



An overview of the RSPB's engagement with the site protection system

The second RSPB submission to the Defra review of the implementation of the Birds and Habitats Directive in England

About this paper

This paper is a summary of the RSPB's case-based engagement with the site protection element of the implementation of the Birds and Habitats Directives in England over the past 30 years. It contains data relating to our involvement in cases, our perspective on some of the issues embraced by the review, supported by a number of case studies of key cases. It should be read in conjunction with our first submission to the Defra Review of 25 January 2012.

RSPB casework and the implementation of the Birds and Habitats Directive

As explained in our first paper, the RSPB considers site-based conservation to be a very effective way of conserving aggregations of species and their habitats. Site protection has been a key element in the UK conservation "tool-kit" for nearly a century. It is not surprising that the Nature Directives place such emphasis on the protection and management of special places, as a vital element in delivery favourable conservation species for target species and habitats. This legislation has become a vital element in ensuring that one Member State does not gain competitive advantage over others through the adoption of lower environmental standards, and that populations of migratory species are not adversely affected throughout their range, by a nation permitting damaging development. The Directives have helped conserve the species and habitats for which they were made; in so doing they have helped conserve the natural environment more widely and, indeed, the supply of ecosystem services needed by man associated with these sites.

The RSPB has invested considerable resource in seeking to protect internationally and nationally important wildlife sites from damaging developments in pursuit of our charitable objectives to conserve wildlife; a particular focus of this work is engagement with strategic planning mechanisms and the local planning system. In so doing, we seek to work with applicants to achieve win-win solutions that integrate objectives for people and the natural environment, so contributing to the achievement of sustainable development and living within natural limits. We recognise that it may be difficult for a company meeting the Nature Directive for the first time and consequent invest time in helping companies understand the system. As a membership body, with over 1 million members, we are a civil society body that helps individuals and communities to access and influence decisions and shape the future.

That said, our involvement in casework or, indeed, the influence of the protected area network in constraining growth should not be overstated. The majority of development

proposals responded to by the RSPB arise from the planning system: on average two-thirds (67%) of all RSPB cases in England between 2001 and 2010 related to planning applications (similar to figures for the UK as a whole). Other casework arises from areas such as forestry, flood risk management and access. RSPB Council has defined criteria for engagement, under which we normally only get involved in sites holding species or habitats of international or national importance, whether or not they have been formally designated.

In England, the RSPB responded to a total of 2,177 planning applications between 2001 and 2010, an average of 217 per annum. This compares to a total 5,993,408 planning applications received in England over the same period at an average of 599,341 per annum.

The RSPB therefore commented on approximately 0.036% of all planning applications in England between 2001 and 2010.

The RSPB undertakes casework through network of full-time conservation officers at regional and country level to monitor and make representations on changes in land use that could affect important bird populations and other wildlife interests. Conservation officers draw on central technical support and expertise (policy, legal and scientific) to provide a consistent approach to the application of the legal and policy framework across the UK and keep up to date with emerging thinking in the application of the legal and policy framework.

The RSPB's network of conservation officers has increased over time as resources have allowed and now stands at 44 at a UK level, including 26 in England. This increase in capacity has enabled the RSPB to respond and make representations on an increasing number of cases affecting important places for birds and other wildlife in pursuit of the RSPB's charitable objectives. At a UK level, the number of new cases per annum the RSPB made representations on doubled from 350 in 2001 to 746 in 2010. For England, the number of new cases per annum the RSPB made representations on tripled from 142 in 2001 to 434 in 2010.

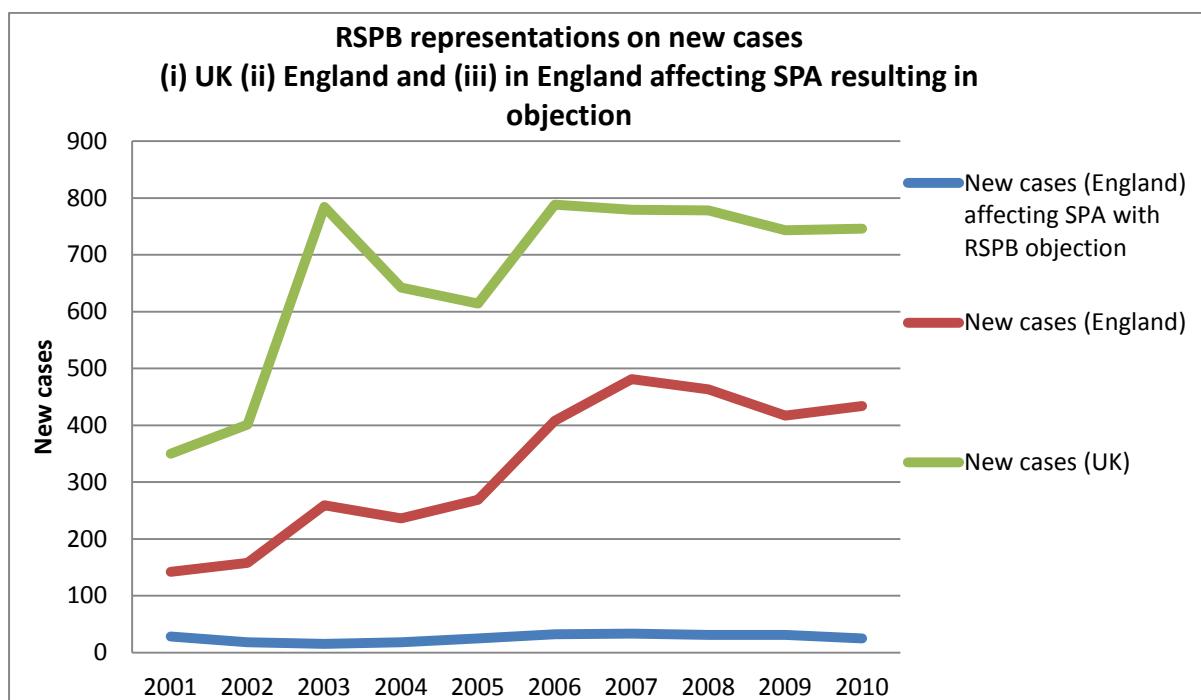
The RSPB objects in a relatively small proportion of the cases it makes representations on (10% at a UK level between 2001-2010). We do not object to proposals lightly, but when we do, it is often because of basic flaws in proposals as submitted, for example:

- Insufficient environmental information for the decision-maker to reach an informed decision;
- Inadequate or inappropriate survey to base any impact assessment on;
- Inadequate mitigation measures to avoid or reduce damage to acknowledged wildlife interests (see Crowthorne (Case Study 15), Hurstleigh (Case Study 28) and Wing Water Treatment Works (Case study 50));
- Inadequate justification for a damaging scheme to go ahead in preference to conservation *in situ* (see Havant Local Plan, Case Study 22);
- Inadequate compensatory measures where residual adverse effects are predicted; and in exceptional cases
- When there are unacceptable impacts on acknowledged wildlife interests and we consider it is not in the public interest for the development should not go ahead.

Many of these issues can and have been resolved through positive negotiation with proponents. Sustaining an outright objection is extremely rare and normally falls in to the following categories:

- Unacceptable damage to a Natura 2000 site (See Lewis wind farm (Case Study 32); Dibden Bay Container Terminal (Case Study 16); and Cliffe Airport in Aviation White Paper (Case study 5))
- Would set important precedents in the application of the decision-making tests (Dibden Bay Container Terminal (Case Study 16), Bathside Bay Container Terminal (Case Study 7), Hurstleigh (Case Study 28); and Lewis wind farm (Case Study 32))
- Raises important policy issues requiring clarification by Government (see Bathside Bay Container Terminal (Case Study 7))

Despite this wide range of possible reasons for objection, the RSPB’s rate of objection on new cases in which it has made representations has remained stable in absolute terms and fallen in relative terms (see figure). Between 2001 and 2010 in respect of those new cases in England (and the UK) affecting SPAs that resulted in an RSPB objection, the annual average remained stable at 26 (c.f. 35 per annum for the UK); as a proportion, the rate of objection in England declined from 20% in 2001 to 6% in 2010 as the number of cases increased overall (a similar rate of decline in the rate of objection was experienced at a UK level).



It supports the RSPB’s qualitative experience that *the use of objections has not increased over time, suggesting a maturing decision-making system, and demonstrating the emphasis the RSPB places on working with developers and decision-making authorities to resolve our concerns*. Based on our experience this is due to:

- Increased awareness and understanding of the requirements of the Habitats Regulations and the sensitivities of SPAs and SACs over time among developers, competent authorities and nature conservation bodies;

- Improving best practice (in terms of early consultation and improved baseline survey) by developers and their consultants, enabling identification and solving of potential problems e.g. through use of avoidance or mitigation measures;
- Increasing role of spatial planning to avoid sensitive areas and, where this is not practicable, to identify in advance the issues that should be addressed at project level to avoid conflicts (see section below on spatial planning).

Embedding the value of nature in decision-making

The Nature Directives are central to efforts to embed the value of nature in decision-making, both in UK and across the EU: in this respect, they are still a work in progress. The robust level playing field they created both across Member States and between and within land-use sectors represented step changes in the treatment of wildlife in decisions relating to land-use change and management.

The transparent and robust decision-making process introduced (particularly by the Habitats Directive) helped internalise the costs of damage to the natural environment posed by land-use change at a time when such costs were largely ignored. For example:

- In 1981, the Nature Conservancy Council estimated 10-15% of all Sites of Special Scientific Interest (then protected weakly under domestic legislation) were suffering damage each year;¹
- The extent of semi-natural habitats was greatly reduced e.g. loss of coastal grazing marshes in south and east England², loss of 94% of lowland raised bogs and 83% of lowland heathland.³

The Nature Directives were introduced against a backdrop of ongoing declines, and with the express purpose of halting and then reversing those declines to restore and maintain Europe's wildlife at favourable conservation status.⁴ The two Directives are structured in similar ways, with two limbs designed to work together to secure favourable conservation status of the species and habitats they seek to conserve:

- **Habitat conservation** (protected areas, habitat management inside and outside protected areas, habitat restoration, habitat creation) – the Birds Directive is the most explicit in respect of habitat conservation (see Articles 3 and 4);
- **Species protection** (schemes of general protection from deliberate killing or taking and, for certain species, destruction of eggs and nests or disturbance or deterioration of breeding sites and resting places)

Site protection stems from the protected area provisions of both Directives and is the only habitat conservation measure that can be said to have been implemented in an adequate way in the UK (i.e. SPAs, SACs and the ASSIs/SSSIs that underpin them and help secure their protection and management). The strengthened protected area provision introduced

¹ Lowe et al (1986) *Countryside Conflicts: the politics of farming, forestry and conservation*

² Williams, G and Hall, M (1987) *The Loss of Coastal Grazing Marshes in South and East England, with Special Reference to East Essex, England*, *Biological Conservation* 39, 243-253.

³ HMSO (1995) *Biodiversity: the UK Steering Group Report. Volume 2: Action Plans*.

⁴ Dodd, A (2008) *EU Nature Directives: rights, responsibilities and results*. *Environmental Law and Management*. 20, 237-245

by Birds Directive (through ASSIs/SSSIs and SPAs) and then supplemented and clarified by the Habitats Directive has been essential to tackle the historic imbalance in treatment of the natural environment in decision making, evident in the decades prior to adoption and manifest in the massive losses of important wildlife habitats recorded.⁵

The Nature Directives have proved essential in stemming historic losses and embedding the value of nature into decision-making. Without them, it is clear much of what we value in the natural environment would have continued to be destroyed.

The Habitats Directive in particular evolved and clarified decision-making affecting protected areas in the UK. Two key obligations on the UK in respect of the Natura 2000 network are of relevance:

- To take appropriate steps to avoid deterioration of SPAs and SACs (Article 6(2))
- Ensure plans and projects avoid adverse effects on SPAs and SACs, while recognising that damage can be allowed in exceptional cases where there are no less damaging alternative solutions and the public interest justifies it – in which cases compensation must be provided (Articles 6(3) and 6(4)).

This represented a fundamental cultural change, embedding the precautionary approach to ensure the long-term conservation of Europe's most important wildlife and ensure that where damage is permitted, it is in the genuine public interest (as opposed to private interest).

Fundamental to understanding the criticisms from the development sector is the fact that the decision-making tests of the Habitats Directives reverse the traditional onus of proof incumbent on the objector to a proposal. Instead, to obtain consent, that burden now falls on the proponent who must:

- First demonstrate there is no (risk of) an adverse effect on SPAs and SACs; and
- Second, if damage cannot be ruled out, demonstrate:
 - No less damaging alternative solutions exist to meet the public interest served by the proposal;
 - That there are imperative reasons of overriding public interest why the damaging plan or project should proceed; and
 - Appropriate compensatory measures have been secured.

We consider the regulatory impact of the Nature Directives to be fully justified given the international importance of the Natura 2000 network and the relatively small area of the country that they embrace.

⁵ See Natural England (2008) State of the Natural Environment 2008

Securing an objective evidence base on which to make decisions about protected area designation and subsequent management, including the assessment of the impacts of development proposals

Sound decision-making is facilitated by objective data. In the context of protected areas, a vital element is the availability of survey data on the abundance and distribution for those species that have been identified as priorities for conservation through site protection mechanisms. For the Birds Directive, protected areas are part of measures required to protect all birds (through Article 3), but priorities for protection through designation of SPAs under Article 4 focus on those threatened species listed on Annex I and migratory species.

The UK, and especially England, is blessed with a large number of expert amateur birdwatchers and ornithologists, who contribute data through casual visits, special surveys and periodic national breeding and wintering bird atlas projects, co-ordinated by a variety of bodies including local bird clubs, the British Trust for Ornithology, the RSPB, and the Rare Breeding Bird Panel. JNCC and Natural England make an important contribution to funding this work as well as carrying out their own survey work. There are some bird species where amateur effort has to be supplemented by professional surveyors if adequate results are to be obtained. At the UK level, the planning of timing and funding of surveys for such species is co-ordinated through the Statutory Conservation Agency/RSPB Annual Breeding Bird Scheme (see http://jncc.defra.gov.uk/pdf/SCARABBS_JAN02.pdf). The sum product of this effort is *a rich resource of information to inform identification and selection of protected areas in the terrestrial environment*, although additional specific survey work may be required to, for example, help define site boundaries or provide additional data to confirm the regularity of use of a site.

Sadly, for obvious reasons, this amateur resource is not available for marine survey. Indeed, the scale and nature of the technologies necessary to properly survey the marine environment is beyond the capacity of individuals and civil society bodies. For birds, the statutory conservation bodies (now JNCC) have taken the lead on marine survey, especially through the JNCC Seabirds at Sea project, that lasted from 1979-2002, and is now contained within the European Seabirds at Sea database, also hosted by JNCC. However, these data are spatially incomplete, with uneven coverage between years. The data are now becoming aged, in an environment that is beginning to show rapid change in the face of climate change, and exploitation of fish stocks. *The absence of fundamental data is the underlying cause of the current difficulties regarding implementation of the Birds and Habitats Directives in the marine environment.* Indeed, the RSPB has been warning of this for at least a decade (see for example the RSPB's comments dated 18 February 2003 on the Department for Trade and Industry's consultation document *Future Offshore: A Strategic Framework for the Offshore Wind Industry*).

Over the last decade, the main source of new data for the marine environment has been developer-led work related to oil and gas development, or wind farm development, intended to contribute to site-specific Environmental Impact Assessment. In several instances, these surveys have found hitherto new wildlife resources, which have had serious implications for the projects concerned. Examples are Shell Flat (Case Study 42) and London

Array (Case Study 34), which discovered major new populations of wintering common scoter and red-throated diver respectively. We believe this is far too late in the process: strategic planning and Strategic Environmental Assessment should have filtered out such conflicts far earlier. Over-reliance on developer-led survey also means that these sites cannot be placed in the wider context to assess their relative importance or to ensure the best areas are being protected. Also, survey is being geared to current deployment of an existing technology, rather than getting ahead and being able to shape deployment of future technology.

In addition to traditional survey, new data acquisition technologies such as radio-tracking birds between colonies and feeding areas (e.g. the RSPB-led Future of the Marine Atlantic Environment project),⁶ and use of radar can help fill these gaps. *Development of a shared and integrated strategy for marine survey and monitoring to harness and co-ordinate the efforts of Government, developers and others is a priority.*

A second area of difficulty is marshalling scientific data to help make judgements about the potential impact of plans or projects on the designated interest of protected areas, especially in the assessment of whether a plan or project is likely to have significant effect (and thus require appropriate assessment) or constitute an adverse effect in the context of an appropriate assessment. This problem is particularly acute in relation to new technologies, where in essence judgements are being made in a context of uncertainty rather than an evidence-based understanding of risk. Modelling techniques can assist, but post-implementation monitoring is vital

- to validate these models
- to establish and improve the quality of impact assessments over time; and
- to allow transition from precautionary to more evidence-based (and thus less precautionary) decision-making.

A further problem is interpreting the significance of observed effects: for example, if birds are displaced from a site by disturbance, are they able to find alternative feeding sites, or will they die? And if they die, what is the significance of that for the conservation status of the species? And what is the cumulative impact, if many developments are being implemented that impact on the same species or population – a very live question in relation to the deployment of offshore wind on seabirds. And how does risk alter with weather – migratory swans and geese may well be able to detect and avoid turbines in good weather conditions, but not in rain or poor visibility? In the case of London Array (Case Study 34), these issues were addressed by making fairly cautious decisions about the displacement affect of turbines on wintering red-throated diver, and phasing construction, so post-implementation monitoring could be used to inform deployment of any second phase.

On occasion, we may understand that there is an impact, and be able to make judgements about how best to integrate development and natural environment objectives, but not necessarily be able to pinpoint the precise vehicle for those impacts. To take an example, stone curlews do not breed near urban areas or main roads, so excluding them from

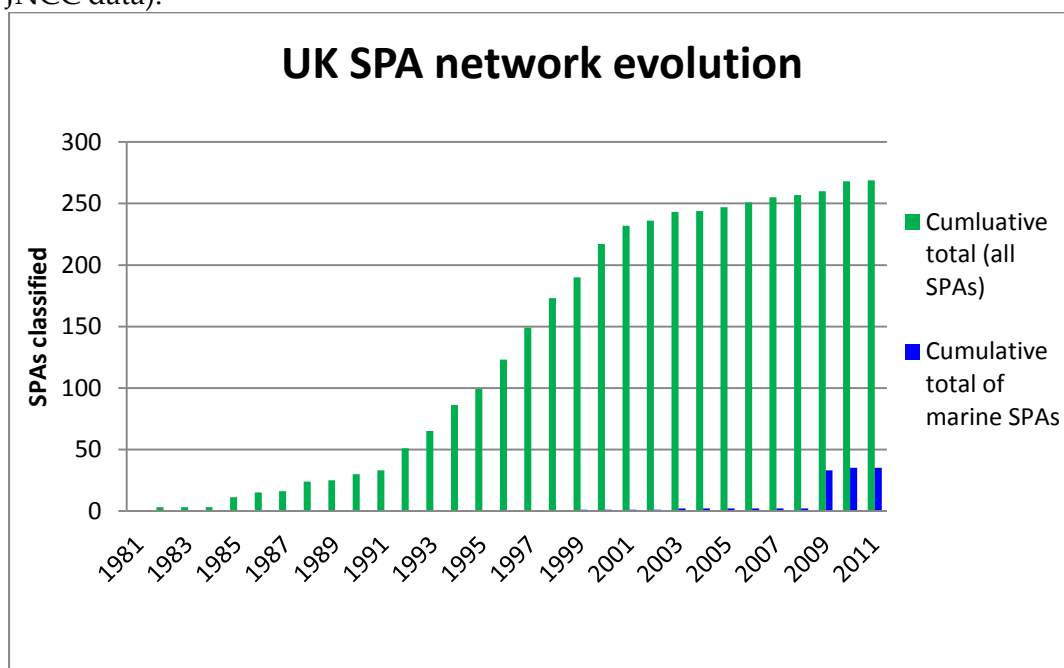
⁶ See <http://www.rspb.org.uk/ourwork/projects/details/255106-future-of-the-atlantic-marine-environment-fame>

otherwise suitable habitat. The reasons may include noise, light, predation by domestic pets, disturbance by dogs and people or a combination of these. This has implications for the location of new urban development and roads in their core breeding areas, such as [A303 Stonehenge road improvement](#) (Case Study 2) and housing in Breckland (see [Breckland Local Development Framework](#) (Case Study 8)). This is a well studied species with far more information both about its ecology and environmental impacts than for most. Whilst it is possible that greater investment in research might clarify the cause(s), for the purposes of land use planning there is sufficient to inform decisions-making (see [A11 dualling](#) (Case Study 1), [Weeting housing](#) (Case study X), [Breckland Local Development Framework](#) (Case study 8) and [A303 Stonehenge road improvement](#) (Case Study 2)).

Perhaps one of the best examples of data being gathered to inform the impact of a major new plan or project was in relation to the introduction of the new right of access to open country, made following passage of Part 1 of the Countryside and Rights of Way Act 2000. A particular concern was the possible impact of disturbance from walkers and dogs on ground-nesting birds. A strategic meeting to identify research needs led to research being commissioned by English Nature/Countryside Agency, that was later reported on fully and then used in field assessments to determine the need for mitigation measures or restrictions (see [Access to open country](#) (Case Study 4)).

Establishing a coherent protected area network

Perhaps the most important part of implementation of the Nature Directives is ensuring that site designation is as complete as possible. Without this, developers face considerable regulatory uncertainty, both in understanding the location of important environmental assets, and the procedures that relate to them. The approach to designation differs between the two Nature Directives. For the Birds Directive, Special Protection Areas must be selected as part of a package of special conservation measures; the Directive requires that most suitable territories shall be selected to meet the protective requirements of the species. The figure below summarises the progression of SPA classification in the UK to date (based on JNCC data).



Terrestrial SPAs

For the terrestrial environment, the UK has developed a two stage process by which sites are identified for possible designation. Stage 1 involves using quantitative guidelines to identify sites holding important populations of birds; stage 2 uses qualitative guidelines to select most suitable territories where application of the Stage 1 guidelines does not result in an adequate number of areas being identified (see <http://jncc.defra.gov.uk/page-1405> for details). Arguably, greater emphasis has been placed in the selection process on identifying most suitable territories, than determining whether the suite of sites for a particular species adds up to something that meets its protective requirements. The adopted approach demands a lot of data to support site designation (eg a run of 5-years data to demonstrate regularity of use), boundaries are tightly defined (eg with no buffer zones around the outside to assist protection) and, historically, ornithological sites have only been designated if they had underlying intrinsic ecological interest (ie: they first justified notification as SSSI on botanical grounds). This approach has now ceased (e.g. with the designation of arable areas within Breckland for stone curlew), but this change in policy has not necessarily been retrofitted to sites already designated. In combination, the result has been an extremely parsimonious approach, the result of which has been a matter of dispute with NGO's for over a decade. Site designation for several species is incomplete. For others, the site network does not protect their needs adequately as semi-natural habitats are designated, but in the majority of cases cropped habitats are not (so for many geese, roost sites are designated, but their feeding areas are not).

From an international perspective, the UK has the lowest proportionate area of its territory designated SPA of all Member States (SPAs and SACs together cover only 6% of the UK). There is a considerable gap between BirdLife International's Important Bird Area inventory for the UK (see <http://www.birdlife.org/datazone/site>) and the potential list of sites for SPA designation identified by JNCC in its 2001 SPA Review (see <http://jncc.defra.gov.uk/page-1412>). The BirdLife IBA inventories have been accepted by the ECJ as an objective measure of the adequacy of a national SPA network. The first instance was in *Commission v Netherlands C-3/96*, in which the Court took account of the Inventory of Important Bird Areas in the European Community, published in 1989, finding that, although it was not legally binding on the Member States concerned, it could, by reason of its scientific value in that case, be used by the Court as a basis of reference for assessing the extent to which a Member State had complied with its obligation to classify SPAs. A further example is *Commission v Ireland C-418/04*.

Further, the SPA Review remains largely unimplemented in England. The UK SPA Scientific Working Group was established by Defra in 2001 as a reconciliation process through which to address these site selection issues (see <http://jncc.defra.gov.uk/page-1770>). Its membership includes statutory, NGO and industry stakeholders. It has been meeting for a decade; it is not clear that in England at least that its work has made a difference to the site designation process. It is planned to deliver Phase 1 of a '2010' SPA Review in 2012. However, while this will include consideration of some of the issues outlined above (for example designation of cropped land), and identify where the current network of SPAs may be insufficient for the limited list of species included in that Review, any action towards

addressing the insufficiencies identified is intended to be progressed via second and third phases of the Review for which they are no Terms of Reference and no timescale.

We contend that there has been no 'gold-plating' whatsoever in the UK approach to terrestrial SPA site designation. Indeed, there is considerable evidence that the UK has lagged behind other Member States. The practical implications of this are potentially serious. Projects may be proposed for land for which there is an extensive body of data to support designation; it is possible that the *Basses Corbières* judgment might apply, either directly or by extension (i.e. that any development with adverse effects could not benefit from the derogation tests set out in Article 6(4) of the Habitats Directive – alternatives and IROPI ; instead the original Birds Directive tests would apply, under which damaging projects could only proceed for reasons of human health and public safety)⁷. This might apply to new sites or, more likely, functionally linked cropped habitats associated with an existing SPA (e.g. grazing marsh or arable land within a sea-wall bordering an estuary). Case studies include Dibden Bay Container Terminal (Case Study 16), Cliffe Airport (see Aviation White Paper, Case Study 5) and more recently, developments proposed for the south bank of the Humber (see Wildlife and Countryside Link submission).⁸

Marine

The position regarding SPA designation in the marine environment is more difficult than for terrestrial sites. For offshore waters, the designation process was delayed by Government reluctance to acknowledge application of the Nature Directives to them; the successful 1999 Judicial Review brought by Greenpeace⁹ clarified this. Further, the data-hungry approach chosen requires the availability of a lot of survey data, replicated over several years for an area. As discussed in the survey section above, lack of investment in marine survey has meant that basic data are not available to populate such a data-rich approach.

JNCC has adopted three main strands to the identification and recommendation of marine SPAs, that are then forwarded to Natural England to do the public consultation on, before forwarding to Defra, for consultation within Government and eventual formal designation.

Strand 1 addresses **marine extensions to onshore seabird breeding colonies**. These are intended to protect behaviours directly associated with the colony, such as resting, bathing and mating, and to be defined by standard radii from the colony, the distance depending on the species in the colony. This approach and the species-specific radii for its application to colonies throughout the UK have been agreed by Government since 2008, and yet to date only those in Scotland have been classified. We consider that the classification of agreed maintenance extensions in England needs to be done urgently, as some nearshore waters are being considered for development. An example is Bempton/Flamborough Head, North Yorkshire, which is also being consulted on for oil and gas exploration as part of the current licensing round. Failure to designate will cause regulatory confusion, and given the Government's approval of the maintenance extension approach and radii (and therefore its

⁷ European Commission v France C-374/98

⁸ For further detail, see http://jncc.defra.gov.uk/pdf/sparswg_RSPBcaseworkscience_paper.pdf .

⁹ R. v.. Secretary of State for Trade and Industry & Others, ex parte. Greenpeace Ltd [2000] Env LR221

recognition that this and other maintenance areas should be classified) we believe that the *Basses Corbières* ruling would be found to apply in this case.

Strand 2 is for **concentrations of moulting and wintering ducks, divers and grebes**. Most sites are relatively near-shore, but some could encompass shallow sand-banks well offshore. Considerable data are now available to enable site identification, from seabirds at sea surveys, specific site surveys and more recently developer-led surveys, and the JNCC has completed its analysis of all areas of search for Strand 2 sites. However, little progress has been made with site designation, with only two sites classified in English Waters to date (the Outer Thames Estuary and Liverpool Bay SPAs), and in both cases failure to designate these areas until their importance was highlighted by developer survey has caused regulatory difficulties (Shell Flat (Case Study 42) and London Array (Case Study 34).

In making its recommendations for site selection for designation, JNCC proposes adopting the terrestrial approach to application of the Stage 1 and Stage 2 guidelines. This risks failure to designate sufficient sites as SPA to meet the protective requirements of the species, unless there is a very clear vision as to what those requirements are and what the protected area mechanism is intended to contribute to conservation of each species. For example, it would be expected that a highly concentrated species of predictable occurrence such as common scoter would have a higher proportion of its population represented in the protected area network, than a less concentrated more mobile species.

Strand 3 addresses **seabird feeding areas, both in- and offshore**. These areas might be used by seabirds year-round, but the breeding season is perhaps most significant, when parents are feeding young, and thus feeding areas are functionally linked to, and constrained by the location of, onshore breeding colonies of cliff-nesting auks, gannets and gulls, hole-nesting puffins, shearwaters and petrels and, ground-nesting gulls and terns.

For over a decade, JNCC has tried to identify seabird feeding areas using a combination of ESAS data and interpolation through statistical modelling to address data deficiencies. The RSPB has been consistently critical of this approach, as we believed there was insufficient primary data to support application of this data-hungry approach. We understand that JNCC has now accepted this, and is seeking additional data from other sources.

Nevertheless, JNCC has succeeded in identifying a small number of sites where the case is sound enough to proceed to consultation without further delay. None of these sites that pass JNCC's stringent analytical approach are in English and associated offshore waters.

However, Dogger Bank emerges clearly as a site supporting qualifying numbers of a range of species in all seasons (guillemot, little gull and little auk, and an assemblage of over 20,000 birds in every season). Dogger Bank failed selection on the basis of application of the regularity criterion, reflecting the problems of applying such a data hungry approach in a data poor environment. *We consider there is a good case for progressing this site to designation.*

To identify anything approaching a coherent suite of foraging sites will require further data probably involving a combination of complementary techniques. As the JNCC have stated that no further survey will be undertaken in support of this work, we believe the Defra's

current deadline of 2015 is unrealistic to achieve, and consider Defra and DECC need to make the case to Treasury to help fund this work.

Effective transposition of legislation

The Nature Directives have been transposed in to English law through a number of legal instruments over the last 31 years.¹⁰ Effective implementation depends first and foremost on clear and robust transposition designed to deliver the purposes of the Nature Directives, helping to create certainty and confidence in all users. In this regard, the UK Government (like most Member States) has been only partially successful and has frequently had to respond to criticisms of its transposition through piecemeal amendments.

This need for ad hoc amendment has itself been a cause of ongoing uncertainty for all those who interact with the legislation as it has resulted in irregular “moving of goalposts”, perhaps most significantly in respect of European Protected Species where the law has been subject to frequent amendments in recent years. Much of the uncertainty that has arisen in decision-making systems results from inadequate Government transposition and implementation of the legislation and a lack of clear guidance for both SNCBs and developers to assist their understanding of the legislative requirements.

The most significant recent changes resulted from the European Court of Justice judgment in Case C-6/04 *Commission vs United Kingdom* (October 2005):

- Application of the Birds and Habitats Directives requirements to the offshore marine environment from 2007;
- Application of articles 6(3) and 6(4) to land-use plan systems;
- Significant amendments to the European Protected Species regime which took several attempts at amending regulations to finally resolve.

As a result, transposition in respect of the protection of Natura 2000 sites and European Protected Species now follows or draws heavily on the wording of the Nature Directives (see also WCL submission). **The RSPB would argue there is no evidence of gold plating in the transposition of these provisions.**

However, considerable reliance for “transposition” continues to be placed by the Government on policy guidance rather than appropriate, explicit and proportionate legislative provision. The RSPB would argue that this leaves the Government unnecessarily vulnerable to infraction e.g. protection of potential SPAs, protection of areas identified as compensatory measures under Article 6(4) of the Habitats Directive.

Clear gaps in transposition remain. This creates ongoing uncertainty surrounding possible future enforced changes to the legal framework and, critically, results in the Government being unable to realise the potential of the Nature Directives to support its objectives in respect of the natural environment. This is especially true in respect of halting the loss of

¹⁰ In particular: Wildlife and Countryside Act 1981 (as amended), Conservation of Species and Habitats Regulations 2010 (as amended), Offshore (Marine Conservation) Regulations 2007 (as amended), Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended)

and then restoring biodiversity, in particular the need to put in place a robust framework for the delivery of landscape scale conservation¹¹:

- Failure to transpose the habitat conservation (management, restoration and creation) measures set out in the Nature Directives to put in place an integrated framework to secure the recovery and maintenance of the UK's wildlife to favourable status. In particular:
 - Article 3 of the Birds Directive (wide ranging habitat conservation measures)
 - With the exception of the classification of SPAs, Article 4 of the Birds Directive in respect of special conservation measures *per se* as part of an integrated package, and the second sentence of Article 4(4) in respect of the protection of Annex I and migratory species outside SPAs;
 - Article 10 of the Habitats Directive in respect of appropriate connectivity in the landscape.
- Failure to transpose in the terrestrial and inshore environment the requirements of Article 6(2) of the Habitats Directive to take appropriate steps to avoid deterioration and disturbance of habitats and species of Community interest in SPAs and SACs;
- Failure to set clear conservation objectives for the favourable conservation status of species and habitats protected by the Nature Directives, including translating these to protected area level (see Site Conservation Objectives below).

In this context, *the RSPB considers the review should provide an opportunity to address these gaps in transposition* and that the Government should take a purposive approach to the overall transposition of the Nature Directives to provide clarity and confidence and to ensure that their objectives can be met.

Definition of clear and robust site conservation objectives

The purpose of SPAs and SACs is to contribute, as part of wider suite of conservation measures, to the overall FCS of the species and habitats they protect.¹² The European Commission's guidance on reporting on FCS under the Habitats Directive put this more simply: to ensure species and habitats are healthy and prospering and will continue to prosper over the long-term. Restoring and maintaining a habitat or species to FCS is clearly a dynamic process, and more so given the need to build in adaptation to climate change.

For those species and habitats already at FCS, the role of an SPA or SAC is to maintain that status. For those that have suffered or are suffering declines, their role is to restore them to a favourable status. The proportion of a species or habitat protected by the SPA or SAC network varies. It follows that the contribution of the site network and individual sites within it to achieving FCS will vary from species to species and habitat to habitat. *At present, the UK has not explicitly defined FCS for Annex I and migratory bird species, nor*

¹¹ See Lawton et al (2010) *Making Space for Nature: a review of England's wildlife sites and ecological network. Report to Defra*; Defra (2011) *The Natural Choice: securing the value of nature*; and Dodd et al (in press) *Protected Areas and Wildlife in Changing Landscapes: The Law and Policy Context for NGO Responses to Climate Change in the UK*. *Journal of International Wildlife Law and Policy*.

¹² FCS is not in the text of the Birds Directive. However, the EC has argued the obligation is implicit in Article 2 of the Birds Directive. See European Commission (2008) *Guide to sustainable hunting under the Birds Directive*.

has it defined the contribution of the SPA and SAC networks (and individual sites within those networks) to achieving FCS; we believe this requires urgent remedy. This has implications for practical decision-making.

In the context of the review, there are several key observations in respect of site conservation objectives for SPAs and SACs:

- There is a need for clear, robust definitions of FCS at the site level – this will require both qualitative and quantitative objectives. The majority of SPAs in England (and devolved administrations) at best have qualitative objectives, but lack robust quantitative objectives that meet the purposes of the Birds Directive;
- Quantitative objectives are important as they provide a benchmark against which to assess impacts of plans or projects on an SAC or SPA feature, especially species populations;
- Such objectives must take a purposive approach and be designed to secure the restoration and maintenance of a species or habitat at a favourable level.
- Such objectives would need to be subject to periodic review to take account of improved scientific understanding and the implications of climate change.

Current guidelines for setting conservation objectives and favourable condition are flawed in that they start with the assumption that SPAs (and SACs) were in favourable condition at the time of designation. For many species and habitats this is clearly not the case, as the whole purpose of the Nature Directives is to halt and reverse declines in many species and habitats. It is also evidenced by the significant and successful investment over the last 10 years in beginning to restore protected areas to favourable condition. For a species, quantitative objectives should be based on its habitat being restored to favourable condition – this is not automatically the case at present, creating a clear disconnect between a species and its habitat. This runs a strong risk that species objectives will be set too low.

As mentioned above, *lack of agreed, quantified objectives has important knock on effects in decision-making.* Apart from being the cause of regular criticism of Natural England by developers and consultants, it creates uncertainty and inherently leads to, for European Protected Species particularly, a more precautionary approach to impact assessment. For example, if you do not have a clear idea of what an SPA's 'target' favourable population is for a particular rare breeding bird, you are forced to take a precautionary approach in assessing impacts, in case unnecessary damage is caused. It makes assessing the need for, and nature of, any mitigation and compensatory measures more complex and problematic than should be the case.

Strategic planning to direct the right development to the right locations and avoid conflict by enabling early engagement

Strategic (spatial) planning is vital to ensuring the effective and democratic shaping of land use and our communities, delivering the right types of development in the right places. The RSPB believes that sound strategic planning should be able to allocate the use of space to avoid important wildlife sites being impacted upon by development, while enabling societal objectives for economic and social development to be met. Done well, *strategic planning can provide regulatory certainty and avoid site-specific conflicts at a late stage in the*

development process (e.g. once a planning application has been submitted), when financial and legal resources have been committed and there is less room for manoeuvre, in terms of where to locate a specific development proposal.

The RSPB has been a long-term advocate of the benefits of such integration of nature conservation considerations into strategic planning and the use of strategic assessment techniques.¹³ However, formal application of the Birds and Habitats Directives to strategic planning only began in 2005 as a result of the ECJ judgment against the UK Government. The RSPB very much welcomed this change for the reasons set out above, given that successive governments had resisted it. The Holton Heath/Purbeck Local Plan case in 2001 (Case Study 26) and Havant Local Plan case in 2005 (Case Study 22) underlined the need for a new approach that prevented unsustainable proposals becoming embedded in strategic plans over many years, raising unrealistic landowner, developer and local authority expectations that damaging schemes could proceed. The success of the RSPB (and English Nature) in these cases highlighted the main benefit in applying the Nature Directives decision-making tests to strategic plans to secure more sustainable patterns of land-use.

The ECJ judgment has had a beneficial impact on a range of strategic plan types from national to local spatial scales where they have a bearing on important sites for wildlife, for example:

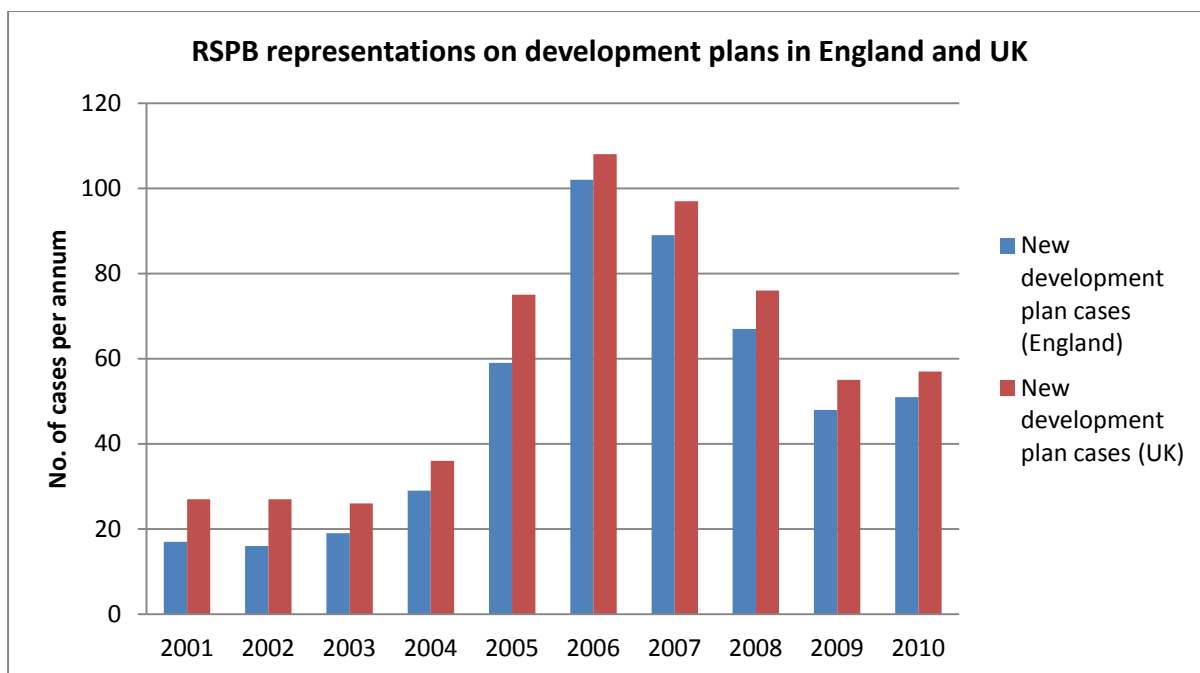
- Development plans
- Shoreline management plans and flood risk management strategies (see **Constructive engagement** below)
- River Basin and Catchment Flood Management Plans
- Coastal access (see Coastal Access in England, Case Study 14)

Below we take a closer look at our involvement in the development plan system and the positive role application of the decision-making tests of the Habitats Regulations has played.

Development plans

Development plans comprise the majority of our work on strategic plans. Between 2001 and 2010 we made representations on 584 development plan documents across the UK, 497 of these in England (see figure below).

¹³ For example, see Bain, C, Dodd, A and Pritchard D (1990) *RSPB Planscan: a study of development plans in England and Wales*. RSPB; and Therivel, R, Wilson, E, Thompson, S, Heaney, D. and Pritchard, D. (1992) *Strategic Environmental Assessment*. Earthscan, London.



The most immediate effect of the ECJ judgment was felt by local planning authorities in England, who were in the process of introducing the new Local Development Framework and Regional Spatial Strategy systems.¹⁴ There was initial upheaval, delay and uncertainty for plan preparation caused by the overnight application of the ECJ judgment just three months after the Government had issued a Circular stating plan making authorities were not required to apply the Habitats Directive to their development plans.¹⁵ For example, difficulties in retrofitting this requirement to nearly completed plans such as Chichester Core Strategy (Case Study 12), or a failure to fully appreciate the extra evidence that this necessitated by some local authorities, such as Rushmoor Core Strategy (Case Study 41) led inspectors to conclude their submitted plans risked being undeliverable and rule them unsound, echoing similar conclusions reached by the inspector in respect of the Holton Heath/Purbeck Local Plan case (Case Study 26). The RSPB recognised the need for constructive guidance to plan-making authorities and, in the absence of any Government guidance, produced its own to disseminate best practice.¹⁶

Just over six years on, it is clear that we are seeing the predicted benefits from appropriate application of the decision-making tests of the Habitats Directive to strategic plans. Strong examples of best practice have emerged that demonstrate the ability of the Habitats Directive tests to help plan makers adopt plans that put in place robust frameworks designed to avoid, or substantially reduce, project level conflicts between social and economic development and the protection of Natura 2000 sites. Work over the last few years in the Thames Basin Heaths and south-east Dorset (see WCL submission) and through the Breckland Local Development Framework (Case Study 8) represent ground-breaking approaches to plan-making where energy and resources are positively focused on achieving

¹⁴ Introduced by the Planning and Compulsory Purchase Act 2004

¹⁵ ODPM (2005) Circular 06/2005 *Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system*.

¹⁶ See http://www.rspb.org.uk/Images/spatialplansengland_tcm9-168180.pdf

an outcome that safeguards Natura 2000 sites while continuing to meet legitimate social and economic goals with the minimum of conflict.

Each demanded application of cutting edge scientific analysis and impact assessment to better understand the effects of new housing growth and to identify appropriate solutions. These cases share several key elements common to proportionate yet robust application of the Habitats Regulations:

- Using the best available objective science to understand the potential impacts of housing growth on Natura 2000 sites, in particular rare ground-nesting birds;
- Applying that science robustly and proportionately to inform impact assessments;
- Identifying appropriate spatial and policy solutions to ensure appropriate measures are implemented to avoid or minimise impacts at the project level;
- Co-operative working between local planning authorities, Natural England, the RSPB and Wildlife Trusts to ensure economic, social and environmental objectives could be met.

Based on our practical experience, we suggest that implementation could be improved further by, for example:

- Encouraging local planning authorities to engage in the Habitats Regulations assessment as early as possible in the plan-making process and to take a positive approach to it as a means by which to deliver more sustainable patterns of land-use and to streamline subsequent decision-making;
- Where Natura 2000 sites straddle more than one local planning authority, provide greater encouragement for cross-authority working, sharing costs on research, analysis and impact assessment and, where necessary, delivery of mitigation solutions;
- Providing mechanisms to disseminate best practice to other local authorities, especially in the treatment of:
 - Applied research, as many of the Habitats Regulation assessments need to apply cutting edge assessment techniques;
 - Appropriate design and funding of mitigation measures to secure no adverse effect on the integrity of Natura 2000 sites, the latter especially with respect to the interaction with the Community Infrastructure Levy;
 - When it is, or is not, appropriate to defer decisions on adverse effect to the planning application level, given the risk that a plan may be ruled unsound if too many 'difficult' decisions are deferred.

Adequate capacity and expertise within competent authorities and statutory nature conservation bodies

In our first submission to the Review, we highlighted the critical role that Natural England has to play in a successful regulatory system, providing expertise on the natural environment, and leadership in addressing site-based casework (see paragraphs 21-22). Ideally, Natural England should have the capacity and capability to engage positively with developers, to seek negotiated outcomes that contribute to sustainable development. Many of the case examples given demonstrate this, but highlights include: Immingham Outer Harbour (Case Study 29), London Array (Case Study 34).

Natural England derives influence not only from its technical expertise, but the knowledge that its view will be respected by other competent authorities, and local and national Government, should it consider a plan or project is so harmful that it should not proceed. And, indeed, that the project may be halted as a consequence. Dibden Bay Container Terminal (Case Study 16) is a good example of where Natural England's opposition to a development not only protected an important site, but also led to a more sustainable approach being embraced by the ports sector.

The loss of intellectual capital from Natural England is of significant concern, as is its locus and ability to continue to engage with developers and others with confidence, through knowing that it has the support of Government should it be necessary to sustain an objection, or refuse consent for damaging projects.

Constructive engagement by all parties in the process

We acknowledge that, for any business meeting the Habitats Regulations for the first time, the requirements are daunting, and may even appear prohibitive. We have been very conscious that lack of understanding and uncertainty may lead to anger and unwillingness to engage with the issues that the Regulations raise. Conversely, familiarity with the Regulations facilitates constructive outcomes, especially where a whole sector such as ports is operating largely within protected areas. The RSPB has invested considerable time in working with companies to assist them through the regulatory process, in the prospect that we can achieve outcomes that are good for business as well as the natural environment and, that should we end up unable to agree, at least both sides will be doing so from a position of knowledge, and not simply misunderstanding.

We have also noted a cycle in relation to the various industry sectors that we have worked with as they learn how to work with the Regulations. The early phase is marked by generally difficult discussions and often objection/inquiry into specific proposals, is followed by greater understanding and smoother outcomes, as better spatial planning, location or design leads to the integration of development and natural environment objectives.

In this section, we give examples of this process.

Ports

Britain's estuaries are international 'hubs' for millions of migrating and wintering wildfowl and waders – part of a network of sites reaching from the Arctic to Africa. The UK is of special importance due to our location, indented coastline and climate, which means we have many estuaries that are relatively ice-free during the winter months. But as 'hubs' for shipping estuaries have, for many centuries, been subject to land claim for ports and associated development. Habitat loss at some estuaries has been very significant, e.g. the Tees, where over 97% of the historic area of mudflat has been lost.

Even following the introduction of the Birds Directive, port development continued to be a cause of conflict as well as significant loss of intertidal habitats without appropriate habitat compensation. Cases such as Lappel Bank, Medway (Case Study 30) and Trinity Terminal

(Felixstowe Dock and Railway Act) (Case Study 47) exemplify this, although the UK Government would eventually provide habitat compensation for both schemes at Wallasea, Essex following legal challenge by the RSPB.

During the mid-late 1990s, the RSPB became aware of several major port expansion projects. At the time we thought this was a product of intra-port competition, against over-inflated estimates of future demand, especially for containers. However, our perception was altered fundamentally by work we commissioned from MDS Transmodal to enhance our understanding of the sector. This confirmed that growth in container traffic was expected to be c.7% per annum, associated with growth of manufacturing in China and the Far East and was fundamental in informing our approach as described below.

The first real test of the new Habitats Directive's decision-making tests arose in 1998 from the Harwich Channel Deepening (Case Study 21) proposal. This case represented the start of a sea change in the working relationships between port and harbour authorities (in this case, Harwich Haven Authority and Hutchison Ports UK) and conservation bodies, that would evolve over the following 10 years to place parts of the UK port sector at the forefront of working constructively with the Birds and Habitats Directives, both at a UK and an EU level.

Given the extent to which the ports sector has to operate within or adjacent to Natura 2000 sites, and their relative importance to the UK economy, they are the industry most likely to be able to claim imperative reasons of overriding public interest (IROPI). The alternative solutions test is perhaps more challenging: the RSPB's view, then and now, was that this required Government to maintain a strategic overview of port expansion, selecting those options that were least environmentally damaging to new demand (see 'Troubled Waters', published by Portswatch, a consortium of NGOs including the RSPB). In particular, we argued additional capacity should be supplied through better use of the existing port estate, rather than 'greenfield' expansion wherever possible.

The challenge was heightened in that ABP's Dibden Bay Container Terminal project (Case Study 16), aimed at expanding the Port of Southampton, was not only first in line, but also one of the most damaging of the options to come forward. Despite dialogue with the company, and the introduction of some (weak) mitigation measures in the scheme, the company's case was essentially that the birds would tolerate a reduced area of mudflat, and associated grazing marsh. Following the public inquiry, the Government accepted the inspector's recommendation that the project should not proceed.

Although seen by many commuters as a major port-wildlife conflict, that ports 'lost', we would argue that the influence of Dibden was far more positive, reinforcing the need for the much closer co-operative working between the port sector and conservation that first emerged at Harwich Channel Deepening (Case Study 21), and was one in which ABP would play a leading role. So, at Immingham Outer Harbour (Case Study 29) the company acknowledged the environmental impact and made provision for compensation with a mechanism for review and remediation, so enabling English Nature and the RSPB to withdraw objections to the harbour revision order, and leaving it to the Secretary of State to

determine whether the alternative solutions and IROPI case was sufficiently robust to meet the Habitats Regulations tests.

Similar solutions were agreed with P&O (now DP World) in relation to London Gateway Container Terminal (Case Study 35), the Port of Bristol Deep Sea Container Terminal (Case Study 9) and Hutchison Ports Bathside Bay Container Terminal project (Case Study 7). The RSPB did sustain an objection to this last project on the grounds that the UK need to meet projected demand could be met in a less damaging way by other projects without the need for Bathside Bay Container Terminal. In determining this case, the Government was, for the first time, required to clarify its policy on the public interest in terms of the necessary planning horizon to meet projected demand for container port supply in the south-east.

Redevelopment of existing port facilities was also approved for the Felixstowe South redevelopment (Case Study 19), where environmental impacts were considered not to give rise to an adverse effect following appropriate assessment and no objection was made by the RSPB or English Nature. The Felixstowe South redevelopment illustrates the potential to increase significantly port productivity through modernisation without causing unacceptable environmental damage.

The story comes full circle with the proposed redevelopment of the Port of Southampton, which if consent it is granted would enable the capacity envisaged to be provided by Dibden within the existing Port estate through the use of 'multi-story' car storage, increasing container stacks from three to five and altering their orientation and creation of two new quays. These proposed solutions have been facilitated by several companies moving out of the port and thus creating more space to enable ABP to consider increasing productivity within the same footprint. As at Immingham Outer Harbour, environmental damage has been identified and compensatory measures proposed.

With the collapse in global trade to Europe, there is now a huge surplus of consented capacity seeking trade. Support to offshore wind (maintenance, assembling and possibly construction) is now seen as an important alternative – both in its own right and as a stop-gap until the economy recovers.

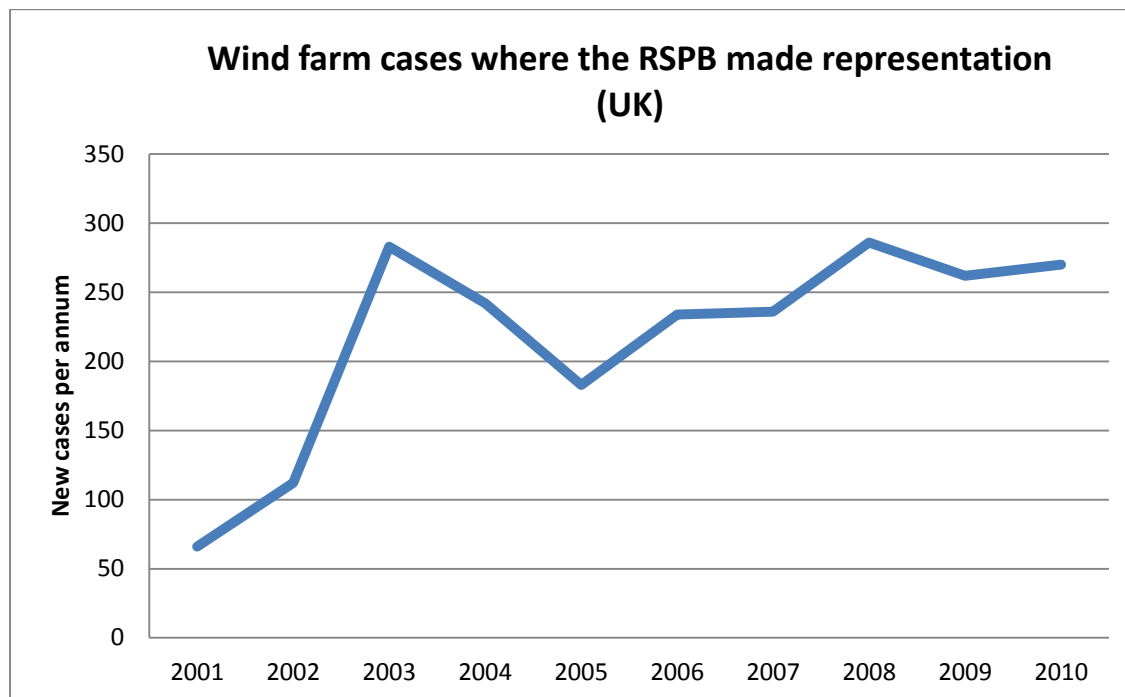
This takes us full circle. We are in no doubt that supply to offshore wind constitutes IROPI. There is a large amount of consented port capacity that could supply this need, either with no environmental damage or projects where, through co-operative working, damage has been identified, and habitat compensation already agreed and secured. There are a few companies seeking to promote environmentally damaging projects that should not be consented if the alternative solutions test were to be applied properly, and have not engaged constructively with regulators or public-interest NGOs. ***Put bluntly, we believe it is vital for the wider public interest that those companies who engaged to deliver sustainable development are rewarded, and that those who do not, are not.***

Onshore wind

Badly located wind turbines have the potential to impact on bird mortality through collision with turbine blades, displacement of breeding or feeding birds due to their physical

presence and damage to habitats through base structures, transmission lines and access roads etc. Where drainage systems are disrupted in hydrologically sensitive habitats, damage may extend beyond the immediate turbine.

The increasing roll-out of wind farms (both onshore and offshore) has inevitably led to growth in the number of cases on which the RSPB makes representations (see figure below).

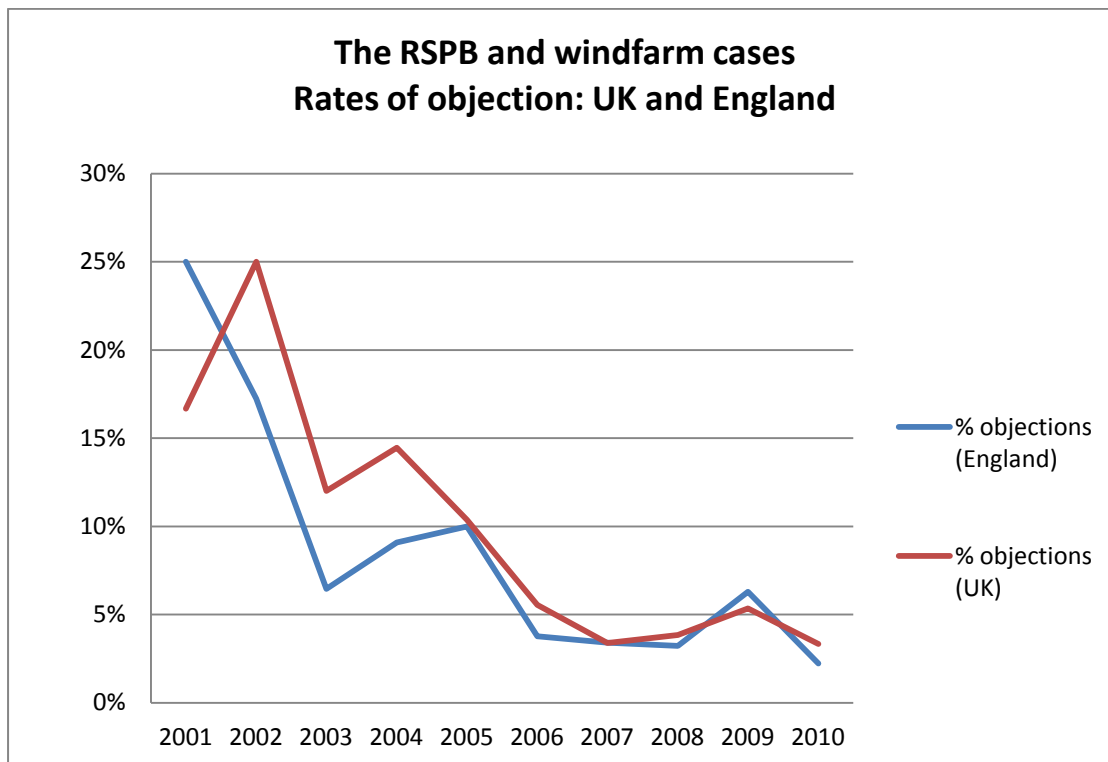


The RSPB supports the deployment of renewable energy as a vital step in climate change mitigation. We have actively sought to work with the renewable industry to assist the deployment of turbines in a way that minimises damage to the natural environment. We believe that strategic planning has an important role in identifying areas suitable for wind farms, as well as identifying areas of sensitivity. The RSPB has contributed to this process by contributing to the development of sensitivity maps: identifying those areas where deployment of turbines would pose such high risk to birds that the developer should be cautious in their approach. Many companies now seek our views as to location and design of wind farm projects in advance of formal application, with a view to achieving an integrated project. In 2009, the RSPB commissioned a report which compared approaches across the UK and a number of other countries and set out a suggested approach to positive planning for wind energy.¹⁷

This approach has been the main reason why the relative number of projects attracting formal objection from the RSPB has fallen dramatically during the last decade, at a time when the number of cases on which the RSPB has made representations has risen steadily (see figure below). Examples of where developers have engaged constructively in achieving

¹⁷ IEEP (2009) *Positive planning for onshore wind expanding onshore wind energy capacity while conserving nature. A report by the IEEP commissioned by the RSPB.*

solutions with respect to SPAs are Frodsham wind farm (Case Study 20) and Ovenden Moor wind farm (Case Study 39).



Water

An industry clearly dependent on the natural environment for its raw product is the water industry. Several large water supply reservoirs in southern England have been classified SPA for their wintering waterfowl populations. Development to enhance water supply risks disruption to this interest. Projects undertaken by Anglian Water at the Wing Water Treatment Works (Case Study 50), and Northumbrian Water Limited at Abberton Reservoir (Case Study 3) embraced the importance of these sites in achieving water supply objectives.

An example of a different kind is in relation to the United Utilities estate in the Dark Peak and Bowland, held by the company as water gathering grounds, as well as being classified SPA for moorland birds. Due to fire, overgrazing and industrial pollution, large areas are dominated by degraded bare peat: oxidised peat stains water causing unacceptable discolouration. Through the PR04 water price round, OFWAT accepted a proposal that this problem should be addressed through at source solutions to restore the catchment through the Sustainable Catchment Management Programme (Case Study 43), rather than using end of pipe solutions to remove discolouration. The need to restore SPA habitat to favourable condition was a key element in persuading OFWAT to accept what then was an innovative funding mechanism. Less than a decade on, the results on the ground are impressive, the area of bare peat having been sharply reduced through reductions in grazing intensity, drain blocking and the stabilisation of bare peat using jute netting and rolls, with a nurse crop of grass (a sterile brome), to aid revegetation. See <http://www.unitedutilities.com/scamp.aspx>

Roads

New road construction can cause huge environmental damage, including through carbon emissions, nitrogen deposition, direct habitat loss and indirect effects, including noise disrupting birdsong. Spatial impacts can be reduced through a combination of route selection and design. In some instances, there may be no alternative solution and an IROPI case, that means provision of compensatory habitat may be appropriate – this has only been required once so far in the UK (A380 road improvement Mallaig to Lochailort, adversely affecting the Glen Bleasdale SAC).

Examples of recent road schemes where constructive solutions have been reached through positive negotiation/public consultation, include the A11 dualling (Case Study 1) where the selected route minimises direct habitat loss and affects on stone curlews have been mitigated by provision of new habitat, and the A303 Stonehenge road improvement (Case Study 2), where the eventual decision was to do nothing – the least harmful alternative after tunnelling was determined to be too expensive.

Housing

A particular problem with respect to housing close to the heathlands of south and east England, much of which is designated as SAC and SPA, is the impact of urban effects, in particular increased recreational pressure by people and dogs, and the impact of predation by cats, on ground nesting birds. Larger developments can readily be appropriately assessed in their own right, but the cumulative impact of many smaller “windfall” infill developments, and replacement of Victorian villas with flats, was resulting in significant additional pressure, that was not being subject to proper assessment. In many instances, this pressure was a consequence of inadequate green-space provision within existing urban areas, meaning that the SPA/SAC heathland was the de facto open space.

The introduction of schemes for the Thames Basin Heaths and south-east Dorset heathlands (see WCL submission) that prohibit further development immediately adjacent to SPA/SAC heaths, require developers to invest in the provision of Sustainable Alternative Natural Greenspace (SANGs) to provide alternative recreational space, and contribute to access management and other measures, is an innovative solution that benefits wildlife and people. It provides a more flexible and streamlined alternative to assessing every minor housing development that might give rise to an impact on a designated site. The gestation of this approach was particularly difficult in the Thames Basin Heaths, but the result is now generally positive, with all parties engaged in its delivery, and especially the housing sector and local authorities. Of course, there are some exceptions, of which Hurstableigh (Case Study 28) was one, where the Secretary of State supported the SANGs approach following inquiry, and Crowthorne (Case Study 15), where the Secretary of State deemed a larger scale proposal’s proposed mitigation measures inadequate and unable to avoid an adverse effect on the nearby Thames Basin Heaths SPA.

Flood defence

Our coasts are under increased threat due to anthropogenically accelerated climate change, resulting in sea-level rise and increased risk of storm-surges. Sea-defence works may exacerbate coastal squeeze, and result in the loss of intertidal habitats, important for

wintering and passage wildfowl and waders, and also for other ecosystem service provision such as fish nurseries. In some instances, works may directly interrupt natural coastal processes (such as shingle banks), harming SAC features. What is clear is that in the medium term change is inevitable. In many instances, sustaining a SAC feature may cause loss to freshwater and other habitats inside the sea-wall, including SAC saline lagoons, and SPA grazing marshes and reedbeds. The production and appropriate assessment of Shoreline Management Plans and Flood Risk Management Strategies (supported by Coastal Habitat Management Plans), have been important in assessing the scale of change/loss and making provision for compensatory habitat through EA's Regional Habitat Creation Programmes.

Examples of the application of this approach include the Phase 6 of the Morecambe Flood Defences (Case Study 38); unavoidable damage to the SAC/SPA was compensated for through creation of new inter-tidal habitat at Hesketh Outmarsh. In the Humber, strategic planning has similarly provided for creation of new inter-tidal habitat to offset coastal squeeze (see WCL submission).

On the North Norfolk Coast, EA and NE decided it was no longer appropriate to continue works to bulldoze and sustain the height of the shingle ridge at Cley-Salthouse Sea Defences (Case Study 13), due to impact on the SAC feature and cost. Restoration of more natural coastal processes have caused an adverse impact on the freshwater habitats of the SPA, that is being addressed through provision of compensatory habitat in sustainable locations inland. Similarly, to the west at Titchwell Coastal Change Project (Case Study 46), coastal erosion has threatened freshwater marsh elements of the SPA. The RSPB manages the sea-wall, and under guidance from NE, we have enabled natural coastal processes to continue to sustain the SAC, whilst accepting damage to the SPA. A £5.5m scheme has been undertaken to protect the remaining freshwater area. Similar examples can be found on the Suffolk coast: Dingle Marshes flood risk management scheme (Case Study 17) and Minsmere Sea Defence Project (Case Study 37).

Thorough understanding by all parties involved of the stages of the process (likely significant effect, adverse effect, mitigation, alternative solutions, IROPI, compensation)

The RSPB's experience of working with the Nature Directives is considerable and focuses on engaging positively to facilitate constructive outcomes, drawing on the understanding and expertise that experience has created. As new issues emerge, we seek to assimilate the lessons learned and apply them to new cases, with the aim of assisting decision-makers, developers, consultants and other stakeholders.

As noted in the section on **Constructive engagement, key to working with the Habitats Regulations is obtaining a thorough understanding of the decision-making process and the requirements of each stage** – and this typically follows the cycle described in that section. Greater understanding of the process can help ensure a positive approach is taken, increase trust, avoid misunderstandings, minimise delay and reduce costs. Below, we provide case examples against each stage of the decision-making process to illustrate good and bad practice in dealing with each test.

Likely significant effect

- Implementing a strategic planning framework within which individual proposals can be deemed to have no likely significant effect through:
 - Provision of mitigation to an agreed standard (Thames Basin Heaths and south-east Dorset in WCL submission)
 - Screening to ensure locational and other requirements are met (Breckland Local Development Framework, Case Study 8)

Adverse effect on site integrity

- Conclusion of no adverse effects following appropriate assessment and constructive discussion:
 - Earls Barton mineral extraction (Case Study 18)
 - Hemsby wind farm (Case Study 24)
 - Felixstowe South redevelopment (Case Study 19)
 - Teesport Container Terminal (Case Study 44)
- Conclusion of no adverse effect on site integrity following agreement of appropriate mitigation measures:
 - Phasing of habitat restoration in mineral quarry within SPA to ensure stone-curlew breeding population maintained (Cavenham Quarry, Breckland, Case Study 11)
 - Negotiation of comprehensive package of mitigation measures
 - All dualling(Case Study 1)
 - Abberton Reservoir (Case Study 3)
 - Frodsham wind farm (Case Study 20)
 - Hellrigg wind farm (Case Study 23)
 - Hickling flood risk management scheme/wetland creation project (Case Study 25)
 - Larkshall Vegetable Stores, Breckland (Case Study 31) under auspices of Breckland Local Development Framework (Case Study 8)
 - London Array (Case Study 34)
 - Lytham Moss housing (Case study 36)
 - Ovenden Moor wind farm (Case Study 39)
 - Queen Elizabeth Barracks and Wakefords Copse (Case Study 40)
- Consented without adequate weight being placed on Natural England's statutory advice
 - Little Cheyne Court wind farm (Case Study 33)
- Refusal due to adverse effect on site integrity:
 - Inadequate mitigation measures provided
 - Crowthorne (Case Study 15)
 - Hurstleigh (Case Study 28)
 - Not compliant with development plan framework
 - Weeting housing, Breckland (Case Study 49)
 - Unacceptable impact
 - Broadmarsh employment allocation, Havant Local Plan (Case Study 22)
 - Cruise Terminal in Barrow Port Area Action Plan (Case Study 6)

Alternative solutions

- Refused due to availability of less damaging alternatives solutions to meet public interest
 - Dibden Bay Container Terminal (Case Study 16)
 - Lewis wind farm (Case Study 32)

Imperative reasons of overriding public interest/Securing compensatory measures

The following plans and projects have been approved on the basis that they meet the no alternative solutions and imperative reasons of overriding public interest tests. Where it is a strategic plan, they have put in place a framework to secure the necessary compensatory measures. Where it is an individual project, they have secured comprehensive compensatory measures, and their consent is conditional on those measures being provided.

- Humber Shoreline Management Plan and Flood Risk Management Strategy (see WCL submission)
- Bathside Bay Container Terminal (Case Study 7)
- Dingle Marshes flood risk management scheme(Case Study 17)
- Hullbridge Tidal defences (Case Study 27)
- Immingham Outer Harbour (Case Study 29)
- London Gateway Container Terminal (Case Study 35)
- Minsmere Sea Defence Project (Case Study 37)
- Morecambe Flood Defences (Case Study 38)
- Quay 2005 container terminal (see WCL submission)
- Thames Estuary 2100 (Case Study 45)
- Titchwell Coastal Change Project (Case Study 48)
- Wing Water Treatment Works (Case Study 50)

In addition, there are several, now relatively historic, schemes which received approval without adequate provision for compensatory measures. In the case of the Cardiff Bay Barrage (Case Study 10) and Trinity Terminal/Felixstowe Dock and Railway Act 1988 (Case Study 47), the enabling Act provided for non like-for-like compensation. Lappel Bank (Case Study 30) lacked any compensatory provision at the time of consent. This was later secured elsewhere in the greater Thames estuary as a consequence of judicial review brought by the RSPB, through the Defra scheme at Wallasea (this also includes like-for-like compensation for the loss of mudflats at Trinity Terminal/Felixstowe Dock and Railway Act 1988 (Case Study 47)).

The Wallasea Island Wild Coast Project (Case Study 48) has provided strategic compensation for historic and ongoing losses on the Essex and Suffolk coast.

Availability of accessible guidance; mechanisms to share best-practice

The availability of good quality guidance has naturally improved over time, as experience and understanding of the practical issues associated with applying the decision-making tests has increased. The European Commission has been a key source of such guidance (http://ec.europa.eu/environment/nature/info/pubs/directives_en.htm). Initially generic in

nature to explain the rationale and key concepts under articles 6(3) and 6(4),¹⁸ it has become increasingly targeted at:

- Specific topics in need of best practice guidance to improve implementation e.g. EC guidance on compensatory measures under Article 6(4);¹⁹
- The needs of those land-use and industrial sectors most likely to encounter the decision-making tests, especially in respect of Natura 2000 sites e.g. estuaries and coastal zone, non-energy extractive industries, wind energy, rivers and inland waterways.

The latter need has been met through the establishment of sector specific working groups bringing together experts from across the EU to pool their knowledge, share best practice and set this out in guidance documents for the benefit of the wider community. The RSPB strongly supports this proactive approach and has provided its input and expertise through BirdLife International e.g. by sitting on the working groups on wind energy, Estuaries and the Coastal Zone, and Non-Energy Extractive Industries.

Within the UK, guidance largely originates from central Government and its agencies. In respect of the decision-making tests affecting Natura 2000 sites, this is, we would argue, relatively basic in nature. In England, it was last updated in 2005 through the ODPM Circular.²⁰ While this represented a welcome improvement on earlier policy guidance, in light of the concerns giving rise to the current review it would appear relatively limited in scope and ambition, and provides little guidance in respect of development plans for the reasons given above. The fate of this Circular remains unclear in light of development of the National Planning Policy Framework and the Government's emphasis on brevity.

As described above in the sections on **RSPB Casework** and **Constructive Engagement**, the RSPB seeks to use its conservation officer network to disseminate best practice through working relationships with decision-makers, developers and consultants. The close working relationship between this network and the central HQ teams helps to provide greater consistency and to enable more rapid dissemination of best practice as well as potential pitfalls to avoid. This is primarily through its representations on developments plans and individual proposals affecting Natura 2000 sites, in particular SPAs. The RSPB also takes opportunities to make presentations to specialist audiences at national and regional level to promote best practice, as well as sit on industry working groups e.g. COWRIE (Collaborative Offshore Wind Research Into The Environment). We have also produced targeted guidance on key issues e.g. the appropriate assessment of spatial plans (see Strategic Planning section above).

¹⁸ See: EC (2000) *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*; and EC (2001) *Assessment of plans and projects significantly affecting Natura 2000 sites - A Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC*.

¹⁹ EC (2007) *Guidance document on Article 6(4) of the 'Habitats Directive' 92/42/EEC*

²⁰ ODPM (2005) Circular 06/2005 *Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system*.

Post-implementation monitoring and sharing of results

An important feature of those projects where possible adverse effects have been mitigated, or offset through the provision of compensatory habitat, is *post-implementation monitoring to ensure that their delivery has been effective*. Such provisions may be secured through conditions attached to the planning consent, and bilateral legal agreements with statutory regulators and others. *Best-practice projects include a feedback loop*, such that if mitigation or compensation measures prove to be inadequate as a consequence of scheme design or poor delivery, there is a mechanism to require remediation.

Consideration of the performance of such measures may be informed by an environmental panel, made up of parties to such an agreement, that assess monitoring data and what it says about scheme performance. To take an example, if a compensatory managed realignment scheme is not attracting the number of birds intended, is this due to birds short stopping in mainland Europe due to mild weather, or can it reasonably be attributed to the performance of the scheme? Scheme monitoring data, combined with contextual data from other sources such as alerts derived from the BTO/JNCC/RSPB/WWT Wetland Birds Survey scheme, can supply objective information on which to make such judgements. One of the best examples of this is the Harwich Haven Regulators' Group, established to monitor and review the impacts of the [Harwich Haven Channel Deepening](#) but which has assimilated the monitoring and review requirements of successive schemes within the Haven area e.g. Trinity III Terminal extension (Felixstowe), [Felixstowe South redevelopment](#) and [Bathside Bay Container Terminal](#). It reports annually and adjusts monitoring requirements over time on the basis of scientific evidence. Other examples of environmental review panels being used include, [London Array](#), [Immingham Outer Harbour](#), [Bristol Deep Sea Container Terminal](#), [London Gateway](#), [A11 dualling](#).

But *post-scheme monitoring has a far wider role in understanding the environmental impact of developments, especially those involving new technologies*, such as wind turbines.

Ideally, work should be designed to be as robust as possible, including inclusion of control sites if appropriate. But this may require research and survey work, the cost of which is beyond that which is reasonable to ask of the applicant alone. However, Government and research bodies may be unwilling to contribute funding, as impact studies may be regarded as near-market research. Execution of a successful programme may also require co-ordination between developments, which may not be forthcoming if the data concerned provides future market advantage, or if the developer fears it might lead to further operational or other restrictions. Ideally, there should be a clear and shared strategy for what is required, who should fund it, with the contribution made by specific developments being secured through planning conditions. These should include the sharing and ownership of data and if there are no commercial sensitivities, the requirement to publish the data for use by others proposing applications.

Don't blame the Directives too quickly!

A final thought. *The Nature Directives have, quite rightly in our view, become influential in land use planning*. After all, the fundamental reason for this Review is that some believe that they are now excessively so, and are limiting growth in an unwarranted way. In the case studies we have given, there are some where the issue is indeed one of development

versus the natural (and cultural) heritage. An example is the A303 Stonehenge tunnel, where Ministers concluded that the cost of a bored tunnel to protect the World Heritage Site and SPA was excessive.

But *there are many where the environment is but one reason for the failure of a project*. Cliffe was confirmed as being a poor location for an airport in the 2003 Aviation White Paper not only because of its environmental impact, but also because there was a weak business case, congested air space and consequent air traffic control concerns, and a high level of anxiety around air safety due to bird strike. The Severn Tidal Power Study identified flood risk management costs in the face of geomorphological changes in the estuary following barrage construction to be a powerful reason for not proceeding with a traditional high-head barrage, independent of concerns about the loss of SPA/SAC mudflat for birds, or mortality to salmonid fish from turbines.

And *the Nature Directives are a positive tool for ensuring that we use land wisely*. To return to Dibden. An argument promoted by objectors was that best use should be made of the existing port estate before building on a greenfield site. A decade on and the Port of Southampton is being redeveloped to do just that, enabled by some ancillary companies moving out of the estate. In the English uplands, habitat restoration to enhance raw water quality has been integrated with delivery of SPA/SAC favourable condition (SCAMP).

Reserves and Protected Areas

RSPB

6 February 2012



An overview of the RSPB's engagement with the site protection system

Annex

Case studies referred to in text of main submission



List of case studies

No.	Case study name
1.	A11 dualling
2.	A303 Stonehenge road improvement
3.	Abberton Reservoir
4.	Access to Open Country
5.	Aviation White Paper
6.	Barrow Port Area Action Plan
7.	Bathside Bay Container Terminal
8.	Breckland Local Development Framework
9.	Bristol Deep Sea Container Terminal
10.	Cardiff Bay Barrage
11.	Cavenham Quarry, Breckland
12.	Chichester Core Strategy
13.	Cley-Salthouse Sea Defences
14.	Coastal Access in England
15.	Crowthorne
16.	Dibden Bay Container Terminal
17.	Dingle Marshes flood risk management scheme
18.	Earls Barton mineral extraction
19.	Felixstowe South redevelopment
20.	Frodsham wind farm
21.	Harwich Channel Deepening
22.	Havant Local Plan
23.	Hellrigg wind farm
24.	Hemsby wind farm
25.	Hickling flood risk management scheme/wetland creation project
26.	Holton Heath/Purbeck Local Plan
27.	Hullbridge Tidal Defences
28.	Hurstleigh
29.	Immingham Outer Harbour
30.	Lappel Bank
31.	Larkshall Vegetable Stores, Breckland
32.	Lewis wind farm
33.	Little Cheyne Court wind farm



No.	Case study name
34.	London Array
35.	London Gateway Container Terminal
36.	Lytham Moss housing
37.	Minsmere Sea Defence Project
38.	Morecambe Flood Defences
39.	Ovenden Moor wind farm
40.	Queen Elizabeth Barracks and Wakefords Copse
41.	Rushmoor Core Strategy
42.	Shell Flat
43.	Sustainable Catchment Management Programme
44.	Teesport Container Terminal
45.	Thames Estuary 2100
46.	Titchwell Coastal Change Project
47.	Trinity Terminal/Felixstowe Dock and Railway Act 1988
48.	Wallasea Island Wild Coast Project
49.	Weeting housing, Breckland
50.	Wing Water Treatment Works



Case study 1	A11 dualling
Name, Company, Date, Location, Size	A11 trunk road improvements Highways Agency 2000-2009 Suffolk
Purpose/ Summary of project	Dualling of the last single lane stretch of the A11 between Thetford in Norfolk and Fiveways roundabout near Mildenhall in Suffolk
Impacts	Direct habitat loss of SAC from road widening. Disturbance from increased traffic flows causing a reduction in 11 pairs of stone-curlew within the Breckland SPA.
Interaction with Habs Regs and resolution- ToR 1	Likely significant effect agreed but initial lack of agreement on the scale of adverse effect. Discussion between HA Natural England and RSPB led to a joint working group to identify and agree the impacts from the scheme. This led to agreement on the scale of the impact and the identification of suitable mitigation. Delivery of the mitigation was enshrined in a legal agreement between HA, RSPB and NE which allowed the conservation organisations to withdraw their objection, prior to public inquiry. Overall the result means that the scheme will have no adverse impact upon the SPA. Work is still ongoing with HA to deliver the mitigation habitat.
Points for relevance for the Review - other ToR + Defra issues	Constructive engagement by all parties based on the best available science resulted in an acceptable outcome and avoided the issue being subject to public inquiry (although a public inquiry considered other non-conservation related objections.



Case study 2	A303 Stonehenge road improvement
Name, Company, Date, Location, Size	A303 Stonehenge Highways Agency/Department for Transport 2005-2008 Stonehenge, Wiltshire
Purpose/ Summary of project	<p>Dualling of the A303 to relieve traffic congestion.</p> <p>The A303 is a major arterial road between London and the south-west. It has been progressively dualled; the section through the Stonehenge World Heritage Site and Salisbury Plain SPA is one of the more significant sections that remains single carriageway causing major congestion, especially during the summer months. The current road is also intrusive in relation to Stonehenge itself.</p> <p>Following a public inquiry in 2004, the inspector recommended dualling the road, along with a 2.1km bored tunnel to remove the effects of the road and traffic from the core World Heritage Site. However, geological problems caused tunnelling costs to increase and the Minister of Transport announced a Review of the published scheme. The consequent 2006 public consultation included five options:</p> <ul style="list-style-type: none"> • the published scheme (bypass and 2.1km bored tunnel) • a northern bypass • a southern bypass • a cut and cover tunnel • a partial solution involving closure of the A303/A344 junction. <p>The Review concluded the published scheme was best in meeting transport and environmental objectives, was acceptable and deliverable, but had affordability problems. The less expensive options had a greater degree of adverse impact that raised questions of deliverability. Following receipt of the Review report in December 2007, Ministers decided to cancel the scheme.</p>
Impacts	Although best known for Stonehenge, the area is part of the Salisbury Plain SPA, part of one of the largest areas of chalk downland in Europe, of major importance for flora and fauna, and a remaining stronghold for stone curlew. Two of the proposed options to the published scheme - bypasses to the north or south of the site – would have caused major habitat loss, and site fragmentation.
Interaction with Habs Regs and resolution- ToR 1	National Trust, the major landowner in the area, holding inalienable land, took the view that unless the published long bored tunnel option was selected, it was better to do nothing and retain the existing road. RSPB agreed and concluded that the published bored tunnel represented an 'exceptional environmental scheme', and a reasonable alternative given the impact on the SPA of the northern or southern bypass alternative.
Points for relevance for the Review - other ToR + Defra issues	A project that highlights the perennial questions of what represents reasonable cost between alternative solutions. It is difficult to escape the view that the last Government, during a time of relative prosperity, missed the opportunity to deliver a project that would have enhanced a World Heritage Site, and a major tourist/economic asset to the UK, whilst protecting the SPA and contributing to landscape-scale conservation.



Case study 3	Abberton Reservoir
Name, Company, Date, Location, Size	Abberton Reservoir Northumbrian Water Ltd (NWL) 2005-2008 Essex
Purpose/ Summary of project	The Abberton scheme comprised three major components: increasing the water storage capacity of the Abberton Reservoir, the upgrading of the Ely-Ouse to Essex Transfer Scheme ('EOETS') and the Denver Variation.
Impacts	The Abberton scheme had the potential to affect five SPAs: the Ouse Washes, the Wash, the Stour and Orwell Estuaries, Abberton Reservoir and the Blackwater Estuary, with temporary habitat loss for wintering waterfowl at Abberton and indirect impacts possible on the other 4 SPAs.
Interaction with Habs Regs and resolution- ToR 1	<p>Amendments to the proposals following consultation meant that NWL could demonstrate that there would be no adverse impacts from the scheme on any of the five SPAs which were potentially affected by the time the planning application was submitted. In fact the scheme led to enhancement of the Abberton Reservoir SPA/Ramsar site at all scales (international, European, National, regional, county, district and local) as follows:</p> <ul style="list-style-type: none"> • Creation of additional lagoons around the western end of the reservoir will provide valuable habitat for waterfowl; • Raising of the main section of the reservoir will provide habitat enhancements for the waterfowl for which the SPA is classified; • Creation of shallow lagoon habitat will benefit uncommon plants such as the short-leaved water starwort and provide important feeding habitat for wildfowl; • Removal of most of the concrete apron and its replacement by improved 'natural' shoreline/marginal habitat will benefit the nationally and internationally important bird populations and will also benefit aquatic plants such as the great yellow cress; • Enhancement of terrestrial habitat around the reservoir, including hedgerows, grassland and ponds will benefit many species such as great crested newt, and species of reptile and terrestrial invertebrate; • Increases in the amount and quality of new and existing habitat at the western end of the reservoir for water vole (revised plans for this section have been recently submitted to NE for comment); and • Creation of new foraging habitat for breeding birds and bats.
Points for relevance for the Review - other ToR + Defra issues	<p>The developer, NWL, and their consultants were constructive and helpful. Work to amend the proposals by the developers meant that, by the time the planning application was submitted, it could be demonstrated that there would be no adverse impacts from the scheme on any of the five SPAs which were potentially affected.</p> <p>The RSPB welcomed the considerable efforts made by NWL and their agents in enhancing and creating new habitats in and around the reservoir, which will benefit not only those species for which the SPA is classified, but also a wide range of other animal and plant species.</p>



Case study 4	Access to Open Country
Name, Company, Date, Location, Size	Access to Open Country Defra 1998-2005 England N/A
Purpose/ Summary of project	<p>Creation of a statutory right of access on foot to open country (defined as mountain (ie: land above 600m asl), registered common land and land mapped as moorland, Heathland and downland).</p> <p>The first term Labour Government was elected with a manifesto commitment to create a statutory right of access on foot for public engagement to open countryside. The proposal proved controversial, mainly due to the impact on private property rights but, following consultation, the new right was enacted as Part 1 of the Countryside and Rights of Way Act 2000. The Act included provisions enabling temporary restrictions and closures for a variety of reasons, including nature conservation. The right was introduced on a phased basis and came into effect across all of England on 31 October 2005.</p>
Impacts	<p>A particular concern was the potential adverse effect of access disturbance by people and dogs on ground-nesting birds, including moorland birds; breeding and roosting waders on saltmarsh commons; nightjar, woodlark and Dartford warbler on lowland heathlands; and stone curlew on downland and acid grass heath.</p>
Interaction with Habs Regs and resolution- ToR 1	<p>RSPB argued that introduction of the new right was a plan, and thus should be subject to Appropriate Assessment. English Nature and the Countryside Agency were reluctant to accept this interpretation, but agreed to undertake “conservation assessments” in respect of all Natura 2000 sites and SSSIs to inform whether introduction of the new right should be accompanied by mitigation measures, or voluntary or statutory restriction on access (made under Section 26 of the Act).</p> <p>Advisers undertaking the conservation assessments were assisted by guidance prepared by a Wildlife Access and Advisory Group, chaired by Countryside Agency and including representatives from EN, National Trust, Wildlife Trusts and RSPB. However, there was a general absence of data with which to assess the significance of such efforts.</p> <p>English Nature convened a meeting of top scientists to identify the priority species for impact-related research, and to recommend the most appropriate research approach. The result was a research strategy, which was then converted into a three-year commissioned research programme.¹ The results of this work were presented at a special 2005 BOU Conference “Birds and Recreational Disturbance.”²</p>
Points for relevance for the Review - other ToR + Defra issues	<p>This is an excellent example of a strategic approach to acquisition of data to help inform responses to a plan or project that might result in adverse effects to Nature 2000 sites.</p> <p>The research commissioned by England Nature and Countryside Agency added hugely to the available data on the relationship between access and disturbance to birds, It was invaluable not only in the context of access to open country, but also in the assessment of access disturbance associated with development proposals in the vicinity of Heathland SPAs (see TBH and Dorset case studies).</p>



Case study 5	Aviation White Paper (The Future Development of Air Transport in the UK: South East)
Name, Company, Date, Location, Size	Department for Transport July 2002 – December 2003 South East England
Purpose/ Summary of project	Identification of long-term options for airport expansion in SE England. In July 2002 Government initiated a consultation on the long-term development of aviation in the south-east, given forecasts that unrestricted demand could double by 2030. The consultation, initiated in 2002, led to publication of a White Paper ‘The Future of Air Transport’ in December 2003.
Impacts	The consultation included an option for a new hub airport at Cliffe in North Kent marshes, that would have caused major habitat loss to the Thames Estuary and Marshes SPA.
Interaction with Habs Regs and resolution- ToR 1	Quite apart from the overall question of aviation and climate change, the July 2002 consultation, whilst including a damaging option for Cliffe, expressly excluded a second runway at Gatwick. This was on grounds of a planning agreement under which, in 1979, BAA undertook not to construct such a runway until 2019. The Government decided to respect the agreement. This being the case, a new runway could not be open until 2024. The Government then considered this Gatwick second runway option should be omitted from the consultation, as to include an option that could not be available until so late in the White Paper period would cause unnecessary blight and anxiety. Three local authorities impacted by the Cliffe airport option (Kent, Essex and Medway), sought Judicial Review to challenge the exclusion of Gatwick from the options being consulted on. In November 2002, the High Court ruled that the Government was indeed wrong in exclusion of Gatwick, and in February 2003 a revised consultation was initiated. Amongst its reasons in making this judgement, the High Court held that to exclude Gatwick was unlawful because it was irrational, in part due to the requirements of the Habitats Regulations. The High Court decision was also based on the fact that Gatwick might (singly or with other sites) be an alternative solution to more damaging proposals in respect of impacts on Natura 2000 sites.
Points for relevance for the Review - other ToR + Defra issues	An example of the role of the Habitats Directive in strategic planning. The December 2003 Aviation White Paper did not support the option of a new airport at Cliffe. The White Paper explicitly concluded that there were reasonable alternative solutions to Cliffe (and thus failed the Habitats Directive tests (see paragraph 11.20)), although ultimately the low rate of return on capital investment, business, air traffic control and bird strike/air safety reasons were as important in rejection of this option.



Case study 6	Barrow Port Area Action Plan
Name, Company, Date, Location, Size	Barrow Port Area Action Plan Barrow in Furness Borough Council 2010 Cumbria
Purpose/ Summary of project	Regeneration of Barrow-in-Furness through a strategic plan, including a proposal to allocate land for a cruise ship facility.
Impacts	Potential habitat loss from a capital dredge of the Morecambe Bay Special Protection Area.
Interaction with Habs Regs and resolution- ToR 1	<p>The proposed cruise terminal facility required dredging of a turning circle and a channel next to the terminal building, both within the Morecambe Bay Special Protection Area. The appropriate assessment (AA) of the Area Action Plan (AAP) was limited in detail due to failing to quantify the extent of any adverse effect caused by this. The proposed allocation for the facility conflicted with advice in Circular 06/2005 (<i>Biodiversity and Geological Conservation – Statutory Obligations And Their Impact Within The Planning System</i>) that sites should not be allocated where such effects are uncertain.</p> <p>The AA was legally flawed, erroneously proposing compensatory habitat as a mitigation measure. It provided little evidence about the scale or nature of the compensatory habitat or where and how it would be provided, leaving the Inspector unsure that this would be feasible.</p> <p>In addition:</p> <ul style="list-style-type: none"> • There was no substantive evidence of any significant demand for a cruise facility (only 6 cruise liners visited in 2004-9 and none were booked for 2010) • Increasing size of cruise liners meant that by 2025 only 73% would be able to use the facility if it was built to its maximum (and most damaging) possible size and tides would restrict access of these vessels to 3½ hours every day. • public sector funding was required, but it was uncertain whether this would be available. • ABP (the statutory port authority and owner of the site) did not support the scheme. <p>The impact of all these factors gave the Inspector strong concerns about whether the proposal was appropriate and capable of being delivered, and consequently he required its deletion to make the plan sound.</p>
Points for relevance for the Review - other ToR + Defra issues	This case highlights the potential for ‘prestige’ schemes lacking a sound financial, economic and land tenure case to be promoted with little prospect of success, and with a failure to appreciate the requirements of the Habitats Regulations, giving rise to unnecessary conflict with Natura 2000 sites.



Case study 7	Bathside Bay Container Terminal
Name, Company, Date, Location, Size	Bathside Bay Hutchison Ports (UK) Limited (HPUKL) 2000-2004 Harwich, Essex
Purpose/ Summary of project	Construction of major container port involving land claim of intertidal mudflats
Impacts	Direct habitat loss of Bathside Bay, which comprises 69ha of intertidal habitats that form part of the Stour Estuary SSSI and the Stour and Orwell Estuaries SPA and Ramsar site. The Bay provides important habitats for feeding and roosting waders and wildfowl
Interaction with Habs Regs and resolution- ToR 1	<p>HPUKL undertook a thorough environmental impact assessment (which included information for the appropriate assessment). The scope of the elements relating to nature conservation had been agreed through early consultation with English Nature and the RSPB. The EIA/Information for AA concluded that, even after mitigation, there would be an adverse effect upon the SPA/Ramsar site's integrity. The nature, design and location of compensatory measures were agreed with EN and RSPB and set out in a comprehensive legal agreement.</p> <p>This information was considered at public inquiry in 2004, and provided the basis for Government approval of the scheme's mitigation, compensation and monitoring measures in respect of impacts on the SPA/Ramsar asite.</p> <p>The Environmental Statement provided information on the consideration of alternative solutions and the need for the proposal which the RSPB challenged at public inquiry on the basis that there were less damaging alternative solutions to meet projected demand for container port capacity. This challenge was in the context of lack of a clear Government policy on the nature, magnitude and timescale over which container port capacity should be planned.</p> <p>To date neither the port development nor therefore the compensatory habitat has been implemented.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>HPUKL embraced the Habitats Regulations positively and worked constructively with EN and RSPB to agree ecological impacts and identify mitigation and compensation measures.</p> <p>Critically, at a very early stage, HPUKL accepted that it was likely that compensation would be needed so in parallel to preparing the port application, secured suitable land nearby for the creation of compensatory habitat. The application to create the compensation land was submitted at the same time as the container port applications.</p> <p>The ability of the RSPB to challenge the need for this scheme at the same time as working constructively with HPUKL on the ecological impacts was made possible by long-term relationships and trust that had built up over several years, and an understanding that the RSPB treated each application and each port developer equally.</p> <p>The monitoring arrangements included in the legal agreement are to be integrated with those undertaken by the Harwich Haven Regulators' Group, ensuring that the findings are reported regularly and made publicly available.</p>



Case study 8	Breckland Local Development Framework
Name, Company, Date, Location, Size	Breckland Local Development Framework Breckland District Council 2007-2012 Norfolk
Purpose/ Summary of project	The introduction of a spatial planning framework for Breckland District Council, delivered via its Core Strategy, Site Allocations Development Plan Document and the Thetford Area Action Plan.
Impacts	Disturbance to stone-curlew, nightjar and woodlark within the Breckland SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>The Breckland LDF will deliver extensive housing development (5,000 homes) at Thetford, which lies close to large numbers of breeding stone-curlew. The Breckland SPA holds approximately two thirds of the UK population. Stone-curlew are known to be susceptible to disturbance by people.</p> <p>Extensive and thorough scientific investigation fed into the Habitats Regulations Assessment of the Core Strategy. This led to the Core Strategy introducing 1500m buffer zones for those parts of the SPA holding breeding stone-curlew within which development must accord with detailed policies or demonstrate that it will not have an adverse effect upon the SPA.</p> <p>The use of innovative buffer zones with attendant policy criteria has enabled the Council to identify areas where development is, or is not, possible. Generally, development within existing settlements is likely to be acceptable (this enabled neighbouring Forest Heath District Council to propose 1,000 houses at Brandon which lies entirely within the buffers), whilst development that extends the urban area or is located in open countryside is unlikely to be accepted.</p> <p>The appropriate assessment and the plan's response to it are an exemplar of how effective, evidence-led, spatial planning should be undertaken: the Council has avoided harming the SPA and has also managed to secure its entire, ambitious, housing supply for the plan period without needing to rely upon windfall sites.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Natural England and the RSPB worked closely with the Council and its consultants and attended the examination of the Core Strategy and the Site Allocations DPD to support the Council. The RSPB will also be attending the Area Action Plan examination to support the Council in March 2012.</p> <p>Strategic level housing provision has been secured.</p> <p>The HRA process raised understandable questions about the precise mechanisms causing impacts on stone curlews that it was not possible to answer with the best available science. Further lengthy and expensive research might help, but is not guaranteed to provide the answers that would guarantee clarity on what type and form of development in the buffer could go ahead and under what circumstances. As the Council is able to meet its strategic housing needs without the research has not yet been commissioned.</p>



Case study 9	Bristol Deep Sea Container Terminal
Name, Company, Date, Location, Size	Bristol Deep Sea Container Terminal The Bristol Port Company/First Corporate Shipping 2006-2008 Avonmouth
Purpose/ Summary of project	Proposed major new container terminal on Severn estuary, involving land claim and creation of new breakwater
Impacts	Direct and indirect impacts on intertidal habitats within Severn Estuary SPA, SAC and Ramsar site. Main impact was accretion of sediment on 80ha intertidal mud immediately upstream, of which 60ha lies within the SPA and is an important winter feeding area for c.3,000 waterbirds.
Interaction with Habs Regs and resolution- ToR 1	<p>Agreement on scope of possible impacts targeted work to inform appropriate assessment, with detailed modelling to predict effects on upstream intertidal flats.</p> <p>Concluded that changes to sedimentation were likely to have an adverse effect on the integrity of SPA and SAC habitats (a total of 80ha) which could not be mitigated. Comprehensive legal agreement negotiated covering mitigation, compensation and monitoring requirements. The Port agreed to provide 120ha of intertidal habitats to be fully functioning in advance of the predicted damage i.e. created at least two winters before the damage would be triggered by construction.</p> <p>The RSPB, Natural England and Countryside Council for Wales withdrew their objections on completion of the legal agreement.</p> <p>The Company eventually received its consent 15 months later in March 2010.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>The Company embraced the Habitats Regulations positively and worked closely with regulators and the RSPB to identify key impacts, and agree mitigation and compensation and monitoring, set out in a detailed legal agreement.</p> <p>Withdrawal of objections meant that there was no need for a public inquiry to take place.</p> <p>This case further developed the UK approach to habitat compensation delivery by explicitly requiring it to be fully functional before damage occurred – in line with UK and EU policy guidance.</p> <p>The Company and the RSPB are now working together to design the intertidal habitat compensation project at Steart, North Somerset to meet the requirements of the legal consent.</p>



Case study 10	Cardiff Bay Barrage
Name, Company, Date, Location, Size	UK Government/Cardiff Bay Development Corporation (various private bills and hybrid bill over 10 years) 1983 - 1993 Cardiff Bay
Purpose/ Summary of project	Barrage to create a recreational lagoon in place of intertidal mudflats, as part of a dockside redevelopment. 439ha compensatory wetland creation project provided on the Gwent Levels (now known as the Newport Wetlands).
Impacts	Complete destruction of the Taff/Ely SSSI and adverse effect on the Severn Estuary pSPA due to the loss of intertidal mudflats used by wintering and passage ducks and wading birds.
Interaction with Habs Regs and resolution- ToR 1	<p>Predates introduction of the Habitats Regulations.</p> <p>Example of case where proponents (central Government) excluded key area of intertidal habitats from the proposed Severn Estuary SPA in order to facilitate economic development.</p> <p>The case was the first example in the UK that grappled with what are now the tests set out under article 6(4) of the Habitats Directive i.e. alternative solutions, IROPI and compensatory measures. Proponents did not address viable, less damaging alternative solutions to achieve stated public interests of regeneration. Nor did they put forward adequate compensatory measures until under pressure from the European Commission. Original compensation proposals were wholly inadequate and tightly constrained by area of search.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Exclusion of area from proposed Severn Estuary SPA did not avoid the need to deal with the predicted impacts on a site that was clearly integral to the pSPA – but caused unnecessary delays in acknowledging and dealing with impacts.</p> <p>To avoid infraction, the UK Government agreed to a package of compensation measures including: habitat creation on the Gwent Levels and species action plans for redshank and dunlin. The species action plans have never been produced.</p> <p>Part of the agreement with the European Commission was to classify the compensatory habitat as part of the Severn Estuary SPA within 5 years of creation. To date, the UK Government has not added the compensatory habitat to the Severn Estuary SPA.</p>



Case study 11	Cavenham Quarry, Breckland
Name, Company, Date, Location, Size	Cavenham Quarry Allen Newport Ltd 1997 Suffolk
Purpose/ Summary of project	An extension to the existing sand and gravel extraction at Cavenham Quarry in the Suffolk part of the Brecks, which held more than 1% of the UK's breeding stone-curlew population, and was part of the proposed Breckland SPA.
Impacts	Habitat loss and disturbance for stone-curlew
Interaction with Habs Regs and resolution- ToR 1	Discussions between English Nature, the RSPB and the owner provided for quarrying to be done in a way that maintained the area of breeding habitat within the overall site. This was through careful design of the phases of mineral extraction such that each phase was restored as soon as practicable to ensure there was no net loss of suitable habitat for breeding stone curlews. After the quarrying was complete, there was agreement that the worked area would be restored to suitable stone-curlew habitat. As there would be no adverse effect on the SPA, the planning authority granted permission.
Points for relevance for the Review - other ToR + Defra issues	Constructive engagement by all parties allowed development to take place within the then proposed SPA without harming the interest of the site.



Case study 12	Chichester Core Strategy
Name, Company, Date, Location, Size	Chichester District Council 2007 Hampshire
Purpose/ Summary of project	The District Council had prepared and submitted its Core Strategy for examination.
Impacts	Increased urban pressure from people and domestic pets, including increased recreational impacts upon the Chichester and Langstone Harbours SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>ODPM advice on the need to undertake appropriate assessment (AA) of land use plans was issued in March 2006, following the decision of the European Court of Justice against the UK in October 2005.</p> <p>At the start of May 2006 the District Council submitted its Core Strategy for examination without an accompanying AA, which was only completed shortly before the hearings began at the end of November 2006.</p> <p>The AA recommended that large-scale housing to the South West of Chichester should be avoided to reduce the risk of disturbance to birds and concluded that more work was required to provide adequate evidence that there was no adverse effect on integrity to the SPA from further proposals to develop west of Chichester and at Fishbourne.</p> <p>The uncertainty created over the ability to deliver those proposals west of Chichester and at Fishbourne were one of the reasons prompting the Inspector to find the Core Strategy unsound.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>The preparation of this plan was hindered by the UK Government's failure to properly implement the Habitats Directive in terms of the AA of land use plans.</p> <p>The Council was forced to undertake an appropriate assessment of its plan at a very late stage in its production, and had to conduct it in the absence of any guidance from Government about how to undertake the assessment process.</p> <p>If the Directive had been implemented properly the Council could have undertaken an assessment at an earlier stage, complete with the benefit of suitable guidance, enabling it to make critical strategic decisions about development locations before time, effort and expense was invested in pursuing undeliverable objectives through the plan-making process.</p>



Case study 13	Cley-Salthouse Sea Defences
Name, Company, Date, Location, Size	Cley-Salthouse Sea Defences Environment Agency 1998-2002 North Norfolk
Purpose/ Summary of project	<p>The Environment Agency considered a sea defence scheme for Cley and Salthouse marshes and parts of the associated villages.</p> <p>Natural England was concerned that works by EA to regularly bulldoze the shingle ridge fronting Cley and Salthouse was not sustainable , interrupting coastal process and causing an adverse effect on an SAC.</p> <p>Ultimately they decided, with NE, that a scheme to increase the protection from flooding was not appropriate or economic, and instead chose to install works to improve the evacuation of flood waters from the marshes after a flood.</p>
Impacts	Reduction in disturbance and disruption to the shingle interest feature within the North Norfolk Coast SAC resulted, increased frequency of saltwater flooding and thus adverse effect to the North Norfolk Coast SPA.
Interaction with Habs Regs and resolution- ToR 1	Restoration of more natural coastal processes has caused an adverse impact on the freshwater habitats of the SPA. It was agreed to compensate for loss of site function through the creation of compensatory habitat. However, it proved impossible to find a suitable site within the immediate vicinity at reasonable cost: compensation is now being provided at Hilgay Fen, an inland site to the south. Neither was compensatory habitat functional by the time of loss.
Points for relevance for the Review - other ToR + Defra issues	<p>This was one of the first schemes where it was necessary to resolve conflicts between the needs of overlapping European designations. The understanding gained by resolving this issue informed many future flood defence schemes affecting Natura 2000 sites.</p> <p>It highlights the challenge of finding suitable sites in which to locate ecologically acceptable compensatory habitat through voluntary negotiation.</p>



Case study 14	Coastal Access in England
Name, Company, Date, Location, Size	Coastal Access Government/English legislation 2004-present English coastline
Purpose/ Summary of project	<p>Creation of a linear right of access along the length of the English coastline, within an accessible corridor or ‘margin’ that offers enjoyment, understanding of the natural environment and a high quality experience, and is managed sustainably in the context of a changing coastline.</p> <p>Improving access to the coast was identified as a priority in Defra’s 2004 Five Year Strategy, and became part of Labour’s 2005 Rural Manifesto. Legislation providing for enhanced coastal access was made as Part 9 of the Marine and Coastal Access Act 2009. Section 296 of the Act requires NE to use its powers to secure a long-distance walking route and an associated accessible margin along that route as ‘spreading’ room. Section 298 requires NE to prepare a scheme setting out the approach they will take in discharging this duty.</p> <p>NE’s Scheme for Coastal Access was approved by the Secretary of State on 23 March 2010. Implementation of coastal access has continued under the Coalition Government, albeit on a longer timescale within a reduced budget. Implementation is phased in c50 sections. NE is required to prepare a report for each section, setting out its proposals after extensive local consultation. NE then submits its final proposals to the Secretary of State who may approve, reject or approve with amendments their proposals. There is a formal appeal mechanism.</p>
Impacts	NE and all stakeholders involved in coastal access have recognised that much of the English coastline is of high environmental quality, the wildlife interest of which may be recognised through designation as SAC and/or SPA. Risk of adverse effect through disturbance to breeding, wintering feeding and roosting, birds. Examples include terns breeding on shingle banks, cliff nesting seabirds, and wintering wildfowl and waders using intertidal mudflats.
Interaction with Habs Regs and resolution- ToR 1	<p>NE accepted that coastal access, and in particular the Approved Scheme for coastal access and the individual Coast Access Reports, are land-use plans or projects and thus are subject to Appropriate Assessment (see Section 4.8, in particular 4.8.6 and associated glossary of the NE Approved Scheme).</p> <p>In many instances coastal access can be formalised or introduced without impact on the natural environment; in some instances introduction of the new right of access will give new powers to address long-standing problems caused by de facto access. Appropriate Assessment provides a mechanism for identifying actions to mitigate or avoid adverse effects on protected sites and species. Such actions will be identified using the principle of least restrictive options (on access), such as routing the trail to avoid sensitive areas (or provision of alternative routes in sensitive periods), informal management techniques (information, wardening, access infrastructure to provide ‘desire lines’) or, use of local restrictions or exclusions on use of spreading room.</p> <p>The first access report, for Weymouth Bay, has just been completed (accompanied by</p>



Case study 14	Coastal Access in England
	Appropriate Assessment which, in this instance, did not identify a need for provision for mitigation or restriction). The Secretary of State issued her determination of the report on 23 January 2012, approving it with some modifications in light of representations made to her.
Points for relevance for the Review - other ToR + Defra issues	We believe that in this instance the framework offered by the Habitats Regulations, and application of Appropriate Assessment in particular, provides a mechanism to ensure the objectives of enhancing access and protecting the natural environment are being integrated.



Case study 15	Crowthorne
Name, Company, Date, Location, Size	Legal General Assurance Society Ltd 2008/2009 Crowthorne, Berkshire
Purpose/ Summary of project	Mixed use redevelopment comprising up to 975 residential units, a business park, community buildings, ancillary uses, landscape and infrastructure.
Impacts	Located adjacent to Thames Basin Heaths SPA. Increased urban pressure from people and domestic pets, including increased recreational impacts on breeding nightjar, Dartford warbler and woodlark populations on adjacent Thames Basin Heaths SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>The proposal would have had a potential adverse effect on the adjacent SPA, particularly through increased visitor disturbance. Mitigation proposed by the developers was inadequate, particularly in respect of the quality and form of alternative open space proposed and lack of access management measures on the adjacent SPA.</p> <p>The application was refused by the Local Authority and a subsequent appeal rejected by the Secretary of State following a public inquiry. The grounds for rejection included potential impacts on the SPA and other planning issues.</p>
Points for relevance for the Review - other ToR + Defra issues	The Secretary of State's decision did acknowledge that, subject to overcoming issues concerning protection of the SPA, the site may be suitable for housing. The particular scheme proposed however, was simply inadequate in terms of the mitigation needed to overcome the potential harm to the SPA.



Case study 16	Dibden Bay Container Terminal
Name, Company, Date, Location, Size	Dibden Bay Associated British Ports (ABP) 1996-2004 Southampton Water, Hampshire
Purpose/ Summary of project	<p>ABP proposed a new container port development to provide new deep-water container capacity that would require a large intertidal and subtidal marine dredge and landward infrastructure (road and rail connections).</p> <p>An intertidal recharge of sediment onto the foreshore further down Southampton Water at Hythe was also proposed and a new tidal creek plus a landward nature conservation area to offset the impacts of the project, in particular the loss of intertidal mudflats in front of the proposed port development.</p>
Impacts	<p>76 ha of intertidal mudflat (including direct loss of 42 ha within the boundaries of the then Solent and Southampton Water SPA and Ramsar site) would have been destroyed. The proposal would also have affected the then Solent Maritime cSAC; other nationally and locally important wildlife habitats would have been damaged too.</p>
Interaction with Habs Regs and resolution- ToR 1	<p>An initial assessment by ABP concluded that the proposal would not have an adverse effect on the Natura 2000 sites. However this was disputed by, among others, English Nature and the RSPB.</p> <p>Following a lengthy Public Inquiry, the Secretary of State (SoS) concluded that there would be no doubt that the proposed development would damage the integrity of the Solent and Southampton Water Ramsar Site and SPA and that it could not be ascertained that the proposed development would not adversely affect the integrity of the Solent Maritime cSAC.</p> <p>The SoS accepted the Inspector's recommendation that there was no IROPI, saying: <i>'Overall, the Secretary of State agrees with the Inspector that the disbenefits of the scheme, as borne out by its impact on internationally and nationally environmentally sensitive sites, outweigh the potential benefits.'</i></p> <p>The SoS also referred to alternative solutions to the project and agreed with the Inspector that there were credible alternative solutions for this container port development. Importantly the SoS also noted that <i>'the consideration of alternatives for projects which would have a significant impact upon a site designated in accordance with the Habitats Regulations must necessarily range more widely'</i> i.e. not just restricted to local sites available for the actual project.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>A key reason for refusal of the proposal was its nature conservation impacts on highly important wildlife sites. The decision highlights the need to address these fully and not overly rely on unproven measures that may not prevent harm.</p> <p>Consideration of the step-by-step approach of the Habitats Regulations revealed fundamental flaws in the proposal and lack of justification for the serious damage that would have been caused. The existence of serious credible (and less damaging) alternative solutions to the proposal to serve the needs of the UK port industry (and thus the wider UK economy) was also of critical importance.</p> <p>Since the decision there has been much closer working between NE, the RSPB and</p>



Case study 16	Dibden Bay Container Terminal
	ABP, as well as the ports industry in general. Potential problems have been resolved and development allowed when the Habitats Regulations decision making process is used properly.



Case study 17	Dingle flood risk management scheme
Name, Company, Date, Location, Size	Dingle Flood risk management project Environment Agency 2010 onwards Suffolk
Purpose/ Summary of project	To enhance the inland defences to protect the freshwater interest of the Minsmere to Walberswick SPA, work to an interim embankment whilst the compensatory habitat requirement identified through the Shoreline Management Plan is delivered.
Impacts	Potential impacts upon species associated with the reedbed and brackish habitats including bittern, marsh harrier, avocet and a broad range of waterfowl within this section of the Minsmere to Walberswick SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>The EA recognised likely significant effect and potential for adverse effect at an early stage. Impacts from the project were identified through appropriate assessment and a detailed Environmental Assessment Plan (EAP). These included recommendations in terms of avoidance and mitigation such as timing, seasonal constraints and detailed environmental design.</p> <p>The scheme was successfully implemented.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Good understanding of the Habitats Regulations process.</p> <p>Constructive engagement by all parties. The RSPB provided significant ecological expertise/knowledge to ensure that the EAP was sufficient and that the project was implemented with minimal environmental impact.</p>



Case study 18	Earls Barton mineral extraction
Name, Company, Date, Location, Size	Sand and gravel quarry at Earls Barton (western extension) Hanson 2006-2008 Northamptonshire
Purpose/ Summary of project	Sand and gravel extraction (including silt disposal), restoration to biodiversity and agriculture.
Impacts	Initial EIA not sufficiently detailed to conclude proposals would not have a significant effect on wintering wildfowl in the Upper Nene Valley Gravel Pits pSPA - lack of detailed information on the existing or proposed final ground levels and depth profiles in the three lakes identified for use as silt lagoons. Potential for adverse effect on integrity of the pSPA through use of these lakes for silt deposition – initial uncertainty about behaviour and distribution of suspended silt in the water column, effects on water clarity, aquatic plants, invertebrates and fish supporting the pSPA/SSSI bird interest or forming features of interest of the SSSI in their own right.
Interaction with Habs Regs and resolution- ToR 1	Following the receipt of further information from the applicant, it was concluded that there was no adverse effect on SPA diving duck species and a slight beneficial impact on dabbling duck species. Consequently NE, the RSPB and the Wildlife Trust were eventually able to withdraw objections and the scheme was consented with conditions by the County Council
Points for relevance for the Review - other ToR + Defra issues	Face to face discussions between all parties were positive and constructive. Co-ordination of NE, the RSPB and the Wildlife Trust responses made the process easier and was welcomed by Hanson. Resolved through provision of additional information as requested.



Case study 19	Felixstowe South redevelopment
Name, Company, Date, Location, Size	Hutchison Ports (UK) Limited (HPUKL) 2003 - 2006 Port of Felixstowe 28ha land claim and redevelopment of existing Landguard Terminal.
Purpose/ Summary of project	Redevelopment of old part of Felixstowe port to provide significant increase in container handling capacity. 910m of additional highly productive quay and a reclaim of 28ha from the harbour to provide additional 1.5m TEU (20 foot equivalent units) capacity. This would increase overall port capacity to 5.2million TEUs.
Impacts	Detailed impact assessment confirmed there would be no adverse impacts on the Stour and Orwell Estuaries SPA/Ramsar site.
Interaction with Habs Regs and resolution- ToR 1	<p>Early consultation by HPUKL with the RSPB and English Nature to agree scope and detail of impact assessment, including in-combination assessment with separate Bathside Bay Container Terminal proposal (Harwich).</p> <p>Confirmed likely significant effect requiring provision of information for appropriate assessment. Conclusion of that process was that the scheme would have no adverse effect on the SPA.</p> <p>Neither EN or the RSPB objected to the scheme.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Discussions between HPUK, EN and the RSPB built on a long-term constructive relationship developed over previous 10 years or so. This included working together through an existing regulators group established to oversee monitoring of earlier port-related schemes. This positive working relationship facilitated the early dialogue in this case.</p> <p>This enabled a straightforward approach to impact assessment and confidence in the findings of that assessment.</p>



Case study 20	Frodsham wind farm
Name, Company, Date, Location, Size	Frodsham wind farm Peel Energy 2008-presnet
Purpose/ Summary of project	Construction and operation a 20 turbine wind farm located on the Frodsham Canal Deposit Grounds, Cheshire immediately abutting the Mersey Estuary SPA
Impacts	RSPB and Natural England were concerned about displacement of wintering wildfowl and wading birds from the Mersey Estuary SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>The proposed development was subject to Environmental Impact Assessment (EIA), reported in an Environmental Statement (ES).</p> <p>Following a site visit, it was discovered that the SPA land within 500m of four of the closest turbines to the SPA was unsuitable habitat that did not support vulnerable species and was unlikely to in the future.</p> <p>The turbine at the confluence of the Weaver and Manchester Ship Canal was removed from the scheme following extensive discussions and site visits with Natural England and the RSPB, as well as other local ecological interest groups as it was close to important bird habitat in the SPA. This enabled the RSPB and Natural England to withdraw objections.</p> <p>Other changes to the scheme include a revised Habitat Creation and Management Plan. Through consultation with Natural England and the RSPB, land within the site will be maintained as a high tide roosting area to mitigate potential ornithological impacts. This will complement the original proposed habitat creation area.</p> <p>However the local council maintained an objection on unrelated grounds and consequently the proposal was considered at public inquiry in late 2011.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>This case represents good practice for terrestrial wind farm development with constructive engagement by Peel Energy and the nature conservation bodies..</p> <p>Proposed mitigation removed the nature conservation objections to the scheme and also provided additional conservation enhancement.</p>



Case study 21	Harwich Channel Deepening
Name, Company, Date, Location, Size	Harwich Haven Authority 1997-8 Harwich, Suffolk
Purpose/ Summary of project	Deepening of approach channel to Port of Felixstowe to allow dock to accept larger container vessels.
Impacts	A total of 16.5ha loss of intertidal mudflats in the Stour and Orwell Estuaries SPA due to (a) reduction in tidal range causing immediate loss of 4ha of intertidal mudflats and (b) loss of a further 12.5ha loss over 5 years due to increased erosion in advance of sediment replacement programme.
Interaction with Habs Regs and resolution- ToR 1	<p>The first proposal in the UK to test fully the 'new' requirements of the Habitats Regulations in respect of the definition of mitigation and compensation.</p> <p>Challenging but eventually constructive negotiations between Harwich Haven Authority, Port of Felixstowe, English Nature and the RSPB to agree the significance of seemingly small-scale changes in estuary function.</p> <p>Experimental mitigation measures were agreed but as these were not tested, it was agreed that habitat replacement outside the SPA should also be provided.</p> <p>The Secretary of State overruled the original agreement reached by the parties and decided that the habitat creation measures proposed as mitigation should be treated as compensation instead because they would not remove the predicted adverse effect. This has dictated the UK approach to habitat compensation ever since.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>A key early case in clarifying the interpretation and implementation of the Habitats Regulations in the UK.</p> <p>Represents beginning of the phase in which the UK port sector, English Nature/Natural England and the RSPB began a more constructive and trusting dialogue which has led to a series of proposals major port schemes that comply fully with the Habitats Regulations and are characterised by positive, challenging and open dialogue aimed at joint problem solving.</p> <p>Key to establishment of the Harwich Haven Regulators' Group which provide a model for use elsewhere in the co-ordination and review of mitigation, compensation and monitoring measures of multiple schemes. This includes the publication of monitoring results.</p>



Case study 22	Havant Local Plan
Name, Company, Date, Location, Size	Havant Borough Council 1995 – 2005 Havant
Purpose/ Summary of project	Draft Havant Local Plan proposed Broadmarsh as a zone for employment development.
Impacts	Loss of key feeding area for dark-bellied brent geese would have a damaging effect on the adjacent Chichester and Langstone Harbour SPA/Ramsar site.
Interaction with Habs Regs and resolution- ToR 1	<p>Grassland at Broadmarsh is a key feeding area for brent geese from the adjacent Chichester and Langstone Harbour SPA/Ramsar site.</p> <p>Allocation of this land for employment would have destroyed this food resource with no guarantee that suitable alternative feeding grounds could be provided to the sub-population of birds affected.</p> <p>The RSPB put forward a strong case at the public inquiry that the employment allocation should be deleted because loss of the feeding grounds would have a damaging effect on the SPA/Ramsar site and that because of this there was no certainty the employment proposal would proceed. The case was not made that there were no alternative solutions.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Local plan proposal that pre-dated UK acceptance that the Habitats Regulations applied to land-use plans. This placed local planning authorities in difficult position in respect of how to assess and test the potential impacts of local plan allocations.</p> <p>Exemplifies benefits of applying Habitats Regulations to development plans at an early stage in the drafting process to avoid selection of unsustainable locations for development.</p>



Case study 23	Hellrigg wind farm
Name, Company, Date, Location, Size	Hellrigg wind farm RWE Npower Renewables 2009 Park Head Farm, Silloth, Cumbria
Purpose/ Summary of project	Construction of 4 turbines at Park Head Farm, Silloth, Cumbria
Impacts	Indirect impacts from disturbance and collision risk to pink-footed geese from the Upper Solway Flats and Marshes SPA. The importance of the area for birds, in particular pink-footed geese, was highlighted in 'alert' maps published by the RSPB in 2007 in a spatial planning guide for onshore wind in Cumbria.
Interaction with Habs Regs and resolution- ToR 1	<p>The RSPB was able to withdraw its objection in 2009 following extensive discussions with the developer and Natural England by securing appropriate:</p> <ul style="list-style-type: none"> • off-site mitigation (through the creation of suitable off-site undisturbed feeding grounds) and • monitoring proposals <p>Both were secured through a planning agreement and would be put in place prior to the commencement of development.</p> <p>The wind farm was consented in 2009 following a public inquiry</p>
Points for relevance for the Review - other ToR + Defra issues	Constructive engagement by all parties to secure mitigation which removed adverse impacts.



Case study 24	Hemsby wind farm
Name, Company, Date, Location, Size	Hemsby wind farm SLP Energy 2010 Hemsby, Norfolk
Purpose/ Summary of project	4 new 105m wind turbines and ancillary infrastructure
Impacts	<p>Inadequate Cumulative Impact Assessment (CIA) provided to show that the proposal would not adversely affect pink-footed geese and marsh harrier from the Broadland SPA, cumulatively or in-combination with other plans and projects.</p> <p>The CIA had been centred on the application site and failed to allow for the potential interchange of geese between the Broadland and North Norfolk Coast SPAs.</p>
Interaction with Habs Regs and resolution- ToR 1	<p>Revised CIA enabled RSPB to conclude no adverse effect alone or in combination with other plans and projects, and to remove objection to the proposal.</p> <p>The Local Authority maintained its objection on other grounds and the scheme was refused.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Early dialogue helps facilitate resolution.</p> <p>There was limited dialogue prior to planning application being submitted. Once discussions started following submission of the RSPB comments the developer and its consultant were receptive to the comments and agreed to carry out additional work on CIA.</p> <p>This achieved resolution but emphasises the potential to have resolved such concerns prior to planning application being submitted.</p> <p>Work to resolve this case can inform future applications of a similar nature. The method of CIA for pink-footed geese in Norfolk used in this case has been used as an example of best practice in discussions with other developers.</p>



Case study 25	Hickling flood risk management scheme/wetland creation project
Name, Company, Date, Location, Size	Hickling flood defence/wetland creation project BESL/EA 2010 Hickling, Norfolk Broads
Purpose/ Summary of project	Flood defence scheme to reduce the length of flood bank needed. In addition it will: <ul style="list-style-type: none"> • create c.20ha of new reedbed and improve management of 100ha of existing reedbed • Allow works on the existing drainage network to improve water management across the area.
Impacts	Potential for disturbance to breeding and wintering birds such as bittern, marsh harrier and hen harrier, within the Broadland SPA.
Interaction with Habs Regs and resolution- ToR 1	Likely significant effect agreed and potential for an adverse effect identified. These potential adverse effects were removed through sensitive scheme design which resulted in an overall improvement to the SPA and additional areas of habitat created outside of the SPA.
Points for relevance for the Review - other ToR + Defra issues	Sensitive scheme design can remove potential impacts and provide enhancements.



Case study 26	Holton Heath/Purbeck Local Plan
Name, Company, Date, Location, Size	Purbeck District Council 1996 – 2002 Holton Heath, Wareham
Purpose/ Summary of project	Draft Development Plan allocation for a proposed new settlement of 1,350 new homes and associated transport improvements, within 50m of the Dorset Heathland SPA. Housing allocation was rolled forward from existing development plans where it had been deemed necessary to fund a road bypass now abandoned as it was considered too damaging to SPA and SAC interests.
Impacts	Increased urban pressure from people (especially risk of arson and recreational disturbance) and domestic pets on the features of the Dorset Heathland SPA, including woodlark, Dartford warbler and nightjar. In addition, other urban effects on the botanical interests of the SACs.
Interaction with Habs Regs and resolution- ToR 1	Pre-dated requirement to apply Habitats Regulations to development plans in UK. Joint case presented at lengthy public inquiry by English Nature, the RSPB and Dorset Wildlife Trust resulted in the allocation being rejected due to the adverse effects on the integrity of the adjacent SPA and SACs. Essentially, a so-called ‘shadow AA’ was required to be undertaken to assess whether the allocation would be likely to be consented or not at the planning application stage. This is essentially the approach now taken in the AA of development plans when considering potentially damaging allocations.
Points for relevance for the Review - other ToR + Defra issues	Emphasises the value in clear and proper transposition of the Nature Directives to create greater certainty in decision-making. The damaging allocation had been rolled forward because there was no requirement in law to question it under the Habitats Regulations. As a consequence, the local authority had been allowed to place too much reliance on this single allocation to deliver a large proportion of its housing supply.



Case study 27	Hullbridge Tidal Defences
Name, Company, Date, Location, Size	Hullbridge Tidal Defences Environment Agency 2001 River Crouch, Essex
Purpose/ Summary of project	Improvement to flood walls at Hullbridge on the River Crouch in Essex
Impacts	Direct habitat loss to the Crouch and Roach Estuary SPA from coastal squeeze caused by improvement of existing flood defences, and from placing rock armouring onto the mudflats.
Interaction with Habs Regs and resolution- ToR 1	<p>The Environment Agency did not initially recognise that there was potential for an adverse effect on the SPA. This changed following representations from bodies including the RSPB.</p> <p>Both the local planning authority and the RSPB recognised that the flood defence works met the tests of no alternative solutions and imperative reasons of overriding public interest.</p> <p>As a result the scheme was revised to include 11 ha of compensatory habitat which was created nearby at Brandy Hole.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>As one of the first cases where adverse impacts of coastal squeeze were recognised as resulting from a flood defence scheme, requiring compensatory measures. As a consequence, it raised some complex issues that need to be resolved in how the Habitats Regulations should be applied.</p> <p>The Environment Agency was constructive in discussions and revised the scheme to include creation of 11 ha of new saltmarsh habitat as compensation for the damage caused by the original scheme.</p> <p>This scheme acted as a model for further flood defence schemes where coastal squeeze was an issue.</p>



Case study 28	Hurstleigh
Name, Company, Date, Location, Size	Berkeley Homes (Oxford and Chiltern) Ltd 2011 Hurstleigh Park, Ascot
Purpose/ Summary of project	Demolition of existing B1 offices and redevelopment of land for 23 dwellings, associated access, landscaping and footpath.
Impacts	Increased urban pressure from people and domestic pets, including increased recreational impacts on breeding nightjar, Dartford warbler and woodlark populations on adjacent Thames Basin Heaths SPA, particularly in combination with other plans and projects.
Interaction with Habs Regs and resolution- ToR 1	<p>The proposal would have a potential adverse affect from recreational pressure on the adjacent Thames Basin Heaths SPA in combination with other plans and projects.</p> <p>There is a mitigation strategy for the SPA (the 'Thames Basin Heaths Delivery Framework') agreed by all of the local authorities in the area to overcome the potential harm. This requires all net new housing within 5km of the SPA to provide or contribute towards secured Suitable Alternative Natural Greenspace (SANG) at a minimum rate of 8ha/1,000 population.</p> <p>The proposal failed to meet the required standard and, in particular, undue reliance was placed on existing open spaces in the surrounding area (Crown Estate land) in lieu of a properly secured/managed SANG. Thus it had the potential to set an unacceptable lower standard of mitigation across a much wider area. The RSPB therefore objected to ensure the agreed standards were upheld.</p> <p>The proposal was heard at a public inquiry and rejected by the Secretary of State who agreed that the proposed development was inconsistent with the mitigation strategy.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>By bringing forward a proposal not in compliance with standards agreed by all local authorities across the Thames Basin Heaths, the proposal had the potential to set a dangerous precedent that would undermine the whole strategic approach.</p> <p>On a positive note, although the original proposal was rejected, the developer, local authority and other parties are working constructively to resolve the issue and allow the development to proceed, subject to meeting the required standards of the mitigation strategy.</p>



Case study 29	Immingham Outer Harbour
Name, Company, Date, Location, Size	Immingham Outer Harbour Associated British Ports 2001-2006 North Lincolnshire
Purpose/ Summary of project	Port extension to create a new roll-on roll-off ferry terminal.
Impacts	Direct habitat loss of 22 ha of mudflat within the Humber Estuary SPA, impacting upon overwintering wildfowl and wading birds.
Interaction with Habs Regs and resolution- ToR 1	<p>This case demonstrates the positive application of the Habitats Regulations to a major infrastructure development, including determination of 'likely significant effects' and 'adverse effects on the integrity of an SPA, candidate SAC and Ramsar site, and then agreement of appropriate mitigation, compensation and monitoring measures.</p> <p>Early discussions with the RSPB and English Nature led to the developer acknowledging that the environmental damage would constitute both a likely significant effect and an adverse effect on site integrity. ABP produced the necessary information to inform the Government's consideration of alternative solutions and imperative reasons of overriding interest. Positive discussions led to the company proposing compensatory measures.</p> <p>Agreement of the mitigation, compensation and monitoring agreement enabled the RSPB and EN to withdraw objections to the scheme and thereby avoid an unnecessary public inquiry.</p> <p>The Secretary of State determined that there was no alternative solution and that IROPI justified the damage caused – and that based on the agreement, compensatory measures could be secured. The scheme was authorised and the terminal opened in 2006. All the compensatory measures have been implemented.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>This case demonstrates (along with its sister scheme, Quay 2005) the evolution of the UK approach by both developers, regulators and NGOs to the Habitats Regulations process. From the company's perspective this built on lessons learnt from the Dibden Bay case, leading to the constructive approach taken on this case even while the Dibden Bay scheme was being considered.</p> <p>The constructive approach taken by the company, regulators and the RSPB provided a clear and purposeful framework within which negotiations to address the application were held.</p> <p>Early acceptance by ABP on the need for compensation allowed it to begin the process of site selection earlier than had been typical. This sowed the seeds for the more proactive approach to identification of compensation sites now shown by some other major ports.</p>



Case study 30	Lappel Bank
Name, Company, Date, Location, Size	Port of Sheerness Late 1980s – mid 1990s 22ha Adjacent to Sheerness Docks
Purpose/ Summary of project	Reclamation of intertidal mudflat for port development.
Impacts	Loss of mudflats supporting a number of important bird species that were an integral part of the Medway Estuary and Marshes SPA .
Interaction with Habs Regs and resolution- ToR 1	<p>The intertidal mudflats Lappel Bank were excluded by the UK Government from the Medway Estuary and Marshes SPA for economic reasons.</p> <p>This decision was challenged by the RSPB and subsequently found to be unlawful. The proceedings were referred to the European Court of Justice (ECJ). The ECJ confirmed an important issue of principle, namely that sites that qualify as SPAs must be classified on their scientific merits and economic reasons cannot be taken into account at the <i>designation stage</i>.</p>
Points for relevance for the Review – other ToR + Defra issues	<p>The Lappel Bank case confirmed the correct approach to designation of Natura 2000 sites, thereby ensuring their proper protection. This provides clarity and certainty to all of the importance and value of such sites. Once a site is properly designated, proposals that could affect it can then be considered properly under the Habitats Regulations decision-making process. This should ensure that unnecessary harm is avoided, but on the exceptional occasions where it cannot be, the Habitats Regulations provides a way to make sure that any harm is fully justified and the necessary compensation provided.</p> <p>A result of the ECJ judgment was the agreement by the UK Government to provide compensatory habitat for both the loss of Lappel Bank (Port of Sheerness) and Fagbury Flats (Trinity Terminal, Felixstowe) as both had excluded from SPAs on economic grounds. The compensatory habitat has now been created at Wallasea on the Essex coast.</p>



Case study 31	Larkshall Vegetable Stores, Breckland
Name, Company, Date, Location, Size	Larkshall vegetable stores Abrey Farms 2011 Breckland, Norfolk
Purpose/ Summary of project	Construction of multiple agricultural store buildings close to the Breckland SPA
Impacts	Potential for disturbance to breeding stone-curlew within the Breckland SPA
Interaction with Habs Regs and resolution- ToR 1	<p>To accord with the Breckland Council Core Strategy, development within a 1500m buffer zone around parts of the Breckland SPA holding breeding stone-curlew must demonstrate that it will not have an adverse effect upon the SPA. The development proposal lay within the buffer.</p> <p>The RSPB worked with the developer to identify potential causes of adverse effect and ways in which these factors could be mitigated through planning conditions.</p> <p>Breckland Council approved the development subject to those planning conditions which mitigated the potential impacts.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Constructive engagement between the developer, NE and the RSPB enabled the development to go ahead.</p> <p>Conditions, based on the recommendations of expert research scientists, were applied which enabled the concerns about potential impacts to be overcome.</p> <p>Solutions to situations such as this may not be straightforward to achieve, as the mitigation methods must be devised in a way which adheres to the best available scientific knowledge and can be delivered through the use of enforceable planning conditions.</p>



Case study 32	Lewis wind farm
Name, Company, Date, Location, Size	Lewis wind farm Lewis Wind Power 2004-2008 Isle of Lewis, Outer Hebrides
Purpose/ Summary of project	Initial proposal for a 234 turbine development and associated infrastructure was submitted to the Scottish Executive in 2004, with a revised application for 181 turbines submitted during 2006.
Impacts	Direct habitat loss within the Lewis Peatlands SPA, supporting important populations of breeding wading birds including dunlins, and golden plovers, along with breeding golden eagles and merlins. Also collision risk and displacement/disturbance.
Interaction with Habs Regs and resolution- ToR 1	<p>The Scottish Government refused consent for the scheme, having concluded that it would have a 'significant adverse effect' on many of the qualifying bird species of the Lewis Peatlands SPA and that the mitigation proposed was unlikely to avoid this.</p> <p>Critically, the Scottish Government concluded there were alternative solutions to meet national wind farm and electricity generation objectives and that therefore there was no need to consider the tests of over-riding public interest.</p> <p>Ministers concluded that the development was first and foremost to be considered as a wind farm proposal designed to supply electricity to the grid and rejected the applicant's contention that it was primarily to bring economic development to the Western Isles. Ministers were clear that the test in terms of the EU Habitats Directive had to be in respect of this primary purpose and thus the search for alternative solutions to meet wind farm and electricity generation objectives need not be confined to the Western Isles. They found that those objectives could be met elsewhere in Scotland as a whole, without necessitating construction on a Natura 2000 site.</p>
Points for relevance for the Review - other ToR + Defra issues	The Scottish Government adopted a robust and logical approach to the alternative solutions test, basing it on clear public interest objectives. This echoes the earlier decision in England on the Dibden Bay Container Terminal which clearly differentiated between the public and the private interests in respect of the alternative solutions test.



Case study 33	Little Cheyne Court wind farm
Name, Company, Date, Location, Size	Little Cheyne Court wind farm RWE npower renewables 2004-2006 Romney Marsh, Kent
Purpose/ Summary of project	Construction of 26 turbines on Romney Marsh, Kent
Impacts	Disturbance and collision risk to Bewick's swans from the nearby Dungeness to Pett Levels SPA
Interaction with Habs Regs and resolution- ToR 1	<p>Unresolved concerns from English Nature and the RSPB were considered at a public inquiry.</p> <p>In November 2005 the Secretary of State (SoS) for the Department of Trade and Industry (DTI) decided to approve the scheme. The Inspector, in his report to the SoS criticised the RSPB/EN case as over-precautionary and dismissed their evidence, including that they had not submitted any actual assessment data even though it is not their role to do the developer's assessment for it. The SoS concurred with this view and concluded no likely adverse effect on the SPA.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Despite a long process of working with the developer on its environmental impact assessment and mitigation, the RSPB and EN remained concerned that their was insufficient information to conclude no adverse effect on the integrity of the SPA and objected to the proposal. They presented a joint case at the public inquiry</p> <p>The RSPB/EN were unhappy with nature of the decision, in terms of the way that the inspector dealt with their evidence and in terms of the decision-making process applied by the SoS under the Habitats Regulations.</p> <p>EN/RSPB discussed this case further with the DTI to ensure that the decision making processes under the Habitat Regulations are dealt with transparently in future cases.</p>



Case study 34	London Array
Name, Company, Date, Location, Size	London Array Wind Farm London Array Company (then Shell/DONG Energy/E.ON) 2001-2006; phase one construction started 2011 Thames Estuary, east of Essex Original proposal for c1 GW wind farm, of which Phase 1 comprises 175 turbines, 630 MW covering 100 km ² of water.
Purpose/ Summary of project	Round 2 Offshore Wind Farm The London Array Wind Farm, located between the Kent and Essex coasts, 20km offshore between two sandbanks, Long Sand and Knock Deep in the Outer Thames Estuary, was one of the 15 projects licensed by The Crown Estate in its second round for offshore wind farm development. It was originally planned to consist of 341 turbines of 1GW capacity. However, survey identified a major concentration of wintering red-throated diver in the north-east area of the proposed site. Negotiations led to an innovative solution, in which construction of the wind farm will be phased. Phase 1 construction is currently underway.
Impacts	Adverse effect upon a large concentration of red-throated diver, through displacement from the most important feeding area within the Outer Thames, and one of the most important areas in the whole of the North Sea.
Interaction with Habs Regs and resolution- ToR 1	Inadequate marine survey prior to licensing meant that a major concentration of up to 6,500 wintering red-throated diver, the most important in English waters (and in excess of the total available estimate of the wintering population of the species at that time), had not been identified, nor designated SPA. Although Round 2 was subject to SEA, the available data to populate it was so weak it made the exercise almost meaningless. Thus the site was licensed, and the ecological value of the site was only properly revealed by developer-led surveys. Negotiations between the developer and (then) English Nature and RSPB, led to the site being regarded as though it were SPA given its high interest. From an RSPB perspective, it would have been entirely valid to sustain an objection to the entire scheme, but in view of the importance of renewables in addressing climate change, and the variation in densities of red-throated divers across what was a large application site, we worked with London Array Company and English Nature to seek an innovative solution, the basis of which was a phased approach using Grampian conditions. To avoid going through the overall regulatory process twice, the company received consent for the whole site, but under two separate legal agreements, one with EN, one with RSPB, agreed only to undertake phase 1 of the scheme, embracing the area of lowest red-throated diver density to the south-west of the site, for 175 turbines delivering c630 MW. Assuming 100% displacement of red-throated divers within this area, and 50% displacement within 1km surrounding it, the interaction rate with the overall candidate SPA diver population was 3.4%. Taking the precautionary assumption that all displaced birds would die, it was concluded following



Case study 34	London Array
	<p>Appropriate Assessment that this did not constitute adverse effect to the integrity of the SPA. Under the legal agreement, the company agreed to undertake post-scheme monitoring. If these assumptions were found to be too precautionary, then it might prove possible to consent construction of further turbines within the phase 2 area to the north and east. An environment panel made up of the Company, (now) NE and RSPB, would oversee the results of post-scheme monitoring and scientific research from other sites to help form a common view on the acceptability of further turbine deployment. The application site is now wholly within the Outer Thames Estuary SPA, designated in August 2010.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>A project that highlights the inadequacy of Government investment in implementation of the Habitats Directive in the marine environment. Lack of investment in marine survey and site designation meant that a significant marine resource was not identified and thus not designated SPA in a timely manner. This resulted in the area being licensed, when a significant area should not have been.</p> <p>The negotiations around this project generated a level of trust in which the Grampian condition approach became possible. The scheme was reduced to two-thirds of its original planned size. Post-scheme monitoring should produce valuable data with which to inform not only any future phases of this project, but also other wind farms involving red-throated diver.</p> <p>One important area of learning from this scheme to Round 3 was the value of licensing a larger area for wind farm development, to give flexibility within a licensed area in which to locate turbines to avoid important environment assets. Round 1 and Round 2 envelopes were very tightly drawn; damage to any environmental assets identified within the licensed area could only be avoided by reducing the size of the planned farm, as in this instance.</p>



Case study 35	London Gateway Container Terminal
Name, Company, Date, Location, Size	London Gateway P&O (now Dubai World Ports) 2002-2007 Shellhaven, Essex
Purpose/ Summary of project	Construction of major container port (3.5m TEU) and logistics centre on site of former Shellhaven oil refinery, and associated capital dredge. Included land claim of part of Thames estuary immediately adjacent to site.
Impacts	Indirect effects upon habitats within Thames Estuary and Marshes SPA through high levels of accretion on c.69ha of intertidal mudflats used by high densities of feeding wintering and passage waders and wildfowl. Risk of potential change to feeding grounds meaning adverse effect on SPA features could not be ruled out.
Interaction with Habs Regs and resolution- ToR 1	<p>Initial constructive discussions focused on the scope of the impact assessment, with particular reference to agreeing a realistic 'worse case' scenario to base the geomorphological modelling on – crucial to understand the likely impacts of accretion on the SPA mudflats. This approach was subsequently applied to the Bristol Deep Sea Container Terminal and has informed best practice on a wide range of other cases.</p> <p>The RSPB and EN objected to the proposal given the predicted scale of the impacts on an important part of the SPA and the preference to secure <i>in situ</i> conservation.</p> <p>All parties continued a constructive dialogue, meaning it was possible for P&O, English Nature and the RSPB to agree on the scale and nature of the likely adverse impacts, and appropriate mitigation, compensation and monitoring measures. This was set out in a comprehensive legal agreement such that there was no need to present evidence on ecological impacts at the public inquiry.</p> <p>The Secretary of State accepted the inspector's conclusions that there were no less damaging alternative solutions, and that there was an overriding public interest for the scheme and consented it. The Secretary of State accepted the legal agreement on mitigation, compensation and monitoring.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>P&O engaged positively with the Habitats Regulations and worked constructively with EN and RSPB to agree ecological impacts and identify mitigation and compensation measures. This included consulting both organisations on areas of search for possible compensation sites.</p> <p>As with other major port cases, London Gateway highlights the fact that nature conservation organisations can work closely with the industry to allow development provided impacts on wildlife are either (ideally) avoided or, in exceptional cases, fully justified in terms of their national interest importance with full compensation for any damage caused.</p>



Case study 36	Lytham Moss housing
Name, Company, Date, Location, Size	Kensington Developments 2009 Lytham, Lancashire
Purpose/ Summary of project	1150 houses plus school and amenity land on 35ha of land
Impacts	Loss of feeding habitat for pink-footed geese and whooper swans from the nearby Ribble and Alt Estuaries SPA
Interaction with Habs Regs and resolution- ToR 1	<p>Risk of adverse effect on integrity of SPA due to loss of foraging habitat on cropped land used by pink-footed geese and whooper swans from the nearby Ribble and Alt Estuaries SPA.</p> <p>Constructive dialogue with developer agreed package of mitigation measures to secure feeding areas for wintering geese and swans, as well as other measures for farmland birds.</p> <p>Ultimately, the application was refused because of uncertainty over the access road from the M55.</p> <p>The proposal is being re-submitted on the basis that an access route has now been secured.</p>
Points for relevance for the Review - other ToR + Defra issues	Despite regulatory uncertainty caused by failure of Government to include important areas of cropped habitats within relevant SPAs, it proved possible to agree an appropriate package of mitigation measures with the developer to ensure there was no adverse effect on the integrity of the nearby SPA.



Case study 37	Minsmere Sea Defence Project
Name, Company, Date, Location, Size	Minsmere Sea Defence Project Environment Agency 2010-11 Suffolk coast
Purpose/ Summary of project	Flood risk management project to strengthen flood banks to protect the majority of the freshwater habitats and associated species at the RSPB's Minsmere reserve and part of the Minsmere-Walberswick SPA.
Impacts	Even though the project is largely beneficial to the environment, 25 ha of freshwater reedbed will not be protected by the scheme and will ultimately be lost to saltwater inundation, resulting in an adverse effect on the integrity of the SPA
Interaction with Habs Regs and resolution- ToR 1	Based on the Shoreline Management Plan process, the EA recognised the potential for an adverse effect on the SPA. The AA and detailed Environmental Assessment Plan (EAP) set out the predicted impacts and recommendations to minimise impacts in terms of avoidance and mitigation such as timing, seasonal constraints and detailed environmental design. Compensatory habitat for the loss of North Marsh freshwater reedbed had been identified through the Shoreline Management Plan process and will be delivered through the Environment Agency's Anglian Regional Habitats Creation Programme (RHCP). The scheme received planning consent and was implemented in late 2011.
Points for relevance for the Review - other ToR + Defra issues	Integration with the strategic Shoreline Management Plan and RHCP process ensured a good understanding of and straightforward compliance the Habitats Regulations. The RHCP seeks to deliver habitat compensation before the loss has occurred, in line with UK and EU guidance. Constructive engagement by all parties. The RSPB provided significant ecological expertise/knowledge to ensure that the EAP was sufficient and that the project was implemented with minimal environmental impact.



Case study 38	Morecambe Flood Defences
Name, Company, Date, Location, Size	Morecambe Flood Defences Lancaster City Council 2007-2008 Lancashire
Purpose/ Summary of project	Flood defence improvements (including rock armour protection to the seawall, two rock breakwaters) to enhance the standard of coastal defence in four locations in Morecambe.
Impacts	Direct loss of habitat from Morecambe Bay SPA/SAC affecting overwintering wildfowl and wading birds, and intertidal habitats.
Interaction with Habs Regs and resolution- ToR 1	<p>All parties (including EN and the RSPB) agreed that the new coastal works would be damaging to both the SPA and SAC interests, but also that there no alternative solutions and imperative reasons of overriding public interest that the work should proceed.</p> <p>However an impasse was reached when no willing landowners could be found to enable managed realignment to compensate for the damage adjacent to the Morecambe Bay SPA/SAC.</p> <p>The RSPB was able to help break the impasse by incorporating the compensatory measures required by Lancaster City Council into part of a managed realignment scheme already planned at Hesketh Outmarsh on the Ribble Estuary, just south of Morecambe Bay. This enabled the necessary flood defence works at Morecambe to proceed.</p> <p>The compensatory measures were implemented in 2008.</p>
Points for relevance for the Review - other ToR + Defra issues	Close cooperation between developers and conservation organisations can unblock obstacles to development creating win-win solutions.



Case study 39	Ovenden Moor wind farm
Name, Company, Date, Location, Size	Ovenden Moor Yorkshire Windpower 2008 onwards Hollin Hill, near Warley Moor reservoir, Yorkshire.
Purpose/ Summary of project	Replacing an existing wind farm- consisting of 23 turbines generating 9.2MW of power - by 10 turbines generating up to 23MW.
Impacts	Repowering the wind farm through use of ten larger turbines, some close to the SPA boundary, predicted to cause displacement of birds from the SPA.
Interaction with Habs Regs and resolution- ToR 1	<p>The existing wind farm on the moors near Halifax, built in 1993, predated the designation of the South Pennines SPA and SAC. Consequently the wind farm was excluded from the SPA, which was notified in 1997.</p> <p>The proposal to repower the wind farm required an appropriate assessment to assess the likely impacts of the change in layout and scale of the turbines on the adjacent SPA.</p> <p>Negotiation resulted in a slight decrease in the number of turbines, and relocation to the site of the previous turbines, and removed the major environmental obstacle to this development. This amendment meant that there should be no adverse effect from the revised scheme.</p>
Points for relevance for the Review - other ToR + Defra issues	Early discussion and a willingness to amend the proposal avoided conflict.



Case study 40	Queen Elizabeth Barracks and Wakefords Copse
Name, Company, Date, Location, Size	Terence O'Rourke 2000-2007 Fleet, Hampshire
Purpose/ Summary of project	Residential development comprising 1132 dwellings and associated open space.
Impacts	Increased recreational pressure on ground-nesting birds, together with increased fire risk.
Interaction with Habs Regs and resolution- ToR 1	<p>One of the first major housing schemes to address seriously the impacts of recreational disturbance on ground nesting birds in lowland heathland SPAs.</p> <p>Broke new ground in commissioning visitor surveys to scale and nature of visitor use of lowland heathland SPA as open space for urban communities in the Thames Basin Heaths. Highlighted the distances residents willing to travel, especially for dog walking and the need to provide alternatives to new residents.</p> <p>Lengthy negotiations with EN and the RSPB on package of measures to address recreational impacts: provision of alternative open space, wardening and access management measures to reach conclusion of no adverse effect on the integrity of the SPA.</p> <p>Ultimately the development did not go ahead at the time.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>This case was at the cutting edge of the application of emerging scientific research on the impacts of recreational disturbance on ground nesting birds to the design of mitigation measures. As a consequence, the negotiations took some time to resolve.</p> <p>However, while such large schemes will continue to require bespoke mitigation, the basic elements identified in this case now form the basis of the mainstream package of mitigation measures contained in the Thames Basin Heaths framework and aimed at the large number of small-scale 'windfall' housing in the Thames Basin Heaths area.</p>



Case study 41	Rushmoor Core Strategy
Name, Company, Date, Location, Size	Rushmoor Borough Council 2007 Rushmoor, Hampshire
Purpose/ Summary of project	The Borough Council had prepared and submitted its Core Strategy for examination.
Impacts	Increased urban pressure from people and domestic pets, including increased recreational disturbance impacts upon the Thames Basin Heaths SPA arising from the implementation of the Core Strategy.
Interaction with Habs Regs and resolution- ToR 1	<p>One of the examining Inspector's concerns with the Core Strategy was the Council's approach to addressing recreational disturbance impacts upon the Thames Basin Heaths SPA, particularly in relation to the proposed Aldershot Urban Extension which was intended to deliver more than 70% of the Borough's housing supply during the plan period.</p> <p>This site lay close to the SPA and the Inspector had "no substantial evidence" to justify the Council's confidence that the site would deliver its anticipated housing yield because of the need to provide a bespoke mitigation scheme. He was concerned that the extra detail needed "would fundamentally alter" the contents of the Core Strategy and "would be procedurally difficult having regard to the advice in PPS12".</p> <p>Housing delivery on the Aldershot Urban Extension site was dependent upon a suitable bespoke mitigation scheme being implemented. There were concerns whether such a scheme was feasible, and the Council and the landowner could provide no evidence to satisfy the Inspector on this issue.</p> <p>Following an exploratory meeting the Inspector advised the Council of his concerns and recommended that the Council considered carefully whether to proceed. The Council subsequently withdrew its Core Strategy.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>The case highlights the importance of tackling difficult strategic issues at an early stage rather than attempting to defer them to later stages in the planning process.</p> <p>It should have been possible to demonstrate the feasibility of the necessary mitigation scheme, and the fact that Rushmoor's replacement Core Strategy has subsequently been upheld by an Inspector at examination and adopted, demonstrates that the issues that prevented the examination of the original Core Strategy were capable of being addressed.</p>



Case study 42	Shell Flat
Name, Company, Date, Location, Size,	Shell Flat wind farm Scottish Power/Eurus/DONG Energy 2000-2004 Offshore, West of Heysham, Irish Sea 90 turbines, total c270 MW
Purpose/ Summary of project	Round 1 Offshore Wind Farm Shell Flat was one of the 13 sites licensed by The Crown Estate in its first round for offshore wind farm development. Survey identified a major concentration of moulting and wintering common scoter. The combination of a very tight licence envelope, risk of radar reflection from Blackpool airport and navigation constraints with the main Heysham shipping channel meant there was no space in which to alter the location of turbines to reduce the impact on scoters, and eventually the project was abandoned.
Impacts	Displacement of moulting and wintering common scoters from a favoured feeding area through presence of turbines; disturbance associated with construction and boat traffic associated with post-construction and maintenance.
Interaction with Habs Regs and resolution- ToR 1	Inadequate marine survey meant that a major concentration of 50,000 plus common scoters, one of the most important in English waters had not been identified, or indeed designated SPA. Round 1 was not subject to SEA, but even if it had, there would not have been data to populate it. Thus the site was licensed and developer-led surveys done as part of the EIA process identified the importance of the Shell Flat for scoters. It was apparent to all involved that this site justified SPA designation, and all parties agreed to treat it as a proposed SPA. Prolonged negotiations could not find a way of altering turbine deployment to mitigate impact on scoters without impacting on other interests, and eventually the project was halted. The site was included within the Liverpool Bay SPA, eventually designed in September 2011.
Points for relevance for the Review - other ToR + Defra issues	<p>The failure of this project highlights the inadequacy of Government implementation of the Habitats Directive in the marine environment in general. Lack of investment in survey meant that an important marine resource was not identified and, consequently, the area was not designated SPA in a timely manner. This resulted in an area being licensed by The Crown Estates for possible wind farm development that should not have been. SEA of Round 1 would not necessarily have helped, because of lack of data with which to populate it.</p> <p>The companies concerned did all that could be expected of them in undertaking survey to identify the environmental assess of the site, and discussions around the projects and its environmental impacts were always constructive.</p> <p>The tragedy of this project is that its implications were not learnt and applied to Offshore Wind Rounds 2 and 3, in that the investment in the programme of marine survey and site designation was not accelerated, in view of the planned increase in deployment of offshore wind to meet UK energy needs.</p>



Case study 43	Sustainable Catchment Management Programme
Name, Company, Date, Location, Size	Sustainable Catchment Management Plan project United Utilities 2005-2010 Trough of Bowland and The Peak District
Purpose/ Summary of project	The Sustainable Catchment Management Programme (SCaMP) was devised to ensure the sustainable environmental management of 20,000 ha of water catchment land under United Utilities' ownership in the in the Peak District and the Forest of Bowland, to remedy site deterioration of the SPA and in the quality of raw water due to peat discolouration.
Impacts	Over recent decades, industrial pollution, drainage installed in the moorland peat, wildfires and agricultural practices have all had a negative environmental impact, affecting the wildlife value of the site. This has contributed to increased discolouration and pollution of water drawn from the catchment, which has to be removed through treatment processes before it is suitable for drinking.
Interaction with Habs Regs and resolution- ToR 1	This project addresses site deterioration, a matter addressed by Article 6.2 of the Habitats Directive which has not been properly transposed into English legislation. Instead of addressing water discolouration in the water treatment works, UU decided to tackle it as source, by restoring areas of bare peat, created as a consequence of excessive burning, overgrazing and industrial pollution. OFWAT was persuaded to finance restoration works through the PR04 water price round settlement.
Points for relevance for the Review - other ToR + Defra issues	Constructive engagement by all parties to find innovative solutions to restore habitats within the SPA, delivering not only species outcomes, but enhancing ecosystem service provision in terms of raw water and carbon storage.



Case study 44	Teesport Container Terminal
Name, Company, Date, Location, Size	PD Teesport 2005-7 Tees Estuary
Purpose/ Summary of project	Proposal for new major container port (1.5m TEU). Required redevelopment of brownfield land and 1km of dredging to deepen main estuary channel
Impacts	Impact of dredging on integrity of nearby SPA and roosting birds through potential changes in sedimentation patterns. <u>Cumulative impacts with Able UK application.</u>
Interaction with Habs Regs and resolution- ToR 1	<p>Initial concerns that proposed dredging would adversely affect intertidal habitats of adjacent SPA using by wintering waders and wildfowl.</p> <p>Detailed discussion with developer and consultants to agree scope of impact assessment and application of geomorphological modelling to inform views on whether impacts would cause problems, both alone and in-combination with that of nearby Able UK scheme.</p> <p>Impact assessment ultimately gave confidence to EN and the RSPB that there would be no adverse effect on the integrity of the SPA.</p>
Points for relevance for the Review - other ToR + Defra issues	Constructive and early discussion allows agreement on scoping of impact assessment and associated modelling work to ensure all parties are better informed of potential impacts.



Case study 45	Thames Estuary 2100
Name, Company, Date, Location, Size	Thames Estuary 2100 (TE2100) Environment Agency 2002-2010 Extends from Teddington, in the west, to a notional line between Sheerness and Shoeburyness and covers the estuary, its tidal tributaries and floodplain.
Purpose/ Summary of project	TE2100 is a strategy prepared to guide strategic flood risk management in the Thames Estuary over the next 100 years.
Impacts	Maintenance and improvement of flood defences through the estuary will lead to coastal squeeze as mudflats and saltmarshes are trapped between rising sea levels and fixed flood banks. The Environment Agency (EA) identified the scale of loss over 100 years, predicted to be 1200 ha within the TE2100 area
Interaction with Habs Regs and resolution- ToR 1	The EA recognised that implementation of the strategy would lead to a likely significant effect and that this would be adverse in respect of the various Natura 2000 sites within its geographic scope. Mitigation measures were incorporated into the strategy, but this still left substantial residual adverse impacts. NE and the RSPB recognised that there were no additional alternative solutions and that reducing the flood risk around the Thames Estuary, including London, was an imperative reason of overriding public interest. The scale and potential location of habitat compensation was addressed through the preparation of a Coastal Habitat Management Plan for the Greater Thames.
Points for relevance for the Review - other ToR + Defra issues	This case demonstrates how strategic planning allows impacts to be identified at a broad geographic and temporal scale and for appropriate compensatory measures to be identified and programmed for implementation over the lifetime of the strategy so that they are functioning at the time of loss.



Case study 46	Titchwell Coastal Change Project
Name, Company, Date, Location, Size	Titchwell Marsh Reserve RSPB 2008 North Norfolk coast
Purpose/ Summary of project	Improving flood walls protecting Titchwell Marsh RSPB reserve to reduce the effect of salt water flooding to the freshwater component of the North Norfolk Coast SPA and managed realignment to counter deterioration in the foreshore within the Wash & North Norfolk Coast SAC caused by climate change, sea level rise and coastal squeeze.
Impacts	<p>This was a complex case where the RSPB was the developer dealing with the conflicting needs of three overlapping European site designations on the Titchwell Reserve. Any course of action, including doing nothing, would result in an adverse impact upon one of the European sites.</p> <p>The option chosen was that which protected the larger part of the affected SPA interest, while offsetting the deterioration of the SAC interest. The managed realignment component of the project would impact a high tide roost for waders and wildfowl from both the Wash and the North Norfolk Coast SPA and Ramsar site, and breeding and wintering avocet.</p>
Interaction with Habs Regs and resolution- ToR 1	<p>The works, while helping to manage various components of the SPA and SAC, were also likely to have a significant affect on others, specifically some of the designated features of the North Norfolk Coast SPA. Therefore it was necessary for the RSPB as developer to provide the information for an Appropriate Assessment.</p> <p>Information was provided in the Environmental Statement to inform the AA, including details of mitigation and compensation measures considered necessary in respect of affected designated features at the site (for example, the brackish marsh). Despite comprehensive mitigation measures, residual adverse effects remained and compensation measures were required.</p> <p>The RSPB provided information to demonstrate that other relevant requirements of the Habitats Regulations were met, including the consideration of less damaging alternative solutions and imperative reasons of overriding public interest (IROPI) linked to the long-term sustainable conservation of the SPA and SAC features.</p> <p>The RSPB ensured that appropriate compensatory measures were secured and committed to make them fully functional before any damage occurred as a consequence of the proposals at the Titchwell Reserve. Most of the compensatory habitat, comprising suitable habitat for 52 pairs of breeding avocet, was consented and created on the RSPB's Freiston Shore and Frampton Marsh reserves prior to the Titchwell proposal being submitted for planning permission.</p> <p>Minor works on site included provision of additional island habitat within the reserve, and the re-profiling of the islands in the freshwater marsh. This provided suitable habitat for the wintering wader roost and was also designed to accommodate a minimum 10 pairs of breeding avocets. Therefore, it mitigated the impact of the loss of the high tide wader roost and partially mitigated the impact of the loss of the islands used by nesting avocets. All these works were completed in</p>



Case study 46	Titchwell Coastal Change Project
	spring 2009 (i.e. before any damage took place at Titchwell).
Points for relevance for the Review - other ToR + Defra issues	This case demonstrates that with careful planning it is possible to undertake works within a protected site which minimise damage, while at the same time ensuring mitigation and compensatory measures are implemented before damage occurs.



Case study 47	Trinity Terminal/Felixstowe Dock and Railway Act 1988
Name, Company, Date, Location, Size	Private bill to create Trinity Terminal, Port of Felixstowe 1988 Felixstowe
Purpose/ Summary of project	Creation of new container terminal through land claim at Fagbury Flats, Felixstowe
Impacts	Loss of 32ha of intertidal mudflats and saltmarsh on Fagbury Flats, integral to what would become the Stour and Orwell Estuaries SPA
Interaction with Habs Regs and resolution- ToR 1	<p>Proposal predates the classification of the SPA and application of the Habitats Directive by at least six years.</p> <p>The RSPB and Suffolk Wildlife Trust petitioned against the proposal due to its damaging effects on the intertidal habitats. Non like-for-like freshwater habitat compensation was secured in the form of the Trimley Marshes Suffolk Wildlife Trust nature reserve.</p> <p>Following the European Court of Justice judgment in the Lappel Bank case, the UK Government agreed to provide like-for-like habitat compensation as part of a larger scheme that would also compensate for the loss of Lappel Bank. This intertidal habitat compensation is now provided by the Defra Wallasea managed realignment scheme in Essex.</p>
Points for relevance for the Review - other ToR + Defra issues	As with Lappel Bank, this case confirms the need for a correct approach to the designation of Natura 2000 sites, thereby ensuring their proper protection. Once a site is properly designated, proposals that could affect it can then be considered properly under the Habitats Regulations decision-making process.



Case study 48	Wallasea Island Wild Coast Project
Name, Company, Date, Location, Size	Wallasea Island Wild Coast Project RSPB, Environment Agency, Crossrail 2005 onwards Crouch Estuary, Essex
Purpose/ Summary of project	<p>The RSPB's Wallasea Island Wild Coast Project will create some 400 ha of new intertidal habitat (both mudflats and saltmarsh), some of which will be used to meet compensatory habitat requirements to offset losses on the Essex and Suffolk coasts.</p> <p>As part of the project, excavated material from Crossrail will be used to raise existing land levels and create raised areas within the existing island sea walls. These walls will later be opened up at certain locations to allow tidal water to flow in and out of the island, creating natural wetlands over time.</p> <p>This allows Crossrail to find an environmentally sustainable site to take around 4.5 million tonnes of excavated material arising from the construction of tunnels, shafts and stations, which will help create the new nature reserve. Movement of the excavated material by freight train and ship will reduce the impact of Crossrail's construction on London.</p>
Impacts	Beneficial provision of new mudflat and saltmarsh habitat, in part to compensate for past losses elsewhere on the Essex and Suffolk coasts
Interaction with Habs Regs and resolution- ToR 1	<p>The project was conceived as a habitat restoration project to create new intertidal and freshmarsh habitat for the benefit of wildlife and public enjoyment.</p> <p>Although the RSPB took the view that the project should be subject to appropriate assessment, NE judged that the project was necessary for the management of the Crouch and Roach Estuary SPA, as it was providing compensatory habitat to offset past losses within the Estuary system, as well as wider losses elsewhere on the Essex and Suffolk coasts.</p> <p>Late in project development, the Environment Agency decided to make a financial contribution to the project in return for which some of the habitat created will be formally counted as compensatory habitat to offset losses on to coastal squeeze elsewhere.</p>
Points for relevance for the Review - other ToR + Defra issues	Habitat creation in compliance with the Habitats Regulations can lead to innovative approaches, which benefit the economy at the same time as wildlife.



Case study 49	Weeting housing, Breckland
Name, Company, Date, Location, Size	Weeting Housing Robert Childerhouse 2011 Breckland, Norfolk
Purpose/ Summary of project	Construction of 35 homes and allotments at Cromwell Close, Weeting in close proximity to the Breckland SPA
Impacts	Disturbance to breeding stone-curlew within the Breckland SPA
Interaction with Habs Regs and resolution- ToR 1	<p>To accord with the Breckland Council Core Strategy, development within a 1500m buffer of the Breckland SPA must demonstrate that it will not have an adverse effect upon the SPA. The development proposal lay within the buffer and a larger scheme had already been rejected by the Council as an allocation in its Core Strategy and Sites Allocation DPD.</p> <p>Based on the sound evidence base assembled for the Core Strategy, both Breckland Council and the RSPB opposed the application, though NE concluded it was acceptable with mitigation. Housing at Weeting was not included in the Core Strategy or the Sites Allocation DPD because there were sufficient alternative sites to meet the Council's housing targets without using a site that would impact upon the SPA.</p> <p>An alternative approach to determining impacts was proposed by the applicant's consultant, but this was not considered a valid approach by the Council, RSPB and NE. The developer also unsuccessfully pursued the addition of Weeting to the District's Site Allocation DPD using the same consultant's report. This was considered at Examination in Public but turned down by the Inspector (who reported in December 2011).</p> <p>Consequently the Council refused the application in January 2012 on both nature conservation, and unrelated grounds. It is not yet known whether the proposal will be subject to an appeal.</p>
Points for relevance for the Review - other ToR + Defra issues	<p>Even when strategic planning directs development to the right locations, developers may still persist in bringing forward proposals that conflict with those strategic decisions.</p> <p>Disappointment at the outcome of planning applications that conflict with the development plan should be considered to be the result of the proper operation of a plan-led development management system, rather than the fault of the Habitats Regulations, especially in a location where the Planning Inspectorate has confirmed that the District's housing supply can be met without the need for development in a sensitive location.</p>



Case study 50	Wing Water Treatment Works
Name, Company, Date, Location, Size	Wing water treatment works Anglian Water 1998-2006 Near Rutland Water
Purpose/ Summary of project	Increase capacity of existing water treatment works
Impacts	Indirect impacts on habitat quality and extent (i.e. area of open fresh water, aquatic macrophytes and invertebrates) available for water birds, through increased rate of drawdown in Rutland Water facilitated by increasing water treatment capacity at Wing.
Interaction with Habs Regs and resolution- ToR 1	<p>Initially, there was resistance from Anglian Water that the proposal was likely to have a significant effect on Rutland Water SPA and needed to undergo AA. Once that was overcome, the main challenge for all parties was agreement on the complex data collection requirements needed to enable AA to be carried out.</p> <p>Once the scale and nature of the predicted adverse effects was agreed, detailed discussions were required to determine the package of mitigation and compensation measures in terms of habitat creation and management inside and outside the SPA boundary (subject to considerations of alternative solutions and IROPI).</p> <p>The initial application was refused, as Rutland County Council (the competent authority) were not able to conclude there would be no adverse effect on the SPA. Following the detailed discussions described above, two subsequent applications (one for the water treatment works extension and one for the engineering operations/change of use of agricultural land to nature conservation associated with the habitat mitigation and compensation package) were approved with conditions.</p> <p>Taking all the mitigation measures in to account, it was concluded there was still a residual adverse effect on the integrity of the SPA: this amounted to the loss of about 6,000 out of the 24,000 wintering waterfowl assemblage.</p> <p>Compensation measures were required in the form of new wetland habitats adjacent to but outside the SPA boundary, to provide habitat for the c.6,000 displaced waterfowl.</p>
Points for relevance for the Review - other ToR + Defra issues	It took the refusal of the initial application to persuade the applicant that there was a potential adverse effect to address. But by 2001 (when the original application was refused) all parties were working together constructively to assess the impacts and develop mitigation/compensation solutions.