e.g. crossing roads.

An electric fence is able to prevent wolves from “entering” the fence⁶. The wild boar fence is not electric and thus, the barrier effect of the fence itself is limited.

The abovementioned assessment is applicable to the construction phase, a following maintenance and finally during dismantling of the fence. The construction of the fence was performed during daytime and considering that wolves travel, long distances, during night-time the project will not pose as a significant disturbance towards wolves, on sites where they are registered to be breeding and resting.

It is the assessment of the Danish EPA that wolves are able to pass the fence and thus the fence will not have an effect on gene pools on the long term of wolves.

In conclusion, the assessment is that the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of wolves. Furthermore, due to the construction and operation of the wild boar fence as described the fence is not expected to increase traffic mortality of wolves.

5.2. Eurasian otter ⁷

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form:

- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- Which mammal species are documented to pass through such 20x20 cm fauna passages?
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?
- Separation of populations of larger mammals caused by the physical barrier of the fence. Badger, otter, wolf will most likely not jump over a fence due to its solid visual impression.

Appendix II under the Bern Convention (strictly protected fauna species) protects the Eurasian otter. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Eurasian otter, the Danish EPA has taken article 6 of the Bern Convention into account (Appendix II).

The Eurasian otter is assessed that the living spaces in or along the watercourses will not be affected because the fence will have openings where the watercourses pass and will not be placed closer 1-2 m to the watercourse. Furthermore, the Eurasian otter will be able to pass through the openings (20x20cm) in the fence (every 50-100 m) and thus, the fence will not hinder the free passage of the Eurasian otter.

⁶ The Danish Nature Agency 2014. Management plan for wolves in Denmark.

⁷ Lutra Lutra/Odder

It is the assessment of the Danish EPA that the Eurasian otter is able to pass the fence and thus the fence will not have an effect on gene pools on the long term of Eurasian otter.

In conclusion, the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of the Eurasian otter.

5.3. The Eurasian bittern⁸ and Common crane⁹

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- What is the evidence for young chicks of breeding birds – especially cranes – will pass through such 20x20 cm openings, and at what age can they not pass anymore. What will be the compensating measures after such age?"
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

Appendix II under the Bern Convention (strictly protected fauna species) protects the Eurasian bittern. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Eurasian bittern, the Danish EPA has taken article 6 of the Bern Convention into account (Appendix II).

Annex I under the Birds Directive protects the Common crane. This means, that the species mentioned in Annex I, shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Common crane, the Danish EPA has taken article 4 of the Birds Directive into account.

The birds can overfly the fence easily. As for a potential risk of collision for birds, that fly very low it is not considered to be higher than other risks in the life of a bird and not to raise the mortality rate above the natural mortality rate. Birds with offspring can pass through the small holes (20X20 cm) and openings in the fence, which means that the fence will not act as a barrier for their passing of the area.

It is the assessment of the Danish EPA that the Eurasian bittern and Common crane are able to pass the fence and thus the fence will not have an effect on gene pools on the long term of the Eurasian bittern and Common crane.

In conclusion, the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of Eurasian bittern and Common crane.

5.4. Beech marten, Pine marten, Stoat, Western polecat¹⁰

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

⁸ Botaurus Stellaris/Rørdrum

⁹ Grus Grus/Trane

¹⁰ Martes foina/Husmår, Martes martes/Skovmår, Mustela ermine/Lækat, Mustela putorius/Ilder

Complaint form

- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- Which mammal species are documented to pass through such 20x20 cm fauna passages
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

Appendix II under the Bern Convention (strictly protected fauna species) protects the Beech marten. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Beech marten, the Danish EPA has taken article 6 of the Bern Convention into account (Appendix II).

Appendix III under the Bern Convention (protected fauna species) protects the Pine marten, the Stoat and the Western polecat. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2 of the Convention. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Pine marten, the Stoat and the Western polecat, the Danish EPA has taken article 7 of the Bern Convention into account (Appendix III).

It is the assessment of the Danish EPA that the small animals can pass through the small holes in the fence (5x20 cm) which means that the fence will not act as a barrier for their passing of the area. The animals that are a bit bigger will be able to pass through the openings (20x20) in the fence (every 50-100 m).

It is the assessment of the Danish EPA that the Beech marten, Pine marten, Stoat and Western polecat are able to pass the fence and thus the fence will not have an effect on gene pools on the long term of Beech marten, Pine marten, Stoat and Western polecat.

In conclusion, the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of the Beech marten, Pine marten, Stoat and Western polecat.

5.5. Eurasian badger ¹¹

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- What is the scientifically based assessment on risks for traffic mortality if species (e.g., European badger *Meles meles*) does not jump over the fence but follow it to the openings planned in connection with roads and highways?
- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

Appendix III under the Bern Convention (protected fauna species) protects the Eurasian badger. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of

¹¹ *Meles meles*/grævling

danger, taking into account the requirements of Article 2 of the Convention. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Eurasian badger, the Danish EPA has taken article 7 of the Bern Convention into account (Appendix III).

The Danish EPA is of the assessment that the Eurasian badger will be able to pass through the openings (20x20) in the fence (every 50-100 m) and will mainly use these passages. However, if the Eurasian badger should use the openings near properties or roads, it should be noted, that the fence stops 2-50 meters from the roads and thus, it is possible for the Eurasian badger to cross the fence without entering the roads.

It is the assessment of the Danish EPA that the Eurasian badger is able to pass the fence and thus the fence will not have an effect on gene pools on the long term of the Eurasian badger.

In conclusion, the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of the Eurasian badger.

5.6. Deer Cervidae; European roe deer, Fallow deer, Red deer¹²

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

Appendix II under the Bern Convention (strictly protected fauna species) protects the Red deer. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the Red deer, the Danish EPA has taken article 6 of the Bern Convention into account (Appendix II).

Appendix III under the Bern Convention (protected fauna species) protects the European roe deer and the Fallow deer (cervidae/all species). This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2 of the Convention. By having conducted a very thorough Natura 2000 screening- including a thorough assessment of the impact of the fence on the European roe deer and the Fallow deer (cervidae/all species), the Danish EPA has taken article 7 of the Bern Convention into account (Appendix III).

It is the assessment of the Danish EPA, that the fence will not have an impact on the total population of deer, but maybe movement pattern of the deer can be affected. The fence will not hinder the free passage of deer. As mentioned above in section 3, the Danish Nature Agency is currently adjusting the design of the fence that includes approximately 600 m of the fence in which the mesh size of the top 60 cm of the fence will be 2,25 cm x 20 cm in order to ensure deer being able to jump across the fence freely.

It is the assessment of the Danish EPA that deer is able to pass the fence and thus the fence will not have an effect on gene pools on the long term of deer.

¹² Capreolus capreolus/Rådyr, Dama dama/Dådyr, Cervus elaphus/Kronhjort

In conclusion, it is assessed that the wild boar fence will not negatively affect the migration and conservation nor cause fragmentation of populations of deer.

5.7. Eurasian lynx ¹³

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?
- How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

Appendix III under the Bern Convention (protected fauna species) protects the Eurasian lynx. This means that contracting parties shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2 of the Convention.

The Eurasian lynx has not migrated into Denmark and therefore has not been subject to an assessment in the conduction of the fence project. Furthermore, if the Eurasian lynx were to migrate into Denmark near the fence, it is the assessment that the Eurasian lynx is able cross the fence either by jumping over the fence or pass via the openings of the fence at crossing roads, railways etc. Thus, it is the assessment of the Danish EPA that Eurasian lynx is able to pass the fence and the fence will not have an effect on gene pools on the long term of the Eurasian lynx nor will the wild boar fence have negatively effect on the migration and conservation nor cause fragmentation of populations of the Eurasian lynx.

6. Comments to questions regarding climate change effects

The complainant has addressed the effects of the current and coming climate change in relation to the fence. Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- To what extend will the fence contribute to the current and coming climate change induced stressors on species, populations and habitats?
- What are the cumulative effects of the fence of each concerned species and in total for the integrity of concerned ecosystem and habitats also taking effects of climate change in to account?
- Climate change induced stressors on species, populations and habitats have not been assessed and whether this adds to the cumulative effects of the fence.

The Danish EPA is aware of the fact that current and coming climate changes can have an impact on the species and habitat types in general. The question of the exact effects on the different species and habitat types in general has not been documented scientifically. Therefore, it is not possible to assess whether the fence will contribute to the effects related to the current and coming climate changes.

7. Comments to questions regarding legal complaints, public hearing and the EU

¹³ Lynx lynx/Europæisk los

Commission

The complainants have had some remarks concerning legal complaints, complaints during the public hearing and questions from the EU Commission.

Firstly, the questions in the complaint are cited. Hereafter follows the comments from the Danish EPA.

Complaint form

- With the decision of the fence, the Danish government also implemented a law for the construction of the fence (<https://www.retsinformation.dk/Forms/R0710.aspx?id=201903>). Very unusual, this law has removed all possibilities for making legal complaints about the fence, the procedures and protection of species and habitats. This also includes complaints to national authorities covering species and habitats already protected by the Natura 2000 directives. Thus, we see no other solution than to submit this complaint to the Bern Convention.
- The Danish Environmental Protection Agency has dismissed all complaints made by WWF Denmark during the public hearing.
- The national law for the construction of the fence removed all normal procedures for making national complaints even in relation to international protection measures such as the Habitats Directive.
- WWF Danmark has during the public hearing complained to the Danish authorities that they have not fulfilled the requirements of the Habitats directive by ensuring a valid and scientifically based non-detrimental screening (Natura 2000 screening) before initiating the construction of the fence. The screening made does not meet the requirements of EU's guidelines and does not make scientific reference as required.
- The EU Commission has earlier asked Danish government for status of an appropriate assessment in accordance with the Habitats Directive, but no direct answer has been made to the Commission.

According to the Danish act on a wild boar fence complaints cannot be appealed to the Danish Board of Appeal for environment. This is due to the decision in the Danish Parliament that they wanted to erect the wild boar fence as soon as possible, because it was not known how quickly the African swine fever could spread via wild boar from other countries into Denmark.

The Danish act on a wild boar fence section 10.1, appeals for review of permit and verdicts under this act can be brought to court within 6 months of notification to the addressee. Thus, the act on a wild boar fence did not remove all possibilities for making legal complaints about the fence, the procedures and protection of species and habitats. Furthermore, the act is assessed to comply with the Aarhus Convention article 9.2 and article 9.3. on access to justice¹⁴.

All received comments after the hearing has been examined carefully and in relation hereto, the Danish EPA revised the permission where necessary to meet the comments received. Both, the comments received and the summary note are available on the homepage of the Danish EPA.

The Danish EPA cannot confirm that the EU Commission has forwarded any questions to the Danish government or Ministry of Environment and Food concerning an assessment in accordance with the Habitats Directive. Of course, the ministry would have replied if such a question had been received.

¹⁴ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, June 25 1998)