Picture: Sami Kivistö

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POLICY RECOMMENDATION

Industrial-scale cutting of common reed

– water law solutions

This policy recommendation presents legal solutions to enable industrial-scale harvesting of reed in water areas. Well-planned harvesting can improve the biodiversity of coastal areas, help in nutrient removal, and provide sustainably produced raw material for the production economy. We recommend minor amendments to the Water Act (VL 587/2011) to increase clarity.

Industrial-scale harvesting of reed is possible under current legislation, but usage rights issues and environmental impacts must be carefully resolved, for which we have developed solutions in this policy recommendation. Minor changes to the Water Act could clarify the legal requirements for cutting and harvesting projects and facilitate their implementation.

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The needs for and impacts of reed cutting

It is necessary to cut common reed to prevent reed bed formation in shore areas and ensure biodiversity. Industrial-scale cutting can serve economic and nature conservation needs, but its environmental impacts depend on the method of implementation.

Possible applications:

Common reed can be utilised in a variety of ways as fertilizer, building material and biofuel, and in highly processed products, such as biochar and bioplastics, for example.

Legal challenges

The challenges are related to the fragmentation of water area ownership, the arrangement of rights of use, exceeding the permit threshold, the unsuitability of the notification procedure for large-scale projects, the difficulties in establishing rights of use and environmental impact assessment.

SOLUTIONS

- **Incorporating large-scale cutting into nuisance removal measures:** This change would allow industrial-scale cutting to be implemented as a nuisance removal measure, which would facilitate the permit process.
- **Clarifying the Water Act in terms of the need for rights of use:** A clarification indicating that certain types of projects, such as large-scale cutting projects, do not require a right of use to the project area would facilitate project implementation.
- **Including cutting projects in the criteria for granting minor rights of use:** This would allow for granting limited rights of use for cutting projects, which would facilitate the permit process and the arrangement of rights of use.

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Introduction

This policy recommendation presents legal solutions to enable the industrial-scale cutting of common reed in water areas. It 1) analyses the legal regulation of using bodies of water and 2) presents proposals for developing legal interpretation and legislation. The conclusion is that it is possible to organise industrial-scale cutting of common reed based on the current legislation. That said, it is recommended to make minor amendments to the Water Act (587/2011) to clarify the matter.

The industrial-scale cutting of common reed is an activity that results in the possibility of using the reed as a raw material for industry. The cutting is extensive and typically takes place in coastal waters. Common reed can be utilised, for example, as a raw material for fertiliser products and the construction industry, as biofuel and in highly processed products. Thus far, both the scale of the cutting and the industrial utilisation of common reed has been minor.

The cutting of common reed must adhere to the provisions of the Water Act. Furthermore, the Nature Conservation Act (9/2023) is applied if the cutting takes place in a protected area or if it may otherwise affect nature conservation values. The Water Act includes provisions on the need for permits for water resource management projects and rights to use another party's water area. Water resource management projects are typically water extraction or hydraulic engineering projects with clearly defined boundaries and impacts. The Water Act does not contain any specific provisions for common reed cutting projects, and the preparation of the law did not account for such regionally extensive and periodically recurring activities.

Small-scale common reed cutting projects have not required a permit under the Water Act. In practice, they have been carried out as nuisance removal projects based on the consent of the water area owner or a notification pursuant to the Water Act (1:15). The consent of the owner of the water area is not required to remove a nuisance, but the owners must be notified of the measure in advance. In all likelihood, industrial-scale cutting cannot be considered a nuisance removal project under the Water Act, but managing its impacts and arranging usage rights may require a water permit.

The fragmentation of water area ownership is a challenge in organising the usage rights needed for reed cutting. Large-scale projects can take place in multiple water areas, and water area owners are often not organised into joint property management associations. It is difficult to reach numerous water area owners in a way that would allow obtaining their consent for the cutting activities or even be able to notify all of them.

Firstly, this policy recommendation provides a description of the needs and impacts of common reed cutting (Chapter 2). This is followed by an examination of the legal regulation of cutting activities in Finland (Chapter 3) and an overview of the legislation in Sweden and Åland (Chapter 4). Finally, the development needs and solutions for national law are presented (Chapter 5) and conclusions are drawn (Chapter 6).

The needs for and impacts of common reed cutting

Common reed is a perennial grass. The number of reed beds has increased dramatically in the coastal areas of Southern Finland due to eutrophication of water bodies, reduction in shore area grazing, climate change and changes in land use. The estimated area of reed beds in Southern Finland is 30,000 hectares. Therefore, the possibilities for cutting common reed are good, and cutting is often needed to prevent reed growth in coastal areas (ELY Centre, Common reed data bank; Klemola – Härjämäki – Pihlaja 2013).

Currently, the scale of common reed cutting is minor and it usually takes place in the summer. The value chain for utilising reed is underdeveloped and further use is often unprofitable. In order to develop value chains and further use, the availability of reed material should be consistent and the cutting areas should be more extensive than they currently are (Joensuu et al. 2014).

If implemented correctly, the industrial-scale cutting of common reed can serve economic, environmental and nature conservation needs. However, its environmental impacts depend on the implementation method. If carried out incorrectly, the cutting can increase nutrient loading and deteriorate the habitats of species, for example.

Picture: Kaisa Lappalainen

Possible uses of common reed

Common reed is a versatile material. It can be used in agriculture and horticulture as bedding, substrate, fertilizer and soil conditioner. In construction, reed can be used as a roofing or insulation material and, in energy production, at combustion plants or as a biogas raw material (ELY Centre, Common reed data bank).

It is also possible to produce biochar and highly processed products from reed. Biochar can be utilised in the battery and metal industries, in water treatment and as a carbon store, for example. Reed products can serve as raw materials for, among other things, the production of bioplastics, the pharmaceutical and textile industries, and cosmetic products (Hyvärinen 2017; Alho et al. 2023).

Environmental impacts of reed growth

The overgrowth of reed in water bodies has harmful effects on biodiversity, recreational use and water quality. Biodiversity dwindles in large contiguous reed beds. The Programme of Measures of the Marine Strategy in Finland mentions the removal of common reed as one of the measures to improve the state of habitats (Programme of Measures of the Marine Strategy in Finland 2022–2027).

Endangered bird species that thrive in open coastal areas, such as waders, have been particularly affected by the overgrowth of coastal areas. Among the habitat types, reed encroachment has a particularly detrimental effect on the habitat type of low-growing water-meadows (ELY Centre, Common reed data bank).

The environmental impacts of cutting

If done correctly, the cutting of common reed can improve the condition of species' habitats and water bodies. Cutting makes it possible to restore habitats in open coastal areas and remove nutrients from the water. At the same time, the recreational opportunities of water bodies and the coastal landscape can be improved.

In order for the cutting to result in positive environmental impacts, it must be carried out carefully. Among other things, the implementation must take into account the breeding season and habitat requirements of reed-dwelling species. In rotational cutting, part of the reed bed is left as a habitat for species and part is cut every 3–5 years, which makes it possible to maintain the diversity of the reed bed structure (ELY Centre, Common reed data bank).

The effects of cutting on nutrient loading and water flows must be assessed carefully. On the one hand, cutting reeds can remove nutrients and improve water flow. On the other hand, poorly implemented cutting can release nutrients and other harmful substances, such as microplastics, bound to the reeds into the water body (Programme of Measures of the Marine Strategy in Finland 2022–2027; Klemola – Härjämäki – Pihlaja 2013).

Needs to coordinate interests

Coastal areas are subject to a variety of interests from environmental values to recreational use, which must be taken into account when planning and implementing reed cutting projects. Carefully implemented industrial-scale cutting can not only serve the commercial utilisation of common reed but also improve coastal areas habitats and the condition of the water bodies.

It may be possible to leverage multi-use plans for coastal areas when selecting suitable cutting sites and planning the implementation method. Their aim is to coordinate the utilisation of natural resources in coastal areas, the protection of biodiversity, water protection, recreational use and landscape management (ELY Centre, Common reed data bank).

Picture: Sami Kivistö

The legal challenges of cutting projects

As indicated above, the Water Act and, if necessary, the Nature Conservation Act apply to the cutting of common reed in water areas. Based on the Water Act, it is open to interpretation how the rights of use related to an industrial-scale cutting project can be organised and what kind of prior approval is required for the project. Initiating extensive cutting operations requires that the sustainability of the operations can be guaranteed for a sufficiently long period of time.

Ownership of water areas

The Water Act states that no measures may be taken on a water area owned by another party without the consent of the owner, a legal right or a right of use granted by an authority (Hollo 2021). The fragmented ownership of water areas causes problems in securing consent from owners.

Most water areas are owned by the joint property management association referred to in the Joint Property Act (758/1989). The ownership is therefore fragmented. Typically, several joint property management associations operate in a single water area.

The availability of a joint property management association depends on whether it is organised or unorganised. An organised joint property management association has rules, and its decision-making power is exercised by the association's general meeting or management board. An unorganised joint property management association does not have an administrative body for legal actions. This leads to challenges not only in the decision-making of the joint property management association but also in reaching its members for notifications and requesting consent.

Advance control of cutting projects

The Water Act presents three options for the implementation of common reed cutting. The choice of implementation option depends on the purpose and impacts of the project. Cutting can be implemented based on the following:

1) By virtue of the ownership of the area or the consent of the owner, without a permit or notification under the Water Act.
2) On the basis of the notification referred to in Water Act 2:15, in the case of nuisance removal in an area owned by another party, as referred to in Water Act 2:6. The owner of the water area must be notified of the measure.
3) Based on the water permit referred to in Chapter 3 of the Water Act. The water permit requires a right to use the water area.

Common reed can be cut solely on the basis of the ownership of the water area or with the owner's consent, if the cutting project does not exceed the permit requirement threshold under the Water Act. However, the challenge in large-scale cutting projects is that consent must be obtained from each joint property management association separately. If the joint property management association is unorganised, consent must be obtained from each shareholder. As a result, securing the owner's consent can be an insurmountable task in practice.

In the notification procedure (Water Act 2:15), a notification of the removal of a nuisance can be submitted to an unorganised joint property management association as a general notification (Water Act 2:6). The prerequisite for removing a nuisance is that the party carrying out the measure suffers from silt, shallow water or other comparable nuisance affecting the use of the water body. As such, the purpose of the provision is to enable a specific use of the water body, such as boating, and to remove a nuisance that disturbs a specific user from a specific area.

The notification procedure of the Water Act cannot serve as a basis for implementing large-scale cutting projects without any issues. In industrial-scale cutting, none of the conditions for removing a nuisance related to the use of the water body, the user and the narrow scope of the operation, as referred to in the Water Act, are usually met.

In the context of industrial-scale cutting, the permit requirement threshold under the Water Act may be exceeded based on the project's impacts on the environment and private interests. The general permit requirement threshold for water resource management projects pursuant to Chapter 3, Section 2 of the Water Act is applied to cutting operations. Based on this, a project requires a water permit, for example, if the project may change the shore or water environment and this causes a change in nature or reduces the suitability of the water body for recreational use. As a point of comparison, it can be stated that dredging a water area always requires a permit if the amount of dredged material exceeds 500 cubic meters (Water Act 3:3).

Even if the permit threshold is not exceeded, it may be useful to apply for a permit under the Water Act for the large-scale cutting of common reed. A permit can guarantee the sustainability of the operations in relation to the owner of the area or the environmental impacts of the operations, for example. The permit process also resolves issues pertaining to access rights.

Permit consideration

If a permit is required for a reed cutting project under the Water Act, it can be granted either on the basis of the harmlessness requirement (does not significantly infringe upon public or private interests) or a comparison of interests (Water Act 3:4). In practice, the interest comparison is applied in the consideration of water permits even in the context of relatively small projects (see the relevant decisions of the Supreme Administrative Court (SAC), such as SAC 2004:45 and SAC 18 October 2004 t. 2590).

A water permit is granted on the basis of a comparison of interests if the project's benefit to public or private interests is substantial compared to the losses incurred by them (Water Act 3:4). Various benefits and losses are taken into account extensively in the comparison of interests (Water Act 3:6–7, Government Proposal 277/2009 vp). They include the environmental impacts of the project, among other things.

The comparison of interests must account for what is presented in the marine strategy regarding the state and use of water bodies (Water Act 3:6). In practice, a project may be denied a permit without an exception if it jeopardises the achievement of the environmental objectives of water management referred to in Section 21 of the Act on the Organisation of River Basin Management and the Marine Strategy (1299/2004), i.e. it may impair the condition of a water body or endanger the achievement of a good condition (SAC 2019:166).

In the decision of the Regional State Administrative Agency of Southern Finland (RSAASF) 13 September 2018 no. 2127/2017, the losses and benefits of a restoration project involving the cutting and dredging of common reed were assessed as follows. The project's losses were considered to be increased turbidity and the release of nutrients into the water as a result the short-term rise of solids from the bottom of the water body. The benefits were considered to include the following:

- slowing down the overgrowth of the bay,
- increasing the open water area,
- improving the flow conditions and water quality,
- improving the aquatic landscape,
- improving recreational opportunities and marina access, and
- improving the preconditions for the diversification of bird and animal species.

An industrial-scale reed cutting project has a good chance of securing a permit under the Water Act based on the comparison of interests, if the project is carried out in an environmentally sound manner. In this case, its benefits may include the project's positive impacts on biodiversity, recreational use and the condition of the water bodies, in addition to the private economic benefits. It is possible to obtain support for assessing the benefits of the project through the marine strategy, which mentions the removal of common reed as a measure to improve the condition of habitats. In this context, it may also be possible to consider a multi-use plan for the shore area. In any case, care must be taken in the project's planning to ensure that its harmful environmental impacts are minimised (Water Act 2:7) and that it does not significantly impair water quality.

An interview with a representative of the Regional State Administrative Agency conducted for this policy recommendation indicated that there are uncertainties regarding the environmental impacts of large-scale common reed cutting projects. It is therefore essential that such projects are planned and their impacts are assessed with care. Based on

Picture: Hanna Hakamäki

the Water Act, the permit application must provide a sufficient explanation of the project's impacts on public and private interests and the environment (Water Act 11:3)

Need for a right of use

As was demonstrated above, any cutting of common reed that falls below the permit threshold under the Water Act can be carried out based on ownership of the area or the owner's consent. If the matter concerns the removal of a nuisance that is being processed in the notification procedure, a right of use is not required, but the owner of the water area must be notified in advance (Water Act 2:6).

The granting of a water permit requires that the applicant has the right to the areas necessary for the project or that the applicant is granted such a right (Water Act 3:4). However, a right of use is not required for all projects under the Water Act. For example, according to established practice, a right of use has not been required for dredging projects in water permit consideration (Soininen 2013). In the context of granting a dredging permit, it may have been deemed that no right of use is required for dredging or that the applicant has agreed on the matter with the owners of the area (see RSAASF 6454/2023 and RSAASF 27140/2022, for example).

As such, it is not clear whether or not a right to use a water area is required for common reed cutting permit under the Water Act. Representatives of the Regional State Administrative Agency stated in interviews that such a right of use has not been required for dredging projects because the projects are temporary, do not typically infringe upon private interests and the parties involved generally do not have any interests related to them. Compared to dredging projects, the harmful environmental impacts of reed cutting, such as water turbidity, are often less severe and the positive impacts are more significant. That being said, cutting projects can have a more pronounced impact on the shore area landscape and recreational use, for example. Such adverse effects can be minimised through careful planning of the cutting operations.

The established practice of dredging permits not requiring a right of use reflects the flexibility of considering the necessity of a right of use under the Water Act. Moreover, compared to dredging, the cutting of common reed is a temporary measure, but it typically affects a larger area. Dredging and cutting projects also differ based on the economic value of the material being removed. However, in terms of the practicalities of dredging projects, the physical impacts of common reed cutting do not necessarily create the need to establish a right of use. In this respect, the harmlessness of the measure with regard to private interests is of key importance.

Establishing a right of use

If a right of use is required for a cutting project subject to a water permit, the condition for granting the permit is that the applicant controls the area with a permanent right of use or that the applicant is granted a right of use through a permit procedure (Water Act 3:4.3). In the context of issuing a permit, a right of use can only be established for the purposes stated in the Water Act, and the ownership of the water area is of essential importance in the regulatory application.

The Water Act lists three options for establishing a right of use in the permit procedure, none of which are suitable for the cutting of common reed without issues:

1. An applicant may be granted a limited right of use to another party's area if the measure is minor in scale or temporary (Water Act 2:12). The minor scale refers to the extent of the necessary right of use, including the area it requires (Government Proposal 262/2016 vp).

2. The problem with reed cutting projects is that cutting is not mentioned in the list of measures for which a minor right of use can be established, as specified in Water Act 2:12. Of the measures listed, carrying out clearing work in another party's area is the closest to this (see Laine 2017 on clearing). In the interviews with representatives of the Regional State Administrative Agency and the Ministry of Justice, the broad scope of cutting projects was considered a challenge in granting limited rights of use for cutting projects, as the legislator's intention was to grant rights of use for projects that are limited in scale only.

   Provisions on a basic right of use are laid down in Water Act 2:13. The prerequisites for granting the right include the applicant controlling at least half of the required area on the basis of ownership or permanent right of use (Water Act 2:13). This requirement may be difficult to meet in cutting projects before applying for a permit. Furthermore, cutting is not mentioned in the law as a need for which a right of use can be established. As such, establishing a basic right of use is not without its problems in the context of reed cutting projects.

3. For projects necessitated by public need pursuant to Chapter 2, Section 13(a) of the Water Act, a right to another party's area may be granted without the aforementioned conditions of limited use or control of the area. In this case, the project must promote significant public interest, such as public recreation or nature conservation. A project implemented by a private party can also serve a public need (Government Proposal 262/2016 vp). In case law, water body restoration projects have often met the requirement of public need. Industrial-scale cutting projects can have significant positive impacts on biodiversity, for example.

   It may be difficult to demonstrate that the requirement of public need is met in the context of a cutting project. When assessing the significance of interests, it is possible to leverage nature, water and marine management plans and strategies, among which cutting is mentioned in the programme of measures of the marine strategy. The programme of measures states that cutting measures should target areas in which they have a positive impact on biodiversity and the retention of substances. After identifying potential cutting sites, a restoration plan should be drawn up for them, after which cutting projects can be carried out (Programme of Measures of the Marine Strategy in Finland 2022–2027).

Legislation in Sweden and Åland

Legislation in Sweden

The cutting of common reed is not recognised as a separate project type in Swedish legislation, but it is subject to the general regulation on water use. Swedish environmental legislation is codified in the Swedish Environmental Code (miljöbalk 1998:808). In addition to the Environmental Code, the Act Containing Special Provisions concerning Water Operations (lag om vattenverksamhet 1998:812) contains provisions on water use. The procedure applied to reed cutting projects is determined specifically for each case based on the scope of the activity, its impacts and the project area.

According to Chapter 11, Section 3 of the Swedish Environmental Code, a water resource management project (vattenverksamhet) refers to, for example, construction, water removal, dredging or any other action carried out in a water body that results in a change in the depth or location of the water body. Water resource management projects are generally subject to a permit (Section 11:9 of the Environmental Code), but, as an example, certain types of dredging projects or projects that do not cause any harm to private or public interests based on prior assessments do not require a water resource permit (Sections 11:12 and 11:15 of the Environmental Code). Certain activities are subject to notification (11:9(a) of the Environmental Code) and other activities must also be presented to the supervisory authority for a hearing if the measure may significantly alter the environment (Environmental Code 12:6).

In Sweden, water areas are largely in private ownership. The procedure applied to cutting projects affects the type of access required to operate in an area owned by another party. If a project is considered a water resource management project in pursuant to Act 1998:812, the Act's provisions on control rights will be observed.

According to Section 2:1 of Act 1998:812, carrying out an activity requires the operator to control the water area. As a general rule, you cannot operate in a water area owned by another party without having control of the area or a right of use established directly by law. The control requirement of Act 1998:812 may be met based on a decision by an authority if the water resource management project involves certain activities in public interest, such as regulating a water body or extracting water for public water supply (Act 1998:812 2:4). Furthermore, the control requirement is met directly under Section 2:5 of Act 1998:812 if the dredging of a water area is carried out to preserve or restore water conditions. In other cases, operations in the area must be agreed upon with the owner of the area.

Generally speaking, exceeding the permit threshold for reed cutting projects is not legally clear-cut in Sweden. In this respect, the impacts of the project are key. The use of the area of a cutting project subject to a permit must be agreed upon through private law agreements, unless the project is considered to be comparable to dredging projects pursuant to Section 2:5 of Act 1998:812. Even if reed cutting is not considered a water resource management project within the scope of Act 1998:812, the use of the water area must be agreed upon with the owner of the area.

Picture: Michelle Kozlova

Legislation in Åland

Ålandic legislation does not contain project-specific regulations for cutting common reed. The Water Act of Åland (Vattenlag för landskapet Åland, 1996:61) applies generally to the use, protection and management of surface waters (Water Act 1:2).

Based on the Water Act of Åland, measures that affect water bodies are considered water resource management projects. These include drainage, construction, piling and dredging (Water Act 1:3). The implementation of water resource management projects and the utilisation of an area owned by another party is subject to a permit if the project affects the rights of an individual right holder and not all relevant right holders have approved it (Water Act 6:15). Furthermore, certain activities, such as dredging an area of more than 500 square meters, are subject to a permit directly under the pertinent legislation (Water Act 6:15).

The implementation of a water resource management project requires a right or right of use to the area pursuant to Chapter 2 of the Water Act. In Åland, water areas are largely privately owned and often jointly owned by joint property management associations. According to the Water Act 2:3–4, the owner has the right to decide on the water area, unless otherwise necessitated by the provisions of the Act. Chapter 3 of the Water Act lays down provisions on the rights of use established for water resource management projects, but these rights of use provisions do not apply directly to cutting projects (see Water Act 3:2–4). In addition to this, anyone who suffers damage from siltation or other similar detriment to the use of a water body has the right to take the necessary measures to eliminate the detriment (VL 2:9), and the Water Act also regulates the right to carry out small-scale dredging in another party's area, if this does not cause significant harm (VL 3:6.1–2).

In Åland, cutting common reed in aquatic environments and coastal areas is generally not considered a water resource management project, which is why a water permit is usually not required. However, the consent of the area owners must be secured for cutting projects if they do not constitute nuisance removal or small-scale and harmless dredging projects, for example.

All cutting projects must comply with the general obligations referred to in the Water Act. These include everyone's responsibility to protect and manage surface waters to the best of their abilities and possibilities.

Comparison with the legal situation in Finland

The legal situation in Sweden and Åland in relation to industrial-scale reed cutting is similar to that in Finland. The legislation does not recognise cutting projects as a separate project type, and the procedure to be applied is determined by the impacts of the project and the project area. Moreover, the ownership of water areas is organised in the same way in all three systems, and the consent of the area owner is required for cutting projects, with certain exceptions.

As is the case in Finland, it is not clear in Sweden and Åland what regulations apply to industrial-scale cutting projects and how access rights to the area can be arranged. This causes uncertainties in the implementation of cutting projects.

Needs and solutions for the development of legal regulation in Finland

The application and interpretation of the law

The legal challenges of cutting common reed in a water area boil down to the question of the right to conduct cutting activities in another party's area. In addition to the right of use, the cutting project must meet other pertinent requirements of water and nature conservation legislation. The resolution of usage rights and other conditions for cutting is linked to the impacts of the project.

Permit requirement

Based on water legislation, the first question to be resolved is whether or not a permit is required for a cutting project under the Water Act. Nuisance removal based on notification procedure (Water Act 2:6 and 2:15) is hardly suitable for large-scale cutting projects. It is up to case-by-case consideration whether or not an industrial-scale cutting project exceeds the permit requirement threshold specified in the Water Act.

Even if a cutting project does not exceed the permit requirement threshold, applying for a permit for it can be beneficial in two respects. Firstly, the permit procedure can resolve right of use issues, i.e. whether i) a right of use under the Water Act is required for a cutting project and ii) whether the right of use can be granted. Secondly, even though applying for a permit is a laborious and time-consuming process, a water permit guarantees a clear legal framework for the operations and protects its persistence.

Rights of use

It is legally ambiguous how rights of use issues related to reed cutting should be resolved in the water permit process. It cannot be concluded from the Water Act's provisions on rights of use whether reed cutting is one of the activities requiring a right of use and on what basis a right of this nature can be granted. Cutting involves removing biomass from the area of another party, but the bottom of the water area is usually not disturbed. The effects of the cutting are temporary, but the activity causes a visible physical change in the environment.

Three interpretations can be presented on the rights of use for cutting projects:

1. For a reed cutting project, no right of use as referred to in the Water Act is required alongside a water permit. The lack of need for granting a right of use can be justified by applying for analogous support for dredging projects for which a right of use is not required, according to established practice. Similarly to the environmental impacts of dredging projects, the impacts of reed cutting and the resulting usage restrictions of the owner are temporary and minor. Cutting projects are large in scale but spread across several water areas and only affect them from time to time. The local impacts of dredging projects on water bodies are often more harmful than those of cutting projects.
2. A minor right of use referred to in Water Act 2:12 may be granted for cutting. Even though cutting is not mentioned in the legislation as a reason for granting minor rights of use, the effects of the activity are usually minor and temporary. However, it is unclear whether industrial-scale cutting projects are too extensive for the purpose of Water Act 2:12.
3. A cutting project meets the general need requirement referred to in Water Act 2:13(a), and a project can be granted a right of use even if the applicant does not control any part of the water areas needed for the cutting operations. Granting a right of use under Water Act 2:13(a) requires that the project, when assessed as a whole, significantly promotes the realisation of public interests. If cutting projects are carried out, for example, based on the programme of measures of the marine strategy and multi-objective planning of coastal areas, the general need requirement pursuant to Water Act 2:13(a) could be met. The interpretation of fulfilling a general need can be based on promoting the goals of water, nature and environmental management as well as recreational use.

The careful planning of a cutting project

If a water permit is sought for a common reed cutting project, it will likely meet the interest comparison requirement set forth in the Water Act. In some cases, it may also be interpreted as a project necessitated by public need. In order to meet these conditions, however, the project must be implemented in such a way that its economic, environmental and possible other benefits clearly outweigh the resulting losses, such as environmental damage. The project must also not have consequences that are contrary to the Nature Conservation Act.

As such, for the purpose of applying for a water permit, a cutting project must be planned carefully, assessing its impacts and minimising any harmful effects. The impacts of a cutting project and thus the legal preconditions for its implementation largely depend on the cutting method. Multi-use plans for coastal areas can be leveraged when selecting cutting sites and planning the cutting method.

Picture: Ilkka Vuorinen / John Nurmisen Säätiö

Legislative development needs

Clarifying the legal requirements for cutting common reed does not require major legislative changes. Three options can be presented for developing the regulation of the Water Act:

1. Amending the condition for nuisance removal referred to in Water Act 2:6 so that large-scale reed cutting is included as a measure for removing the nuisance. This would clearly broaden the current scope of the provision but, based on the amendment, industrial-scale cutting could be implemented without any dispute as a nuisance removal measure. An unorganised joint property management association could be notified of the matter through the website of a government authority and the municipality, which would remove the need to arrange rights of use.

2. Clarifying in the Water Act what kind of projects require the right to use the project implementation area. The current wording of the Water Act does not indicate that, for example, a dredging project does not require a right of use in addition to a water permit, even though it involves physically disturbing another party's water area. The clarification could specify that, in addition to dredging projects, certain types of cutting projects would not require a separate right of use in addition to a water permit.

3. Cutting projects could be included in Water Act 2:12 as activities on the basis of which a minor right of use can be granted to another party's area. This would expand the scope of the section to include cutting activities over a large area. If necessary, the provision could emphasise the temporary and minor nature of reed cutting in a particular water area as a condition for its application. The amendment would make it clear that it would be possible to grant a limited right of use in connection to a water permit for certain types of cutting projects based on the Water Act.

Conclusions

The implementation conditions for an industrial-scale reed cutting project under the Water Act depend on the project's implementation method, impacts and the usage rights required. A cutting project does not necessarily always require a permit under the Water Act, but applying for a permit can be useful for the operator to ensure the sustainability of the operation and resolve issues of usage rights.

The legal challenges related to the industrial-scale cutting of common reed boil down to issues pertaining to rights of use. As an interpretative solution to this issue, we have stated above that, in connection to the granting of a water permit,

1. no right of use is required for a cutting project,
2. a limited right of use is granted for it (Water Act 2:12) or
3. the project is considered to be required by public need under certain conditions (Water Act 2:13(a)).

All of these options involve legal challenges, which is why it is worth considering minor amendments to the Water Act.

In order to develop the legislation, we have proposed the following alternatives:

1. including large-scale cutting in the nuisance removal activities referred to in Water Act 2:6,
2. clarifying the Water Act to the effect that certain types of projects, including large-scale cutting projects, do not require a right of use to the project area, and
3. including cutting projects in the activities referred to in Water Act 2:12, on the basis of which a minor right of use to another party's area can be granted.

All of these amendments would necessitate minor changes to the purposes of the current provisions of the Water Act, which is why they would require careful preparation.

The careful planning of reed cutting projects can help obtain permits and resolve usage rights issues. Cutting projects should be highlighted in water and marine management planning, if their purpose is to improve the state of water bodies. The planning that accounts for the different interests of the projects in the multi-use plan for the shore area can be further defined. Based on careful planning, it is possible to assess how a cutting project promotes public interests and, in some cases, the public need referred to in Water Act 2:13, which can serve as the legal basis for the rights of use required for the cutting project.

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