

# UK SPAR SCIENTIFIC WORKING GROUP

## MEETING 10 NOVEMBER 2011

12.00 – 16.30, Scottish Government, Saughton House, Edinburgh

### Approved Minutes

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#### Attendees

Ian Bainbridge – Chair (SNH)	Ed Mountford – Secretariat (JNCC)
Sarah Anthony (Natural England)*	Greg Mudge (SNH)
Sallie Bailey (Forestry Commission)*	Sue O'Brien (JNCC)
Nigel Buxton (SNH)	Matt Parsons (JNCC)
Nichola Burnett (JNCC)*	David Stroud (JNCC)
Steven Dora (Scottish Government)	Andy Tully (Defra)*
Richard Hearn (WWT)*	Sian Whitehead (CCW)*
Kate Jennings (RSPB)	Jeremy Wilson (Scottish Environment Link)
Ant Maddock (JNCC)*	

\* via video- or telephone-link

#### Apologies

Claire Collyer (CLA)	Emily Musson (Defra)
Miranda Davis (Water UK)	Jim Reid (JNCC)
Ian Enlander (NIEA)	Claire Robinson (NFU)

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### 1. Welcome and apologies

1.1. The Chair welcomed attendees to the meeting. Introductions were given and apologies received (see list above). The main membership change was that Claire Robinson had taken over the role as representative for the National Farmers Union. The Group was advised that Nichola Burnett would be working on SPA Review issues while Ant Maddock was seconded onto marine issues for four days per week for the next six months.

### 2. Minutes of the last meeting

2.1. Draft minutes for the previous SWG meeting in June 2011 had been circulated before the meeting. Amendments were requested in three places: (i) consolidation of items 5.1 and 5.2 (SNH and NE to provide text); (ii) addition of 'and partners' after 'by BTO' in item 9.1; and (iii) revision of the text explaining the headline messages in item 9.7 (RSPB to provide text). It was agreed that a revised set of minutes would be circulated for the SWG to approve, before uploading onto the SWG web site.

**Action Point 1 (10/11/11): SECRETARIAT** to circulate revised set of minutes for the June meeting for SWG approval, prior to uploading onto the SWG web site.

### 3. SWG 2010-11 Report

- 3.1. The Secretariat reported that since the last SWG meeting, the report covering progress of the SWG from January 2010 to October 2011 had been completed and was available on the SWG web site. The report had also been recently sent via email to the Natura 2000 & Ramsar Steering Committee for their consideration. It was noted that the report should also be submitted to the UK Marine Biodiversity Policy Steering Group.

**Action Point 2 (10/11/11): SECRETARIAT & CHAIR** to organise submission of the 2010-11 SWG progress report to the UK Marine Biodiversity Policy Steering Group.

### 4. SPA Review – brief updates

#### *ECJ species reports & BTO contract outputs*

- 4.1. JNCC (Ant Maddock) updated on publication of the outputs from the BTO contract in support of Phase 1 SPA Review, including the brief reports on five species related to European Court of Justice Irish ruling. Further to the discussions at the June SWG meeting, it had been agreed that this information would be published on the Defra website<sup>1</sup> as part of the normal contracting procedures. It was anticipated that all of the national population data collected by BTO would be published next year via the Avian Population Estimates Panel (APEP), with the overwinter waterbird population estimates having already been published<sup>2</sup>.

#### *Management of confidential site-level bird data*

- 4.2. JNCC (Ant Maddock) confirmed that the protocols for the future management of the confidential site-level bird data collected by BTO had been agreed as discussed at the February 2011 SWG meeting.

#### *Ramsar data*

- 4.3. JNCC (Ant Maddock) advised that BTO had supplied as much as was feasible of the bird count data required for the updating of Ramsar Information Sheets.

#### *Little Gull population estimate*

- 4.4. The JNCC Marine SPA Team (Sue O'Brien) had circulated a paper prior to the meeting which provided an update on the position concerning the production of a national population estimate for non-breeding Little Gull. This confirmed that there was currently insufficient data of suitable quality to derive a useful national population estimate for the species. However, an improved picture of the distribution and numbers of Little Gulls was expected when data currently being collected by offshore windfarm developers becomes available. It was anticipated that these data, in conjunction with existing data (visual and digital aerial survey, county records and European Seabirds at Sea data), would be sufficient to estimate the size of the Little Gull population, without the need for further targeted surveys. Nevertheless, a better understanding of the rate at which Little Gulls move through the North Sea on autumn passage and/or undergoing a post-breeding moult was required.

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<sup>1</sup> [link](#) to BTO contract report

<sup>2</sup> see Musgrove, A.J., Austin, G.E., Hearn, R.D., Holt, C.A., Stroud, D.A. & Wotton, S.R. 2011. Overwinter population estimates of British waterbirds. *British Birds*, 104, pp 364-397. [www.britishbirds.co.uk/wp-content/uploads/2010/12/waterbirds7.pdf](http://www.britishbirds.co.uk/wp-content/uploads/2010/12/waterbirds7.pdf)

- 4.5. The Group noted that the current SPA Review aimed to consider the SPA requirements for Little Gull and discussed what could be achieved in the absence of a national population estimate. Natural England advised that consultation on Mersey Narrows SPA had been approved, with Little Gull having been proposed as a qualifying species using stage 1.4 judgements of the SPA Selection Guidelines. The report on Phase 1 of the SPA Review would need to report on the position as regards Little Gull. JNCC Marine SPA Team agreed to look at the timeline as regards the future availability of offshore data on Little Gull.

**Action Point 3 (10/11/11): JNCC Marine SPA Team** to advise on the timeline and seek the earliest possible release of offshore data on Little Gull numbers.

*ECJ case-law index*

- 4.6. JNCC (David Stroud) advised that the ECJ case-law index work had been completed and published in spreadsheet format on the SWG web site<sup>3</sup>. RSPB asked what additional work was proposed to deal with the related item in the SPA Terms of Reference, i.e. the requirement to assess any additional measures necessary to ensure UK compliance with European case law relevant to the legal interpretation of the Birds Directive. The Chair recommended that this should be discussed at the next meeting of the Executive Steering Group and a decision made on how this work would be undertaken (see item 6.2).

*Site Provision Index*

- 4.7. JNCC (David Stroud) updated on work to complete the Site Provision Index (SPI). A near-final draft of the scientific paper on the SPI had been circulated in advance of the meeting, with a view to submission for publication in *Bird Study* at the end of the month. The appendices to this would probably include the raw data by which the index values for each species were determined. The Group asked that the authorship of the paper was revised so that it reflected the input of the SWG. In addition, reference should be made to overlap/correlation between the factors under-pinning the SPI. Discussion of the range of 'acceptability' around the SPI line was another point that ought to be covered. This should recognise that the SPI was intended to be a support tool to trigger consideration of the sufficiency of SPA suites, as reflected in the approach to the current SPA Review where the deviation of each species was to be assessed (via the Decision-making Framework process) on a case-by-case basis by an expert group. Any further comments on the paper were welcomed.

**Action Point 4 (10/11/11): ALL MEMBERS** to send any further comments on the Site Provision Index paper to David Stroud by 18 November.

*Decision Framework – flow chart, guidance, recommendations*

- 4.8. JNCC (David Stroud) advised that the sub-group had further developed the Decision-making Framework for the SPA Review. The latest version of the framework had been circulated for the meeting. The species trial exercise planned at the last SWG meeting had been completed and the framework guidance was under development. Agreement on the framework was considered to be quite close and, in due course, all relevant species would be run through the framework and recommendations drawn-up for consideration by the full SWG.

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<sup>3</sup> see [http://jncc.defra.gov.uk/docs/spa\\_ECJcasesindex.xls](http://jncc.defra.gov.uk/docs/spa_ECJcasesindex.xls)

## 5. SPA Review Phase 1 report & timetable

- 5.1. JNCC (Ant Maddock) updated on progress with final report for Phase 1 of the SPA Review, based on a briefing paper that had been circulated beforehand. Several report chapters had been sent to the SWG for comment. The comments received had been collated in the latest report, which was sent out to the SWG in early October. Most of the relatively straightforward chapters and appendices had been assembled, i.e. Chapters 1 & 2 – Introduction to the report and the SPA Review; Chapter 4 – Data issues; and most of the Appendices. Nevertheless, there was significant work to do on Chapters 3 and 5, which was dependent on the completion of the Site Provision Index and the Decision-making Framework. The same applied to Chapter 7 – Progress since 2001, the current text for which needed to be carefully reconsidered and rewritten, and Chapter 6 – Phase 2, which had not been started. In addition, numerous small tasks would need to be undertaken to complete a report of this size and importance.
- 5.2. It was also reported that the original timetable for the production and approval of the report had slipped. A revised work plan and timeline was proposed, together with the formation of an Editorial Group to lead on the production of the report, and that each block of work was assigned to a lead individual. It was noted that it had proved difficult to get some of the work completed and that this was a significant concern that ought to be taken into account when agreeing the timetable.
- 5.3. The process for approval of the final report was described. After the SWG and the Executive Steering Group were content with the report, it would be passed to the Chief Scientists' Group of the Country Agencies. It would then go to the JNCC Joint Committee, before final presentation to Defra on behalf of the country agencies as independent advice to UK Governments. It was noted that that this process would require time, planning, and close adherence to deadlines.
- 5.4. The Group discussed the above items. The proposed work plan and timetable were largely agreed. A meeting of the sub-group associated with the Decision-making Framework would take place in December, at which the timetable and process for further work on the framework would be set out. This would include the consultation process for the recommendations reached on each bird species.

**Action Point 5 (10/11/11): JNCC (DAVID STROUD)** to convene a meeting of the sub-group in December to progress the SPA Review Decision Framework and set out a process and timetable for further work.

- 5.5. The proposed deadline of December 2012 to deliver the Phase 1 report was agreed. Although options to deliver the report earlier were not ruled out, this seemed unlikely as the JNCC Joint Committee was scheduled to meet only in June, November and March. JNCC agreed to consider options and produce a revised work plan and timetable to circulate around the SWG for approval.

**Action Point 6 (10/11/11): JNCC (ANT MADDOCK)** to produce a revised work plan and timetable for Phase 1 of the SPA Review as soon as possible and circulate to SWG for approval.

- 5.6. The Chair agreed to lead on the formation of an Editorial sub-group, in liaison with JNCC and relevant SWG members. This would mirror the approach taken with

the 2001 SPA Review report, where there was a lead editor and a supporting group to deal with text writing, formatting and making comment.

**Action Point 7 (10/11/11): CHAIR** to form an Editorial sub-group for the SPA Review Phase 1 Report in liaison with JNCC and relevant SWG Members.

- 5.7. It was noted that the SWG must be mindful of delivering a product that met with the aspirations of Government and the requirements of the next phases of the implementation of the SPA Review. Accordingly, Government Administration representatives were encouraged to provide a clear steer on the Phase 1 report, including via the Executive Steering Group (ESG) which provided a forum for this (see item 6.1.vi). The SWG would nevertheless need to focus on its primary role of providing independent and scientifically objective advice.
- 5.8. There was some concern about how implementation and consistency of approach would be maintained in the next phases of the SPA Review, and who would take responsibility to lead on particular bird species. Although the process for the next phases would be devolved to each UK country, it was felt that a UK-wide steer was required via the SWG. It was not clear what role ESG would take and if the Natura 2000 & Ramsar Steering Committee might take on their role. It was recommended that ESG should meet in the near future to consider this and other issues (see item 6.2). Finally, it was agreed that JNCC would prepare a paper on the role of the SWG in the next phases for consideration at the next meeting.

**Action Point 8 (10/11/11): JNCC (DAVID STROUD)** to set out possible involvement of the SWG in the next phases of the SPA Review – for discussion at the next SWG meeting.

## 6. Executive Steering Group

- 6.1. The Secretariat updated on liaison and progress with the Executive Steering Group for the SPA Review (ESG). Following discussions in July with Defra and the new chair of the ESG (Francis Marlow), based on a briefing paper supplied by the Secretariat, the following points were agreed:
- (i) a face-to-face meeting of ESG was not necessary in advance of the next SWG meeting, i.e. ESG had not since the last SWG meeting in June (their last meeting was in October 2010);
  - (ii) issues that needed to be considered by ESG ought to be set out following the agreed 'submission format', which included setting out clear recommendations and the implications of issues presented to them – the SWG would therefore need to think through future submissions to ESG and identify who would lead on writing these;
  - (iii) a submission on the proposed revision to the 'minimum of 50' rule should be circulated to ESG via email in the near future – in response, a submission had been prepared by David Stroud, which was approved by the SWG before formal submission to ESG on 28 October with a deadline for comment of Friday 18 November;
  - (iv) a submission on the proposed extension to the scope of the review should be prepared – as this would probably require some discussion by ESG, it had been scheduled as a discussion item for the next ESG meeting;
  - (v) a submission on proposed revisions to the Phase 1 work plan and timetable should be prepared, once this issue has been discussed and agreed on at the next SWG meeting (see item 5 for outcome);

- (vi) in advance of considering the final report from Phase 1, as agreed by the SWG, it would be useful for ESG to see the developing report and comment on chapters as and when they were developed (see also item 5.7) – perhaps this would be best achieved or at least accompanied by a brief overview rather than the draft report in full;
- (vii) where the final report covered complex issues (e.g. the Decision-making Framework, SPI, Cropped Habitats), supplementary advice was requested to explain the implications of these elements. In particular for the Decision-making Framework, where clear advice on the policy implications and any changes to the current approach to the SPA classification process was needed – an early submission to set out how work on the Decision making framework is progressing was requested;
- (viii) the issue/process by which ESG approved each of the expected products from Phase 1, as well as the role and involvement of other people in Government and the Agencies, ought to be considered at their next meeting (see also item 5.8).

6.2. The Group noted that task (iv) had previously been assigned to David Stroud. Tasks (v) and (vi) were assigned to Ant Maddock and task (vii) to David Stroud. It was also recommended that ESG should hold a meeting in the near future to consider these four submissions, how an assessment of any additional measures necessary to ensure UK compliance with European case law should be undertaken (see item 4.6), and what role they envisaged for ESG in the next phases of the SPA Review (see also item 5.8).

**Action Point 9 (10/11/11): JNCC (DAVID STROUD)** to collate supporting information and develop a proposal for consideration by ESG on expanding the scope of 2010 SPA Review. *[carried over Action Point 18 (28/06/11), Action Point 16 (28/02/11)]*

**Action Point 10 (10/11/11): JNCC (ANT MADDOCK)** to prepare a submission for ESG on the proposed revisions to the Phase 1 work plan and timetable as agreed by the SWG.

**Action Point 11 (10/11/11): JNCC (ANT MADDOCK)** to prepare a submission for ESG on the developing Phase 1 final report.

**Action Point 12 (10/11/11): JNCC (DAVID STROUD)** to prepare a submission on how work on the Decision making framework is progressing.

**Action Point 13 (10/11/11): SECRETARIAT** to advise the Chair of ESG about the need for an ESG meeting, the submissions being prepared for them, and other issues for their consideration.

## **7. Treatment of species within SPA waterbird assemblages**

7.1. As agreed at the last SWG meeting, JNCC (David Stroud) tabled a discussion paper on the treatment of species within SPA waterbird assemblages. Following discussion of the issues summarised in the paper, it was agreed that this matter ought to be revisited, as necessary, when the Public Inquiry decision on the proposed cull of gulls on the Ribble and Alt Estuaries SPA had been reached, as this might add clarity to the situation.

## 8. Estimating Capercaillie population sizes

- 8.1. SNH presented a paper for the SWG to consider on estimating Capercaillie population sizes from lek counts. The paper investigated the relationship between male Capercaillie counts at spring leks conducted across the Scottish range, with national and regional estimates of the Capercaillie population size from national winter surveys. On average lek counts of male birds were approximately 20% of the total population, rather than an expected figure of 50%. This implied that the current approach of multiplying the sum of males counted at leks by two to estimate the local Capercaillie population size would substantially underestimate the actual number of birds present. Based on current knowledge, the paper recommended a multiplication factor of four for such conversions.
- 8.2. The Group noted that such a change would substantially increase the national representation of Capercaillie on individual sites and in the current SPA suite. It recommended that the uncertainty surrounding the national population estimate (as given in Table 1 of the paper) should be flagged-up. In addition, it was unclear why a multiplication factor of four had been selected, when the information presented indicated that a figure of up to six was more appropriate. SNH thanked the Group for their comments, which it would feed back to the Capercaillie Working Group for further comment.

## 9. Rufford Energy Recovery Facility

- 9.1. RSPB provided a briefing paper – as given in Appendix 1 – on the implications of the decision in May 2011 by the Secretary of State for Communities and Local Government to refuse consent for an application for the construction and operation of a waste combustion/Energy Recovery Facility on land at the former Rufford Colliery, Rainworth, Nottinghamshire. This was the first in the UK to shed light on the practical application of the second sentence of Article 4(4) of the Birds Directive and therefore had implications for the protection of Annex I and migratory birds outside of SPAs. It was pointed out that the paper represented RSPB views as there had not been time to confer with Natural England as planned.
- 9.2. RSPB were thanked for this paper. It was felt the issue was more about policy than science and would be usefully targeted at the Natura 2000 & Ramsar Steering Committee. Scottish Government emphasised that this was a decision about an individual case rather than a legal 'ruling'. Natural England commented that they had a slightly different interpretation as regards the emphasis placed on Article 4(4) in the decision. It was agreed that Natural England would provide an advice note on the case to add to the RSPB paper.

**Action Point 14 (10/11/11): NATURAL ENGLAND** to provide an advice note on the Energy Recovery Facility at the former Rufford Colliery.

## 10. Marine SPA work

- 10.1. JNCC Seabirds Team gave an update on progress with work to support identification of possible marine SPAs – details are given in Appendix 2.

## 11. Birds Directive reporting

- 11.1. JNCC (David Stroud) reported on a note updating the Group on matters related to the 2012-2014 reporting under the Birds Directive.
- 11.2. The detailed discussion between Member States, the European Commission and other interested parties concerning the need to move reporting under the Birds Directive to a more outcome-orientated process had been agreed and recently launched in Brussels<sup>4</sup>. Background papers to the new process and the new reporting format and associated guidance were now available<sup>5</sup>. Reporting from Member States was due by the end of 2013. It would take a further year to collate data and information at European scale. A consolidated European overview was planned for publication by the end of 2014. This would include an assessment of the conservation status of each species by the European Commission. Essentially the process would be run jointly with data gathering for BirdLife International's *Birds in Europe 3* assessment<sup>6</sup>.
- 11.3. JNCC would co-ordinate the process in the UK, probably via the Inter-Agency Ornithology Group. A detailed timetable was under development. It was envisaged that data on population status and trends would be drawn from the third assessment of the Avian Population Estimates Panel, which should be published in 2012. The timetable and arrangements for other elements of the new reporting format (distributional data, and information on key pressures and threats on each species) are to be developed by JNCC and other stakeholders in due course.

## 12. Spotted Crake SPA suite

- 12.1. JNCC (David Stroud) introduced a paper which examined the Spotted Crake SPA suite. This assessed the extent of the suite given that the population was now known to be significantly different from that published in the 2001 SPA Review, because of: (i) revised totals at the main UK site; and (ii) a revised national population estimate following the national survey in 1999. The SWG was asked for advice on the implications of this revised understanding, and a number of specific issues related to the planned assessment of Spotted Crake during the current SPA Review. It was also agreed that for the purposes of the current Review, assessment of this species should be undertaken using the 2012 data as soon as is possible in Autumn 2012.
- 12.2. It was agreed that, in light of changed knowledge of the species status nationally and at the main site in the late 1990s, the proportion of the GB population within the SPA suite was 27% not 84%. JNCC web site documentation would need to be changed to reflect this revised assessment. There was little time for further discussion, so additional comments were invited by email by the end of November.

**Action Point 15 (10/11/11): JNCC** to revise information on its website on late 1990s status of Spotted Crake occurrence on SPAs.

**Action Point 16 (10/11/11): ALL MEMBERS** to send any further comments on the Spotted Crake paper to David Stroud by end of November.

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<sup>4</sup> Use this [link](#) to see presentations given at that launch meeting and supporting papers

<sup>5</sup> Use this [link](#) to see background to new process, new reporting format and associated guidance

<sup>6</sup> Use this [link](#) to see background as to the nature of the EU–BirdLife collaboration



### 13. Ramsar issues

- 13.1. JNCC (David Stroud) had circulated two papers to update on issues connected with the Ramsar Convention.
- 13.2. The first paper covered the forthcoming 11<sup>th</sup> Conference of the Parties to the Ramsar Convention. This was being held in Bucharest, Romania from 19-26 June 2012. The provisional agenda, national reports, draft resolutions and other information was available via the Ramsar website<sup>7</sup>. It was envisaged that the draft resolutions and associated guidance would be discussed by the Natura 2000 & Ramsar Forum in early 2012, as part of the process of preparing the UK position for the conference.
- 13.3. The second paper addressed progress on updating of the UK Ramsar Information Sheets (RIS). It also set out the next steps with this, noting that the new Ramsar on-line reporting system was likely to be available for use from late in 2012. However, until there was resolution of the issues previously raised as problematic, it would not be possible to submit any updated RIS irrespective of format or technical process. JNCC would therefore welcome guidance from the Country Agencies and Government Administrations as to how they would like to progress on this issue and what timetable they wish to put in place.

**Action Point 17 (10/11/11): COUNTRY AGENCY & GOVERNMENT ADMINISTRATIONS REPRESENTATIVES** to inform JNCC (David Stroud): (a) how they would like to progress with updating of Ramsar Information Sheets; and (b) what timetable they wish to put in place – by end of November.

### 14. Update on country implementation

- 14.1. SNH reported that they were continuing to progress inshore marine SPAs as a priority, and that work on possible Merlin sites was on-going. CCW and Natural England did not have any additional significant developments to report.

### 15. Progress with Action Points from last meeting

- 15.1. Progress with the Action Points agreed at last SWG meeting was reviewed. All had been completed or covered, except for Action Points 14, 17 and 18 which needed to be carried over (note that the last of these had already been addressed under item 6.2).

**Action Point 18 (10/11/11): RSPB** to give a presentation on the Future of the Atlantic Marine Environment (FAME) project at the next SWG meeting. *[carried over Action Point 14 (28/06/11)]*

**Action Point 19 (10/11/11): CHAIR & JNCC (DAVID STROUD)** to draft a request to the Rare Breeding Birds Panel from the SWG concerning the desirability of enhancing national Honey Buzzard data. *[carried over Action Point 17 (28/06/11), Action Point 6 (01/12/10), Action Point 15 (28/02/11)]*

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<sup>7</sup> Use this [link](#) to see information on the Ramsar COP<sub>11</sub>

## 16. Other matters

### *Geese feeding project*

- 16.1. WWT alerted the Group to a project which would collate all available data on the feeding distribution of Pink-footed Geese and Greylag Geese in Scotland and make this available as on-line maps. The project was being funded by WWT and SNH and carried out through the Goose & Swan Monitoring partnership. Whilst the current focus concerned the assessment of onshore wind farm applications, this work had obvious applications for the identification of cropped habitat extensions to SPAs. Given this, the long term plan was to develop the dataset further to include data from elsewhere in the UK, and to include other goose and swan species, although funding had yet to be secured. It was agreed that a presentation on this project ought to be made to SWG at the first opportunity following the completion of the initial project in April 2012.

**Action Point 20 (10/11/11): WWT (Richard Hearn)** to organise a presentation on the Goose & Swan Monitoring partnership project examining the feeding distribution of Pink-footed Geese and Greylag Geese in Scotland at the first suitable SWG meeting.

### *Next SWG meeting*

- 16.2. The next SWG meeting would potentially take place in March 2012, though this was largely dependent on the SPA Review Phase 1 timetable which had not been entirely agreed on. Once this had been set, the Secretariat agreed to canvass for a suitable date and venue and organise the next meeting.

**Action Point 21 (10/11/11): SECRETARIAT** to canvass for a date for and then organise the next SWG meeting.

## **Appendix 1 – RSPB Briefing on the Implications of Rufford Incinerator Decision for the UK SPA Review**

*Prepared by Andrew Dodd & Kate Jennings, RSPB, November 2011*

The decision in May 2011 by the Secretary of State for Communities and Local Government to refuse consent for the application by Veolia for the construction and operation of a waste combustion/Energy Recovery Facility on land at the former Rufford Colliery, Rainworth, Nottinghamshire<sup>8</sup> is the first in the UK to shed light on the practical application of the second sentence of Article 4(4) Birds Directive. As such it has implications for the protection of Annex I and migratory birds outside of SPAs.

Article 4(4) second sentence states:

*“Outside of these [SPAs], Member States shall also strive to avoid pollution or deterioration of habitats [of Annex I and migratory species]”*

This short note sets out briefly the background to the case in relation to the SPA Review, the decision in respect of Article 4(4) second sentence, and considers some of the implications for the ongoing UK SPA Review.

### **Background**

The main nature conservation objector to the incinerator proposal was the Nottinghamshire Wildlife Trust (NWT), who had been involved with the former colliery site and with this proposal from the outset. The colliery site was due to be restored to heathland under an existing restoration plan.

The incinerator proposal affected a part of the Sherwood Forest area that supported breeding nightjar and woodlark. In objecting to the proposal, NWT argued that, because Sherwood Forest supported greater than 1% of the national populations of nightjar and woodlark, it should be treated as a potential SPA. This was, in part, based on the knowledge that the RSPB has identified Sherwood Forest as meriting consideration as an SPA in its 2005 IBA/SPA Comparison Report.

Both the RSPB and Natural England became involved in the case in the run up to the public inquiry:

- The RSPB had not been involved in the case when it was first proposed, but did submit a brief objection shortly before the inquiry (essentially endorsing NWT concerns), but did not take part in the inquiry
- NE attended the inquiry following a request from the Inspector to set out their view on the conservation status of the Annex I bird populations and the legal implications of this, with particular reference to issues raised by NWT concerning any future SPA status.

In response to a request from consultants working for Veolia, the RSPB provided a written submission to all parties to the inquiry providing factual information about Sherwood's nightjar and woodlark populations, setting that in the context of the ongoing SPA review process, and confirming the RSPB's view that Sherwood Forest was an "important bird area" or IBA.

The inquiry found that:

- Sherwood Forest supported more than 1% of the British population of nightjar and woodlark
- That it met the numerical thresholds for SPA classification for these species

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<sup>8</sup> See: <http://www.communities.gov.uk/documents/planning-callins/pdf/1914959.pdf>

- That it was premature to consider the site as a potential SPA for these species in advance of the conclusions of the ongoing SPA Review.

At the inquiry, NE advised that a risk-based approach, based on Habitats Regulations Assessments under Regulation 61 of the Habitats Regulations, would be advisable to insure against the risk that the site be classified as an SPA in the future and the consent be subject to review under the Habitats Regulations. The final decision adapted this advice in the context of Article 4(4) second sentence.

### **Summary of the decision**

The gist of the decision is that the duty set out in the second sentence of Article 4(4) applies to planning authorities (and by extension, other decision makers) in reaching decisions on proposals that could affect populations of Annex I and migratory species. It draws on legal arguments made during the public inquiry by the NWT, based on a European Court of Justice judgment against Ireland (Case C-418/04). In that case, the ECJ ruled that the duty meant Member States must make serious attempts to implement this provision and take all reasonable measures to avoid deterioration of the species' habitats (paras 179 and 190).

In this case, the duty was applied because, while all parties agreed the Sherwood Forest area supported nationally important numbers of two Annex I species that met the numerical threshold for SPA classification, the ongoing SPA Review made it impossible to clarify the (p)SPA status of Sherwood Forest: this was properly the role of the Secretary of State based on the outputs of the SPA Review and it would be inappropriate to prejudge the outcome of that Review.

The SoS agreed with the Inspector that Article 4(4) second sentence should be applied in this case and that these Annex I species merited protection. The key sections of the decision letter and accompanying Inspector's report are:

- Paragraph 12 of the decision letter
- Paragraphs 1105 and, in particular, 1106 of the Inspector's report

By way of a summary, the Secretary of State agreed with the Inspector that:

- There was a need to act in accordance with Article 4(4) second sentence Birds Directive
- That a 'risk based approach' to assess the impact on the area used by the Annex I species was appropriate
- That a 'risk based approach' should follow the process set out in the Habitats Regulations for assessing the impacts of plans and projects on European sites (akin to a "shadow Habitats Regulations Assessment).

Based on this approach, the impact on the populations of Annex I birds was one of the reasons for the incinerator being refused consent.

### **Implications for the UK SPA Review**

In respect of the UK SPA Review, it is worth considering the following issues:

- The implications of this ruling for sites which meet numeric thresholds for SPA classification, but which have not been identified as (p)SPA
  - While Article 4(4) second sentence provides some protection to sites that should be SPAs, it cannot give the same level of protection as either Article 4(4) first sentence Birds Directive or, once a site has been recognised as a potential SPA, by Articles 6(3) and 6(4) of the Habitats Directive.
- The implications of this ruling for sites where uncertainty persists re (p)SPA status and potential knock-on implications for prioritization of species/seasons within Phases 2 and 3 of the SPA Review

## **Appendix 2 – Update on progress with work to support identification of possible marine SPAs**

*Prepared by Matt Parsons and Sue O'Brien, JNCC Seabirds Team, November 2011*

The marine SPA work programme aims to report on all science underpinning marine SPA classification by the end of 2012. However, this deadline may be compromised as staff resources are limited and are working at full capacity. Work in support of site classification beyond 2012 is currently envisaged to run to 2015/16.

JNCC this summer finished its third and final year of data collection to identify marine areas used by Terns that may be suitable for identification as SPA. Visual tracking and boat transect surveys have been undertaken for the four larger species, while shore-based counts and some boat transects have been made for Little Tern. A two phased approach is being proposed for the analyses:

- Phase 1 – colony-specific models of distribution using environmental covariates at data-rich colonies, with preliminary results expected to be available to SNCBs in the spring of 2012;
- Phase 2 – for data-poor colonies, data from data-rich colonies will be combined to derive more general models of distribution.

For Little Tern colony specific data collection is being proposed, with further data collection being bid for in 2012. Given the challenging timescale for JNCC to supply its final advice to SNCB by Dec 2012, analyses will probably be prioritised, focussing first on colonies with recent occupancy during the five most recent years since 2000.

JNCC undertook a second year of boat surveys for Balearic shearwaters during the summer in Lyme Bay. This follows on from a similar set of surveys in 2009, and will also be supplemented by data collected by Marinelife and SeawatchSW. Analyses of 2011 data are continuing. JNCC expects to report to NE on the results of the analyses and on an approach to site selection/boundary setting in March 2012, with final advice by December 2012.

Additional areas for breeding Shag are being investigated with a desk study this winter, with advice to NE expected in March 2012 and for rest of UK by end 2012. Data sources include ESAS (European Seabirds at Sea) database, offshore analysis, and the potential for working with the FAME partners to make use of tracking studies undertaken at various SPA breeding colonies. Datasets to be used for wintering Shag areas include ESAS analysis, inshore aerial surveys, WeBS, and shore-based counts undertaken by JNCC.

Work to identify inshore aggregations of wintering Divers, Seaduck and Grebes continues. In Scotland, JNCC has identified areas supporting sufficient numbers to meet Stage 1.1 or Stage 1.2 of the UK SPA Selection Guidelines. JNCC is now analysing data on the number and distribution of additional species, as identified by SNH, which might be included in any inshore SPAs at Stage 1.4. Natural England recently received a report from JNCC on the numbers and distribution of Divers and Grebes along the south coast of Cornwall. A paper on methods used to identify the Outer Thames Estuary SPA has been accepted by the journal Biological Conservation subject to minor revision.

Following an analysis of habitat preference of breeding Red-throated Diver, a series of polygons containing regularly used habitat within the range of nests have been identified. Work is underway to facilitate SNH selecting among these polygons using, among other criteria, expert knowledge.

A workshop on the offshore SPA work, which analysed the ESAS database with the aim of identifying hotspots of seabirds in the marine environment, will be held on 16 November 2011 in Edinburgh. At the workshop, the Statutory Nature Conservation Bodies, Defra, Welsh Government and Scottish Government will discuss the results of the most recent analysis. Completion of a report on the offshore SPA work is planned for March 2012.

## UK SPAR SCIENTIFIC WORKING GROUP

### ACTION POINTS AGREED AT 10 NOVEMBER 2011 MEETING

**Action Point 1 (10/11/11): SECRETARIAT** to circulate revised set of minutes for the June meeting for SWG approval, prior to uploading onto the SWG web site.

**Action Point 2 (10/11/11): SECRETARIAT & CHAIR** to organise submission of the 2010-11 SWG progress report to the UK Marine Biodiversity Policy Steering Group.

**Action Point 3 (10/11/11): JNCC Marine SPA Team** to advise on the timeline and seek the earliest possible release of offshore data on Little Gull numbers.

**Action Point 4 (10/11/11): ALL MEMBERS** to send any further comments on the Site Provision Index paper to David Stroud by 18 November.

**Action Point 5 (10/11/11): JNCC (DAVID STROUD)** to convene a meeting of the sub-group in December to progress the SPA Review Decision Framework and set out a process and timetable for further work.

**Action Point 6 (10/11/11): JNCC (ANT MADDOCK)** to produce a revised work plan and timetable for Phase 1 of the SPA Review as soon as possible and circulate to SWG for approval.

**Action Point 7 (10/11/11): CHAIR** to form an Editorial Group for the SPA Review Phase 1 Report in liaison with JNCC and relevant SWG Members.

**Action Point 8 (10/11/11): JNCC (DAVID STROUD)** to set out possible involvement of the SWG in the next phases of the SPA Review – for discussion at the next SWG meeting.

**Action Point 9 (10/11/11): JNCC (DAVID STROUD)** to collate supporting information and develop a proposal for consideration by ESG on expanding the scope of 2010 SPA Review. *[carried over Action Point 18 (28/06/11), Action Point 16 (28/02/11)]*

**Action Point 10 (10/11/11): JNCC (ANT MADDOCK)** to prepare a submission for ESG on the proposed revisions to the Phase 1 work plan and timetable as agreed by the SWG.

**Action Point 11 (10/11/11): JNCC (ANT MADDOCK)** to prepare a submission for ESG on the developing Phase 1 final report.

**Action Point 12 (10/11/11): JNCC (DAVID STROUD)** to prepare a submission on how work on the Decision making framework is progressing.

**Action Point 13 (10/11/11): SECRETARIAT** to advise the Chair of ESG about the need for an ESG meeting, the submissions being prepared for them, and other issues for their consideration.

**Action Point 14 (10/11/11): NATURAL ENGLAND** to provide an advice note on the Energy Recovery Facility at the former Rufford Colliery.

p.t.o.

**Action Point 15 (10/11/11): JNCC** to revise information on its website on late 1990s status of Spotted Crake occurrence on SPAs.

**Action Point 16 (10/11/11): ALL MEMBERS** to send any further comments on the Spotted Crake paper to David Stroud by end of November.

**Action Point 17 (10/11/11): COUNTRY AGENCY & GOVERNMENT ADMINISTRATIONS REPRESENTATIVES** to inform JNCC (David Stroud): (a) how they would like to progress with updating of Ramsar Information Sheets; and (b) what timetable they wish to put in place – by end of November.

**Action Point 18 (10/11/11): RSPB** to give a presentation on the Future of the Atlantic Marine Environment (FAME) project at the next SWG meeting. *[carried over Action Point 14 (28/06/11)]*

**Action Point 19 (10/11/11): CHAIR & JNCC (DAVID STROUD)** to draft a request to the Rare Breeding Birds Panel from the SWG concerning the desirability of enhancing national Honey Buzzard data.  
*[carried over Action Point 17 (28/06/11), Action Point 6 (01/12/10), Action Point 15 (28/02/11)]*

**Action Point 20 (10/11/11): WWT (Richard Hearn)** to organise a presentation on the Goose & Swan Monitoring partnership project examining the feeding distribution of Pink-footed Geese and Greylag Geese in Scotland at the first suitable SWG meeting.

**Action Point 21 (10/11/11): SECRETARIAT** to canvass for a date for and then organise the next SWG meeting.