

## **The Issue of Inclusion of Cropped Habitats in “Most Suitable Territories”**

### **Background**

Section 4.5 of Volume 1 of the SPA Review outlines the general principles underlying boundary determination of SPAs. In summary, the “first stage of boundary determination involves defining the extent of area required by the qualifying species concerned ... scientific judgements made in light of the ecological requirements of the relevant species that may be delivered by that particular site, and the extent to which the site can fulfil these requirements”. Then “every attempt is made to define an identifiable boundary on the ground and can be recognised by those responsible for management of the site”. They must “provide for the conservation requirements of the species in the season(s) and for the particular purposes for which they are classified”.

However, whilst stage 1 guidelines have been used to identify possible sites for SPA classification, stage 2 judgements have been used to decide which are the “most suitable”. One factor applied in making stage 2 judgements is that of naturalness (para 4.6.6). In general “sites having a low degree of naturalness (for example, urban and other industrialised landscapes) have not been selected for SPA classification. However, some less “natural” sites, with large numbers of species or high species diversity, have been chosen as SPAs. This, typically, reflects appropriate management over long periods that has benefited the species concerned. Such areas include low-intensity and small-scale arable areas (which can be of particular importance for species such as corncrake and stone-curlew) and some water storage reservoirs”.

The Review goes on to state (para 4.5.2) that “where species requirements are not met entirely by means of SPA classification, additional provision is achieved through other policies (for example, agri-environment incentives to manage areas surrounding SPAs in an environmentally sensitive manner)”.

### **The Issue**

The RSPB considers SPA boundaries should be chosen to reflect the functional requirements of the qualifying species, for roosting, feeding and (if appropriate) breeding. The application of “naturalness” as one of the criteria at stage 2 has led to some sites containing improved agricultural land or commercial forestry land not being designated (affecting, at one time, nightjar and capercaillie) and the size of others being too small, (affecting a significant number of species including whimbrel, geese (including Greenland white-front, pink-footed, barnacle), curlew, golden plover, marsh harrier, hen harrier, Montagu’s harrier, merlin).

It has been difficult to pin down the reasons for this policy presumption against the designation of such land. Reasons apparent to us include:

- The problem of boundary definition when land does not contain vegetation of natural or semi-natural character of inherent ecological interest.
- The possible transient use of the site by the qualifying species concerned.
- Reluctance to regulate mainstream “economic” land use within an SPA, responsible for the management of the SPA, when the land and land use practice concerned may be indistinguishable from that without the SPA.

In recent years, we are aware that the naturalness criterion has been applied less strictly to the designation of commercial conifer plantations for nightjar, woodlark and capercaillie, croftland for corncrake, and tillage for stone-curlew. However, RSPB believes this process has further to go, and thus the SPA network in the UK is incomplete in this respect.

RSPB is aware that it has been argued that rather than include agricultural areas in SPAs, other means such as agri-environment measures should be used to secure the conservation of these areas. However, in its judgement against the Netherlands (Case C-3/96), the ECJ declared that Member States are obliged to classify all sites, which applying the ornithological criteria, appear to be the most suitable territories for the species in question and that this duty cannot be avoided by adopting other conservation measures (see also C-96/98). As a result, the Commission has advised that the fact a site is improved agricultural land is not, in itself, a sufficient reason not to designate it as an SPA if the area in question is one of the most suitable territories for bird species listed in Annex 1 (or for that matter regularly migratory species). Whilst other scientific factors may lead one to conclude that an area is not one of the most suitable (e.g. if the area is not regularly used), the nature of the habitat should not be the basis of excluding the area from an SPA (letter 23/09/98).

The judgement against France in relation to the Marçais Poitevin (Case C-96/98) is also relevant in that the ECJ declared that the French Government had failed to classify a sufficiently large area of SPA and, in addition, that those areas classified as SPA did not have a legal status such as to guarantee protection of habitats and the survival and reproduction of the protected species. In particular, agri-environment measures were inadequate to offer the level of protection required by Article 4, as these were voluntary in nature.

### **Next Steps**

Previous meetings of the SPA Scientific Working Group have identified three strands to the work plan to address this issue:

1. Bottom up, through a reassessment of those sites or parts of sites proposed for designation as SPA by NGOs, but which were not included in the SPA Review. Sites which NGOs wished to continue to press would be addressed in further bilateral discussions with NGOs, following which it may be appropriate to bring the site(s) and related issues to the SPA Working Group for further discussion.
2. Top down, informing (1), by identifying on a species by species basis those affected by the “improved agricultural land/commercial afforestation” issue and, using a matrix approach, agreeing a framework to provide guidance on how site selection and boundary determination might be treated for the purposes of SPA designation.

The matrix would tabulate information on

- seasonal occurrence
- habitat usage
- site fidelity

A “dummy” matrix for discussion is given at annex 1.

3. Collation of information from other EU states to identify how others had approached this issue and identify “best” practice.

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**Annex 1**

<b>Species</b>	<b>Season</b>	<b>Habitats</b>	<b>Site Fidelity</b>	<b>Suggested Approach to Boundary Definition</b>
Greenland white-fronted goose	Winter	Historically lowland peatlands (raised and blanket bog) foraging on various bog plants. Now adapted in some areas to grasslands varying in intensity of management from low to high.	High for both roosting and feeding; individuals return to same fields, and even parts of fields.	Designate roost site and all associated regularly used feeding areas.
Stone-curlew	Breeding	Breed and feed on bare ground or short vegetation on free draining stony soils. Favoured habitats are grass heaths, chalk downland and spring-sown crops on arable farmland.	High, or as long as suitable land management is practiced. Radio tracking shows during incubation birds may move 2-3 km from the nest to feed, but most foraging is within 1 km. Foraging is usually closer to the brood location (within 1 km) during chick rearing.	Designate all land within 2 km radius of regularly used nest sites, and autumn gathering sites.
Pink-footed goose	Winter	Historically, estuaries provided the most important roost sites, but larger lake and reservoirs now also used.  Feeding – native coastal food – plants, but also agricultural crops – cereals, pasture and root crops	Strong seasonal movements with birds moving south during autumn from north Scottish arrival areas, returning north again in spring following progression of spring grass growth.  Usually feed close to roost site, but may fly up to 20 km to find suitable forage.	Designate regularly used feeding sites with a 20 km radius of roost sites selected following application of stage 2 judgements.