



Environment Information Regulations

Boundary changes and numbers of the bird species for
which the Greater Wash was designated an SPA

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Number of EIR 201815

Request

The RSPB has long called for progress on the identification, classification and appropriate management of marine Special Protection Areas. As such, we welcomed and strongly supported the proposal to classify the Greater Wash as an SPA (although we did raise a number of specific concerns in respect of the detail of the proposal), and were pleased to hear that classification of this site has now been considered.

We also welcomed a request from Natural England (NE) for a teleconference on 9 April 2018 to brief us on the forthcoming announcement on the future status of the site (published on 10 April 2018), during which they appraised us of changes made to the boundary and to the numbers of the bird species for which the site was selected for designation. We understand from this briefing that those changes were made after submission of the final written advice to Ministers by NE and the Joint Nature Conservation Committee (JNCC), (as set out in 'The Greater Wash potential Special Protection Area (pSPA) Report of Consultation by Natural England and the Joint Nature Conservation Committee (JNCC)' - hereafter referred to as the 'Consultation Report' - published on 10 April 2018). These changes are a matter of significant concern to us, and as such I write to request clarification and information that will allow us to further explore our concerns.

First we require clarification on the following:

1). We note that the citation published by Defra on 10 April 2018 was incorrect, and appeared not to be in final form as it:

- repeatedly made reference to the site as a 'pSPA';
- did not include a signed stamp to show that the document had been entered in the Register of European Sites; and
- specified population numbers for all qualifying species which were identical to those set out in the consultation citation, despite the exclusion of a significant area from the consultation site boundary, which would have resulted in smaller populations within the site (a point we had raised, and which had been confirmed by NE staff during our 9 April 2018 teleconference).

We flagged this suspected error to Natural England on 16 April 2018, and they confirmed that an error had been made and provided us with the corrected population figures by email. We note that the Defra webpage was updated on 26 April 2018 (albeit without any explanation of the nature of, or justification for changes made) and that the citation now presented there does include the revised population figures. However, this document still has no Register stamp and continues to make multiple references to the site as a pSPA.

We therefore seek clarification on the following points:

- a) Whether changes made to the documentation published on the 28 April 2018 were confined to publication of an amended citation, or included other changes?
- b) What plans there are in place to ensure that a final citation which both reflects the status of the site and the revised bird population figures within that site will be published and will be added to the Register of European Sites? We assume that only at this point will the classification process be complete.

2). On page 6 of the Consultation report, NE and JNCC set out the 'Consultation Conclusion: Natural England and JNCC's Advice to Defra' which states that:

'Natural England and the JNCC have considered the principal issues raised by consultees, and noted the objections which are outlined below. Both Natural England and JNCC have

assessed the objections and conclude that there are no scientific objections which would warrant any changes to the proposal in the inshore or offshore components of the pSPA, respectively. Both statutory advisers confirm the recommendation of the Greater Wash pSPA to be classified on the basis of the available scientific evidence as set out in the Departmental Brief with the following amendment:' [Emphasis added]

We seek clarification as to the nature of the 'amendment' referred to here as none appears to be presented.

Second, we require the following information:

3). We understand from our teleconference on 9 April 2018 with NE that the decision to alter the boundary of the pSPA was taken at a meeting between Dr Therese Coffey (Parliamentary Under Secretary of State for the Environment), Defra officials, representatives of the offshore wind industry and NE staff. The Consultation Report (page 5) clearly and correctly states that:

'The Birds and Habitats Directives do not permit socio-economic considerations to influence the choice of Natura 2000 sites...or their boundaries',

The formal advice of both JNCC and NE to Defra on the scientific merit of the objections made in respect of the areas now removed from the boundary appears unequivocal. In respect of the decisions made in advance of, at, and/or subsequent to this meeting, we request the following information:

- a) Date of the meeting;
- b) List of organisations and the names and roles of individuals who attended that meeting;
- c) Minutes or any other written record of the meeting;
- d) All information (including scientific data) that was presented at and/or considered to inform decisions made prior to, at, or subsequent to that meeting concerning the proposal to classify the Greater Wash as a SPA;
- e) All correspondence between NE, JNCC, the Minister and Defra officials regarding any amendment or addition to the formal advice given by JNCC and NE to Defra in the Consultation Report. This should include all information relevant to the scrutiny and approval of any amended/supplementary advice by the relevant decision-making bodies within those agencies (for example the Natural England Board) in line with their schedules of delegation, including the dates and minutes of relevant meetings, and all relevant correspondence between any or all of these three parties; and
- f) All correspondence between JNCC, NE and/or Defra and the offshore industry representatives concerning the proposal to classify the Greater Wash as a SPA including any data provided on the proposed designation species.

4). For the avoidance of doubt, and if not already covered in 3) above we request all data upon which the decision to exclude areas of the boundary, which were included in the consultation boundary, was made.

5). As mentioned above, while the area of the SPA has been reduced compared to that subject to the consultation, the stated area of the site (on both the two versions of the citation thus far published and their accompanying map) at 353,577.86 ha is larger than that stated on the consultation citation (344,267ha) which in turn deviated from that stated on the consultation map (360,640.10ha). We also note that in addition to the obvious removal of a significant area within the SPA, there appear to be multiple changes to the 'Point Letters'

which identify the boundary, when comparing the pSPA boundary with that now published and added to the Register of European Sites. We therefore request:

- a) Clarification of the area of the pSPA (as subject to formal consultation) and confirmation of the area of the site now proposed; and
- b) Both a pdf map (or set of pdf maps) showing (on one map) both the consultation and new boundaries at a sufficient scale for all changes to be clear, and a set of ESRI shape files for both the consultation and new boundaries.

6). In the Consultation Report, NE and JNCC highlight to Defra that a number of objectors requested re-analysis of more recent survey data collected by industry on seabird distributions in the offshore wind farm areas - NE and JNCC 'reviewed additional publicly available datasets but found that these were not suitable for the purpose of SPA identification due to their limited spatial extent.....Apart from the publicly available data, no further data sets were provided...during formal consultation which could have been considered' [Emphasis added].

We seek clarification as to the meaning of the underlined text above and in particular:

- a) Were no further data sets provided, or were further data sets provided which were deemed inappropriate for consideration?;
- b) If the latter, what was the nature of the data provided and on what basis was this deemed inappropriate for consideration?; and
- c) If the latter in a) above, were these data reconsidered and used to in any way inform the decision made by the Minister regarding classification of the SPA?

7). On page 24 of the Consultation Report, in relation to the objection from the Lincs windfarm, NE and JNCC state that 'there is now an area of relatively low diver density in a location where diver density used to be high, relative to that in surrounding areas', and on page 58 of the Report it is stated that 'the construction and operation of these [Lincs, Lynn and Inner Dowsing] windfarms has been coincident with a marked reduction in the relative importance of these areas to red throated divers'. We request all data reviewed by NE and JNCC in arriving at these statements.

8). We request confirmation of whether or not all those who responded to the formal consultation were also contacted at the informal consultation stage, which provided an opportunity for 'key stakeholders to input into the process and provide any additional information or data related to the proposal' (Consultation report, page 5). We would like to know which, if any, were not contacted at this stage.

9). We request copies of the final Appropriate Assessments for each of the Lincs, Lyn and inner Dowsing offshore windfarms, and of all JNCC correspondence with both developers and regulators regarding both the contents and the conclusions of those Appropriate Assessments.

Reply

Thank you for your request concerning the boundary change at the Greater Wash, received by JNCC on Wednesday 8th May, which we have dealt with under the Environmental Information Regulations 2004.

We have addressed your questions/requests (below) in the order in which they were presented in your letter (your Ref: ED01-03-03-01).

1. Errors in Citation document

“...We therefore seek clarification on the following points:

a) Whether changes made to the documentation published on the 28 April 2018 were confined to publication of an amended citation, or included other changes?

To our knowledge, the changes to the documentation were confined to the amended citation and the corresponding map. These changes will also be reflected in the Register of European Sites and the Register of European Offshore Marine Sites.

b) What plans there are in place to ensure that a final citation which both reflects the status of the site and the revised bird population figures within that site will be published and will be added to the Register of European Sites? We assume that only at this point will the classification process be complete. ...”

Natural England is currently in the process of updating the citation to correct the clerical errors and to present the correct bird population sizes. As soon as possible, the updated citation, along with the corresponding updated Registrations to the Register of European Sites and the Register of European Offshore Marine sites, will be send to DEFRA and will then receive a signed stamp.

2. Clarification on “amendment” in Consultation Report

“...We seek clarification as to the nature of the ‘amendment’ referred to here as none appears to be presented. ...”

The sentence refers to the amendments which were suggested in the following section on Page 11 of the [Consultation Report](#): “...Natural England and JNCC have considered the observations and recommend that the final citation is amended to (1) be clear with respect to the guidelines under which the different species qualify (suggested rewording presented in Appendix 4), and (2) correct the total site area in the final citation from 3,443 km² (344,267 ha) to 3,606 km² (360,640 ha). ...”. The amendments are described in detail on Page 57 of the Consultation Report.

3. Decisions on boundary change

“...In respect of the decisions made in advance of, at, and/or subsequent to this meeting, we request the following information:

- a) Date of the meeting;
- b) List of organizations and the names and roles of individuals who attended that meeting;
- c) Minutes or any other written record of the meeting;

With regard to items a)–c), JNCC does not hold this information.

d) All information (including scientific data) that was presented at and/or considered to inform decisions made prior to, at, or subsequent to that meeting concerning the proposal to classify the Greater Wash as a SPA;

JNCC had very little involvement in considerations around a boundary change, limited to a brief correspondence with Natural England asking JNCC to provide some thoughts on whether data analysis could potentially be used to inform a boundary change. For this purpose, Natural England send us a draft document to reflect the brief discussion we had on the phone. (attached as Annex 1; received by JNCC on 07/11/2017). Please note that the red text in the document did not reflect any formal agreements between Natural England and JNCC. They were added by the author as a reminder of first tentative outcomes from the preliminary discussions on technical options to exclude areas with lower red-throated diver densities.

In addition, JNCC was asked to provide re-calculations of bird numbers within different working versions of the Greater Wash SPA boundary which were sent to us by Natural England. Our calculations were based on the existing KDE density surfaces of individual species, the same density surfaces used to calculate the numbers within the boundary presented during the public consultation. The outcomes of the re-calculations for two boundary re-drafts are attached as Annex 2.

Apart from this, JNCC has not been part of discussions on whether such a boundary change should be undertaken. We have no information about the data and analysis used to underpin the boundary change and JNCC did not undertake any of the analysis itself, nor have we provided data for this purpose. Our formal advice to Government on the Greater Wash SPA, based on the details provided in the Consultation Report and including the boundary as presented during the consultation, remains unchanged.

e) All correspondence between NE, JNCC, the Minister and Defra officials regarding any amendment or addition to the formal advice given by JNCC and NE to Defra in the Consultation Report. This should include all information relevant to the scrutiny and approval of any amended/supplementary advice by the relevant decision-making bodies within those agencies (for example the Natural England Board) in line with their schedules of delegation, including the dates and minutes of relevant meetings, and all relevant correspondence between any or all of these three parties;

JNCC's formal advice to Government on the Greater Wash SPA, based on the details provided in the [Consultation Report](#) and including the boundary as presented during the consultation, remains unchanged. There was no consideration to change the JNCC's formal advice on the Greater Wash after the advice had been given to Government. Consequently, there was no correspondence with Natural England, DEFRA or the Minister on such a matter, and there was also no need for approval of any amendments to the formal advice and no need for the provision of any supplementary advice.

f) All correspondence between JNCC, NE and/or Defra and the offshore industry representatives concerning the proposal to classify the Greater Wash as a SPA including any data provided on the proposed designation species.

The JNCC did not have any correspondence with industry representatives concerning the proposal to classify the Greater Wash as an SPA, except for the joint letter from Natural England and JNCC to inform stakeholders of the start of the formal consultation on the Greater Wash pSPA proposal.

4. Data underpinning the change of boundary

"...We request all data upon which the decision to exclude areas of the boundary, which were included in the consultation boundary, was made. ..."

JNCC does not hold any data used to underpin the decision to exclude areas from the Greater Wash pSPA.

5. Clarification on area size and submission of maps

"...We therefore request:

a) Clarification of the area of the pSPA (as subject to formal consultation) and confirmation of the area of the site now proposed;

The area sizes were submitted to us by Natural England as follows:

- The area size as stated in the draft citation of the Departmental Brief was 344, 267 ha, or 3,443 km².

- During the public consultation, it was pointed out by stakeholders that there was a discrepancy in area figures in the draft citation and the draft map. Natural England investigated this and concluded that the area figure in the draft citation should be amended to 360,640 ha, or 3,606 km² ([Consultation Report](#) p.11 and Appendix 4).
- The area size after the recent boundary change was reported as 353,578 ha or 3,536 km².

b) Both a pdf map (or set of pdf maps) showing (on one map) both the consultation and new boundaries at a sufficient scale for all changes to be clear, and a set of ESRI shape files for both the consultation and new boundaries.”

Natural England prepared the final boundary of the Greater Wash SPA and holds the original shapefiles for the maps. To ensure that you receive the correct, current version of the boundary shapefile, we therefore suggest requesting the shapefiles and corresponding maps directly from Natural England.

6. Additional datasets

“...We seek clarification as to the meaning of the underlined text above and in particular:

- a) Were no further data sets provided, or were further data sets provided which were deemed inappropriate for consideration?;
- b) If the latter, what was the nature of the data provided and on what basis was this deemed inappropriate for consideration?; and
- c) If the latter in a) above, were these data reconsidered and used to in any way inform the decision made by the Minister regarding classification of the SPA?

With regard to items a)–c), JNCC did not received any further datasets for consideration, nor have we analyzed further datasets. We therefore do not hold any of the information requested.

7. Data showing reduction in numbers of red-throated divers in windfarm areas post construction

“...We request all data reviewed by NE and JNCC in arriving at these statements. ...”

JNCC does not hold these data. To our knowledge these data are held by the Marine Management Organization (MMO) and we would suggest making the data request directly to the MMO.

8. Stakeholders contacted during informal consultation

“...We request confirmation of whether or not all those who responded to the formal consultation were also contacted at the informal consultation stage, which provided an opportunity for ‘key stakeholders to input into the process and provide any additional information or data related to the proposal’ (Consultation report, page 5). We would like to know which, if any, were not contacted at this stage

The informal consultations, running for 12 weeks and starting from the 7th September 2015, were organized and run by Natural England. Although JNCC had been invited to some of the informal consultation meetings, we do not hold information on which stakeholders were contacted during informal consultation, or whether those responding to the formal consultation were also contacted during the informal consultation.

9. Appropriate Assessments

We request copies of the final Appropriate Assessments for each of the Lincs, Lyn and inner Dowsing offshore windfarms, and of all JNCC correspondence with both developers and regulators regarding both the contents and the conclusions of those Appropriate Assessments.

JNCC was not involved in the work on the Appropriate Assessments (AA) as the windfarms are in inshore waters. We therefore do not hold any copies of the AAs, nor do we have any correspondence with developers or regulators on the AAs.

Please acknowledge receipt of this email (and attachments). If you require any further detail please do not hesitate to contact us.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint please contact Kirsty Meadows (kirsty.meadows@jncc.gov.uk).

If you are still not satisfied following this, you can make an appeal to the Information Commissioner who is the statutory regulator. The Information Commissioner can be contacted at:

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Wycliffe House
Water Lane
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Yours sincerely,

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