



Walshaw Moor, South Pennines RSPB complaint to the European Commission Briefing

The RSPB's complaint

The RSPB has submitted a complaint to the European Commission concerning recent decisions by Natural England (NE) over the management and protection of the part of the South Pennine Moors owned and managed by the Walshaw Moor Estate Limited. The RSPB considers those decisions, taken on behalf of the UK Government, were in breach of the requirements of the European Habitats Directive and Birds Directive to protect the special wildlife of the South Pennine Moors.

The RSPB is concerned about the events regarding Walshaw, both insofar as the impact on the conservation status of the protected site in their own right, and as an exemplar of the standard of regulation and site protection in the UK's uplands. This case has set a damaging precedent for the protection and management of upland sites of European importance, and raises grave concerns regarding the position of NE as an independent regulator and one of the 'competent authorities' in England charged with delivery of the Birds and Habitats Directives.

In consequence, the RSPB has given serious consideration as to the options available to better secure habitat restoration on the Walshaw Estate, and restore confidence in NE as an independent regulator.

The RSPB's primary concerns are that NE's decisions:

1. Permit management measures that will result in an adverse effect on the integrity of the South Pennine Moors Special Area of Conservation (SAC) and Special Protection Area (SPA) protected under the Habitats Directive and Birds Directive, in particular the blanket bog habitats found there (**Article 6(3) Habitats Directive**);
2. Fail to take appropriate steps to avoid the deterioration of the habitats of the SAC and SPA by dropping the prosecution into 43 grounds of alleged unconsented activities (including permanent infrastructure), thereby allowing significant damage to remain and elements of the permanent infrastructure to continue to cause damage (**Article 6(2) Habitats Directive**).

The RSPB has come to this position having considered carefully that information released by NE in the 6 months since it announced its settlement with the Estate and dropped all its legal actions against the Estate (see below). Submitting this complaint is the only route left open to the RSPB to achieve the following objectives:

- Overturning those decisions;
- Making good the damage to the South Pennine Moors SAC and SPA; and
- An appropriate management regime put in place that will enable the blanket bog habitats (and the wildlife that depends on them) to be restored to and then maintained in favourable condition. Blanket bog is a globally restricted habitat, which the UK has a special responsibility at a national, EU and global level to restore and conserve.

The South Pennine Moors and the Walshaw Moor Estate

Walshaw Moor (north of Hebden Bridge and west of Haworth, both in West Yorkshire) is part of the South Pennine Moors. The South Pennine Moors are a special place – their extensive areas of blanket bog, wet heath and dry heath support an amazing array of upland wildlife, including a diverse assemblage of breeding birds. These habitats and species have been given special protection in the South Pennines under European and UK wildlife legislation - to ensure they are restored and maintained in a favourable condition, now and in to the future.

The Walshaw Moor Estate Limited owns and manages Walshaw and Lancashire Moors for grouse shooting and has introduced management changes to increase significantly the number of grouse that can be shot each year.



Since 2010, NE, the Government's nature conservation advisers, had been taking various legal actions against the Estate designed to secure appropriate conservation management that would ensure the delicate blanket bog habitats found on the Estate were protected and restored to favourable condition. These actions included:

- Prosecuting the Estate on 43 grounds of alleged unconsented damage to the European and national protected areas in order to secure their restoration;
- Modifying historic consents with the aim of securing more appropriate management to protect and restore the blanket bog habitats and the wildlife that depends on them, in particular by regulating the extent to which the blanket bog habitats are burnt by the Estate to provide habitat for red grouse. This has necessitated a public inquiry to consider the Estate's appeal. The RSPB had submitted a written representation to this Public Inquiry.

These actions are in the context of an earlier successful conviction in 2005 against the Estate, for damaging the site without consent from English Nature.

Natural England's actions

On 9 March 2012, NE suddenly announced it had reached a settlement with the Estate relating to the type and level of management of the Estate's land in the South Pennine Moors. Natural England and the Estate agreed to halt all legal actions against each other, including NE dropping its prosecution. Having been following these issues for several years, the RSPB was very surprised and concerned at this turn of events and sought immediate clarification from NE on the reasons for its dramatic change in approach. This clarification confirmed that NE had granted the Estate a new consent on 1 March 2012 that sets out how the Estate can manage its land in the SAC and SPA. NE decided that the Estate's proposed management measures would cause no harm to the habitats and species protected by the SAC and SPA.

However, these measures included:

- Maintaining existing infrastructure, including some that was the subject of prosecution by NE in order to secure restoration of damage to the SAC and SPA;
- Allowing burning of blanket bog that it had previously been seeking to halt. This included burning of degraded blanket bog that would prevent it being restored to favourable condition.

Consequences of Natural England's actions for the SAC and SPA

The RSPB has considered NE's justification for granting this new consent carefully. We consider it flawed and that it breaches the Habitats and Birds Directives' protective requirements for SACs and SPAs. Rather than protecting the blanket bog habitats and the wildlife that depends on them, the RSPB considers NE's decision result in harm and prevent restoration of the SAC/SPA to favourable condition.

It is the RSPB's view that NE's decision to allow the SSSI Consent 2012 (based on its Habitats Regulations Assessment (HRA)) perpetuates existing damage and will result in ongoing damage and deterioration of the SAC and SPA, preventing the SAC and SPA from being restored to, and maintained at, favourable condition. There are two primary, interrelated reasons for this:

- Failure to take appropriate steps to rectify known damage from unconsented activities
- Agreement to a management measures regime that does not avoid adverse effects on the SAC and SPA's integrity.

The following summarises the RSPB's main concerns.

Failure to take appropriate steps to rectify known damage from unconsented activities

The RSPB contends that NE failed to take appropriate steps to avoid ongoing damage and deterioration to SAC and SPA habitats arising from the various unconsented activities by WMEL. In so doing, its decisions have had the result of perpetuating that damage and deterioration by:

- Agreeing to the SSSI Consent 2012 that permitted the alleged illegal infrastructure to be maintained *in situ*, it codified the damage caused to date by that infrastructure and ensured elements of that would continue to cause damage to the SAC and SPA e.g. hydrological disruption from track construction.
- As part of the Settlement, dropping the prosecutions through which it had been seeking to secure court orders to restore what it considered to be significant damage to the SAC and SPA.



Agreement to a management regime that does not avoid an adverse effect on site integrity

Blanket bog is a climax vegetation that does not require burning or drainage by way of conservation measures. In fact, burning and drainage are designed at best to arrest blanket bog development and at worst, to reverse it. This is in order to promote heather growth for the purposes of sport (grouse) shooting. The SSSI Consent 2012 and accompanying HRA contain several flaws which give rise to an incorrect conclusion that there will be no adverse effect (or risk of an adverse effect) on site integrity arising. These include those set out below.

Failure to restrict frequency of burns

There is nothing in the SSSI Consent 2012 to prevent repeat burning of the same land at any point during a rotation period. While the area that can be burned in any one year is based on a pro-rata calculation of the relevant habitat in a particular unit, there appears to be no constraint placed on the frequency with which any specific area of habitat can be burned i.e. the same area could be burned in successive years.

Undue reliance on 'cool burn' management practices

In order to reach a conclusion of no adverse effect on site integrity the HRA places considerable reliance on the assumption that WMEL will be able to practice 'cool burns' on a consistent, long-term basis. The HRA fails to consider whether this is a practical and realistic assumption. By reference to NE's own expert evidence and thereby to Scottish Government best practice guidelines, the RSPB considers the HRA analysis to be inadequate by failing to acknowledge reasonable scientific doubt as to the efficacy of 'cool burns'.

Allowing degraded blanket bog to be burned

The scientific evidence strongly suggests that burning inhibits, if not prevents, development of blanket bog vegetation, especially when carried out too frequently (e.g. less than 20 years between fires). To achieve favourable condition of blanket bog within the SAC, it will be necessary to restore degraded blanket bog to active blanket bog. Logically, this requires a conservation management regime that favours the growth of peatland vegetation to enable the degraded peatland vegetation to recover in line with the SAC site conservation objectives of restoration. Therefore, it is perverse for the SSSI Consent 2012 to allow a more frequent burning rotation on degraded blanket bog than active blanket bog. The HRA fails to assess the impact of the 15-20 year burning rotation on the ability to restore degraded blanket bog to active blanket bog.

Inadequate assessment of the impacts of unrestricted vehicle use

In addition, unrestricted vehicle use has been specifically allowed within the SSSI Consent 2012. Although there is a reference to the need to avoid any vegetation damage as a result of vehicle use, the possibility of such damage arising is accepted and only allows for remedies after the fact. The HRA and SSSI Consent 2012 fail to make clear how damage is to be defined, who will decide if damage has occurred and how it will be reported and monitored to ensure damaging use ceases in areas where vegetation damage has occurred.

The HRA also fails adequately to consider the potential disturbance effects on the SPA species during their breeding season arising from vehicular use. The HRA assumes that all SPA species are equally sensitive or insensitive to disturbance as red grouse and that all species will react in the same way as red grouse to vehicular disturbance during the breeding season. This is a simplistic assumption.