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SEDHRP,
c/o Habitat Regulations Delivery Manager,
Knowle,
Sidmouth
EX10 8HL

10 August 2017

Dear [REDACTED]

Proposed Wildlife Refuges at Exmouth and Dawlish Warren

We refer to the consultation by the South East Devon Habitat Regulations Executive Committee in relation to the above proposal. We consent to our consultation response being shared in full with East Devon District Council and the South East Devon Habitat Regulations Partnership (SEDHRP) and our responses may be made publicly available online.

As the national governing body, the Royal Yachting Association (RYA)¹ represents the recreational boating organisations based on the Exe. The RYA represents dinghy and yacht racing, motor and sail cruising, RIBs and sportsboats, powerboat racing, windsurfing, inland cruising and personal watercraft (sometimes known as jet skis) - activities that we will refer to as recreational boating within this letter.

There are a number of RYA affiliated organisations registered in the vicinity of the proposed Wildlife Refuges, including Cockwood Boat Club, Exe Sailing Club, Lympstone Sailing Club, Starcross Fishing and Cruising Club, Starcross Yacht Club, Topsham Sailing Club, Topsham Small Craft Club, Exe Power Boat & Ski Club, Exmouth Sea Cadets Exmouth Watersports & Adventure Camps, East Devon Training, Haven Banks Outdoor Education Centre, Outside Edge, Sail Exmouth and the Commando Training Centre Royal Marines Water Activity Centre (Royal Navy Sailing Association). The RYA also represents personal members who sail on the

¹ The RYA is the national body for all forms of recreational and competitive boating under sail or power. It represents dinghy and yacht racing, motor and sail cruising, RIBs and sportsboats, powerboat racing, windsurfing, inland cruising and personal watercraft. The RYA manages the British sailing team and Great Britain was the top sailing nation at each of the 2000, 2004, 2008 and 2016 Olympic Games and at the 2012 Paralympic Games.

The RYA is recognised by Government as being the primary consultative body for the activities it represents. The RYA currently has over 109,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters. There are an estimated further 350,000 boat owners nationally who are members of over 1,400 RYA affiliated clubs and other organisations.

The RYA also sets and maintains an international standard for recreational boat training through a network of over 2,300 RYA Recognised Training Centres over 55 countries. On average, approximately 160,000 people per year complete RYA training courses. RYA training courses form the basis for the small craft training of lifeboat crews, police officers and the Royal Navy and are also adopted as a template for training in many other countries throughout the world.

Exe, outside of these clubs and training centres, including those using Exmouth Marina, Trouts Boat Yard and visitor moorings etc.

The RYA seeks to support the UK Government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas, while protecting the public right and the safety of navigation for recreational boating. This includes ensuring management decisions are based on sound, objective and robust evidence, and all options for co-existence and voluntary initiatives such as those promoted by [The Green Blue](#), are exhausted prior to consideration of other management options. The RYA position on Marine Protected Areas can be found on our [website](#).

Consultation outcome

In our letter to the EEMP dated the 28th April 2017, we stated our reasons why we could not support the proposals for Voluntary Exclusion Zones on the Exe as presented in the formal consultation at that time. The RYA, our members and affiliated organisations attended a number of meetings, workshops and drop-in sessions as part of the initial consultation. During these workshops, and in our letter referred to above, a number of amendments were tabled, including boundary changes, timing changes and tidal restrictions to ensure the safety and continuation of activities important to the local community of the estuary, which were agreed with the Exe Estuary Management Partnership (EEMP) Estuary Officer. These amendments were significant compromises by the recreational boating community in their desire to find a meaningful solution. Those attending the meetings were under the impression these amendments would be taken on board, and therefore the meetings were generally positive as set out in the Estuary Officers report².

However, it became clear that these compromises would not be accepted by the SEDHRP Executive Committee, and large numbers of stakeholders rejected the proposals in the plenary of the final public consultation event on the 20th April. The written responses to the consultation reflect this; with over 70% of respondents to the online questionnaire stating that the proposals would cause them problems, and of these, many responded that the proposals should be abandoned completely. Of those who responded via email or letter, over 90% objected to the proposals, many with very strong views. A number of these responses were on behalf of membership organisations, rather than individuals and therefore should be considered as more than an individual response. In summary, we reject the statement that as a result of the meetings, users were “largely accepting of the approach”² and we are not clear why the proposals were not withdrawn at this stage.

Amended proposals

Following the consultation, a number of changes were made to the proposals, however these did not reflect the compromises offered during the consultation meetings, and were in fact a further compromise between the Estuary Officer and SEDHRP, without further dialogue with those present at the meetings. The amended title of ‘Wildlife Refuges’ does little to change the fact that these areas are designed for

² Exe Estuary Zonation Review Consultation Report, Exe Estuary Management Partnership (publication date unknown), page 35 paragraph 2.

use by wildlife only, rather than designing a scheme where the activities can co-exist with appropriate education, support and guidance. The revised proposals do not reflect the discussions that took place during the consultation, and therefore are not 'voluntary'.

The EEMP Management Group, of which RYA is a member, was asked to endorse the proposals at a meeting on the 21st June. Following consultation with our members, the RYA voted against the endorsement of the amended proposals. However, users of the estuary are in the minority on the Management Group, and it was inevitable that they would not be in the majority if put to a vote of this manner. At present, the Management Group does not accurately reflect the make-up of the stakeholders of the estuary and any majority vote will not strike a balance between the interests of user groups and wildlife. It should be made clear that the Management Group did not unanimously endorse the proposals³.

We understand that the majority of recreational boating clubs on the Exe have responded to this consultation rejecting the amended proposals, along with suggesting alternative ways forward, reflecting the value they place on the wildlife of the estuary. Between them, these clubs represent 3000 users of the estuary⁴. We continue to support these clubs to ensure that the needs of these users are fully taken into account.

Lack of evidence

The RYA continues to be concerned regarding the inability of SEDHRP and EEMP to clearly demonstrate the need for exclusion zones for the types of recreational boats regularly used by the RYA members and affiliated organisations on the Exe.

SEDHRP and EEMP continually refer to the Exe Disturbance Study to demonstrate which activities account for the majority of major flight events. Bait digging on the intertidal, dog walking with dogs off leads on the intertidal, walking on the shore and intertidal and kitesurfing were seen to be the activities that account for the majority of major flight events (66%). Dog walkers with their dogs off leads on the intertidal caused the highest percentage of major flights from all the observed potential disturbance events (31%). Surveys during 2016-17 at Dawlish Warren showed that despite more than half of activities being recorded as small sail boats and small fast boats, they were not identified as the most notable cause of disturbance. It is therefore unclear why activities carried out by RYA members and affiliated organisations is included in the proposals.

SEDHRP states that populations within 10km of the estuary are likely to rise by over 20% by 2030 as a result of housebuilding and this is why precautions should be taken to prevent increases in disturbance. Increasing populations may result in increased numbers of walkers, where there is no real limit on capacity, however this is not the case for recreational boating. SEDHRP and EEMP have not carried out any investigation into participation trends or potential capacity of the estuary for boating.

³ Exe Estuary Zonation Review Consultation Report, Exe Estuary Management Partnership (publication date unknown), page 33 paragraph 2.

⁴ [RYA Club Membership Census, 2016](#)

Increases in recreational boating activity will be limited by the capacity of clubs, the number of berths/moorings and vessels available on the estuary. RYA data shows that the majority of recreational boating clubs are already at more than 70% capacity. Club membership levels in the Exe have been relatively stable, with some decreases over the last few years. The National Watersports Survey⁵ seeks to benchmark participation rates and monitor trends. This is done by repeating the research year-on-year and 2017 is the 15th year in which this work has been conducted. The graph below shows the general participation trends in the South West for shallow drafted boats in the last 9 years.

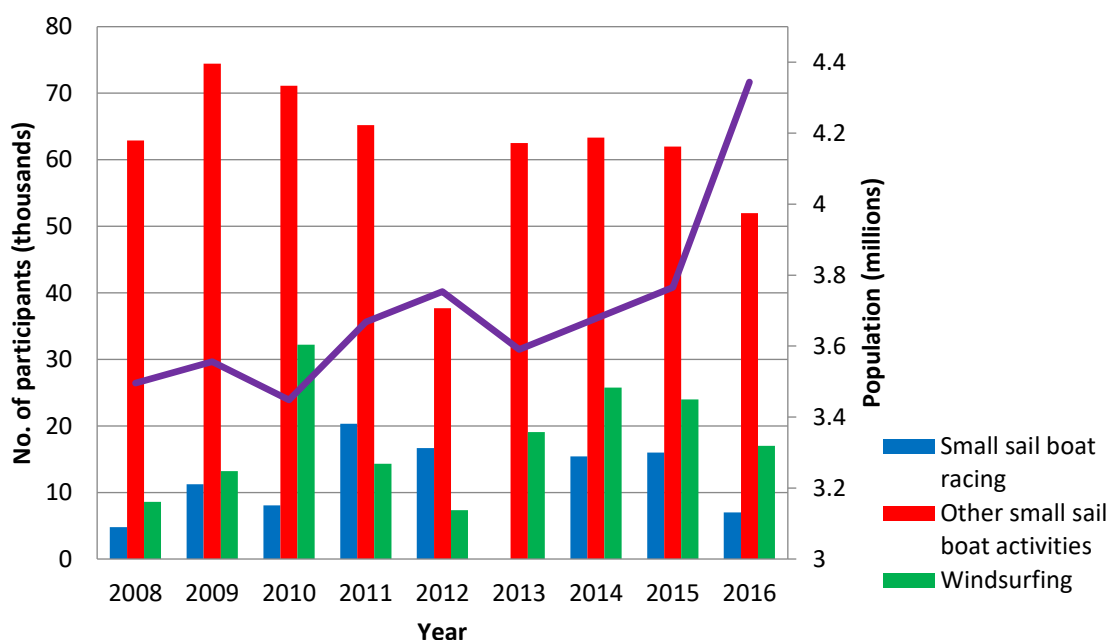


Figure 1 Sailing Participation in the South West

Small sail boat activities show a downward trend since 2009, with small sail boat racing showing a downward trend since 2011. This is despite an increasing population trend. This shows that there are likely to be other factors affecting watersports participation. Likely causes are set out in the RYA Club Membership Census⁴ and the National Watersports Survey⁵ reports.

Way forward

Consultation responses to date have shown that the majority of watersports participants on the estuary do not support the amended proposals and therefore they will be ineffective as 'voluntary' mechanisms. Safety critical areas of the estuary are still included, along with parts of the estuary of importance to a range of watersports, despite strong consultation responses objecting to their inclusion. EEMP and SEDHRP will need to work hard to regain the trust of the recreational boaters on the Exe following a period of immense uncertainty, confusion and disappointment. It is also clear that the EEMP will need to review the membership of the Management Group in light of the issues raised during this consultation.

⁵ [National Watersports Survey, 2016](#)

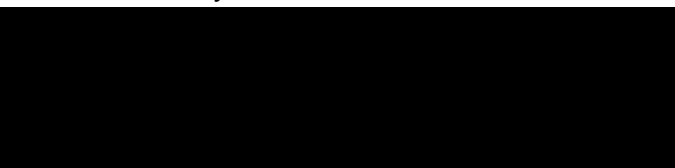
Recreational boaters on the Exe are passionate about their surrounding environment. The majority of responses to date have suggested complete withdrawal of the proposals with regards to recreational boating, with a move towards EEMP and SEDHRP working more collaboratively to produce a new code of conduct, which is fully supported by all. This code of conduct could map 'sensitive areas', with guidance setting out how boaters can ensure that they boating responsibly in these areas. This is a more positive approach, which reflects the successful work put in place in other marine protected areas in the UK. Without withdrawing the proposals, work on any new codes of conduct will be difficult, given the distrust that has developed during this process. In particular, withdrawal of the proposals with respect to recreational boating will enable EEMP and SEDHRP to develop an improved baseline monitoring programme to better understand any impact of recreational boating on the estuary, along with any trends in participation levels as populations increase.

Established by the RYA and British Marine 12 years ago, The Green Blue environmental awareness programme has successfully helped boat users, member businesses, sailing clubs and training centres reduce their impact on coastal and inland waters. The project has delivered hundreds of workshops and environmental audits, developed engaging signage and online resources and distributed thousands of environmental products to encourage boaters, clubs and businesses to make sustainable boating simple. The next two years will see a more focused educational programme for The Green Blue, concentrating primarily on environmental training and education for recreational boaters in the UK's marine protected areas. By working towards an environmentally self-regulating boating community, The Green Blue campaign aims to help boaters minimise their impact on the environment and safeguard the waters and habitats boaters enjoy and rely on for the future. Over the coming months, we will be identifying priority sites to progress this work. We have already started discussions with EEMP as to how this approach might work on the Exe and we have agreed to await the results of the consultation before progressing this further.

We remain committed to supporting the establishment of a well-managed network of marine protected areas and in most cases we believe this can be achieved without any adverse effect on either the public right or the safety of navigation for recreational boating. Full consultation with stakeholders is an essential part of this process to ensure we have a resilient and sustainably-managed marine environment. We will continue to support our members and affiliated organisations in working with EEMP and SEDHRP with regards to these proposals.

If you have any queries please do not hesitate to contact me.

Yours sincerely,

A large black rectangular box redacting the signature of the RYA Planning & Environmental Manager.

RYA Planning & Environmental Manager



TOPSHAM SAILING CLUB

Established 1885

HAWKINS QUAY FERRY ROAD TOPSHAM EXETER DEVON

secretary@topsham-sc.org.uk

By email to:

**South East Devon Habitat
Regulations Partnership**

share@exewildliferefuge.org.uk

22nd July 2017

TOPSHAM SAILING CLUB RESPONSE TO PROPOSED ZONATION OF THE EXE ESTUARY

Dear Members of the South East Devon Habitat Regulations Executive Committee.

The Committee of Topsham Sailing Club has asked that I write in response to a further request for feedback relating to the proposed zonation of the Exe Estuary.

Whilst Topsham Sailing Club welcome and support the biodiversity of the Exe Estuary we are of the opinion that there is no justification for Voluntary Exclusion Zones (VEZ – or Wildlife Refuge Zones) for the following reasons.

- There is no scientific or policy justification,
- disturbance is unduly linked to the impact of water users,
- the process has ignored consultation feedback, and
- there are real concerns over safety.

Furthermore, the procedures followed to date, fly in the face of Government Guidance on consultations which categorically states that you must not predetermine the outcome by selective introduction of data and prejudicial questions. They state that there should always be a risk assessment relating to introduction of policy which should always include the do nothing option. It is also commonly accepted that a consultation period should not take place over the long summer holidays and hence this current period should be extended to take this into account.

If the VEZ is being in any way justified as a result of the Habitat Regulations, these zones should be created through the statutory framework so that they have the force of law which clearly a VEZ does not.

We strongly suggest that the committee take legal advice in this matter.

Notwithstanding this, we remain disappointed that Exeter City Council does not appear to be enforcing the current bylaws which could provide some of the beneficial effects that the committee are seeking to introduce.

The Science

WeBS data does not suggest or put forward any long term evidence that bird populations are declining, although naturally, some variation is bound to occur.

Bird populations can be expected to vary over time and factors other than disturbance such as global warming, farming practice and species competition are much more likely to cause such natural variations.

Research by Professor John Goss-Custard and Professor Richard Stillman suggests disturbance on the Exe is of no significance. We understand that this has been presented to the EEMP and NE by Professor Goss-Custard and seemed to be ignored.

Impact of Water Users

The RYA have already confirmed that water based activity is not increasing substantially.

Table 8 on page 64 of the Footprint Ecology Survey confirms:

- Sailing Vessels cause no disturbance to birds
- only 8% of the disturbance was caused by water borne craft
- Approximately 66% of the disturbance was caused by walkers, with or without dogs.

If existing statutory rights were enforced there would be a significant reduction in bird disturbance.

VEZ Area/Consultation feedback

Despite repeated reasoned requests from water users, EEMP seem unprepared to listen and are intent on implementing the proposed VEZ despite massive objections to their proposals. In particular, Dave Smallshire has stated that the Dawlish VEZ Area north of OS grid Northing 80 is not an area that birds usually frequent, however, this is an area of great importance to all water users, as it provides an area of shelter from the strong tides found in the main channel.

It is notable that of the 222 online questionnaire responses, that 73% thought the proposals would cause problems and only 12% were in support.

Personal Safety

Due to the unusually strong tidal streams encountered between Dawlish and Exmouth it is an area which poses a significant risk to all water users. It is usual in such circumstances for

smaller and non-powered craft to hug the more sheltered shores to avoid the strongest tidal flow and fast moving larger vessels. If the belief of youngsters and novices using smaller craft is that they are not allowed to enter the VEZ then they will be placed at significant additional risk to life, as the tidal flow is sufficient to pin a person underwater beneath a craft or mooring.

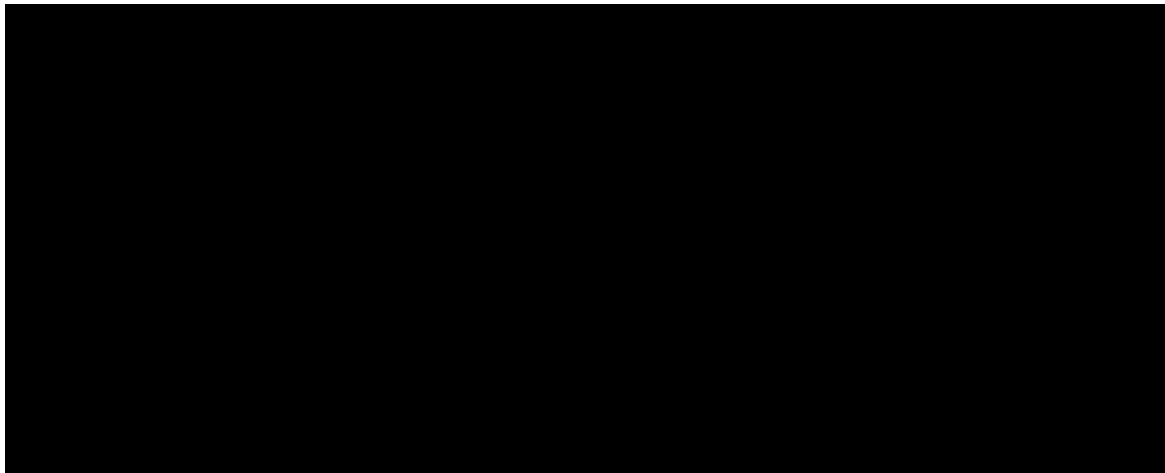
In conclusion, The Committee of Topsham Sailing Club is of the view that VEZ are not required or justified and our objections remain.

Yours sincerely



Hon Sec, Topsham Sailing Club

cc:



Resident 1

From: [REDACTED]
Sent:
To: Exe Wildlife Refuges
Subject: New Message From South East Devon Habitat Regulations Executive Committee

[This sender failed our fraud detection checks and may not be who they appear to be. Learn about spoofing at <http://aka.ms/LearnAboutSpoofing>]

Name: [REDACTED]
Email: [REDACTED]

Messa [REDACTED] previous message, I would add that exclusion zones are of no value at all unless they are strictly enforced. I see no evidence whatever that any restrictions at all on the Exe are at present policed or imposed in any way, and would ask what proposals there are to see that this will be done in any meaningful way. This should include a an assessment of how such work should be financed.

From: [REDACTED]
Sent:
To: Exe Wildlife Refuges
Subject: Re: New Message From South East Devon Habitat Regulations Executive Committee

Thank you for your acknowledgement. If I may add further, my wife and her mother ran the very first sailing Scholl on the Exe, in the 1960s, and the forum I was on in the 1990's was the one that led to the formation of the Exe Estuary Management Committee, which seems to have been the moving spirit behind the present proposed regulations. Even then, it seemed very biased towards the wildlife interests, largely because their PR resources were far greater and less fragmented than the leisure boating interests which were my principal concern. it certainly seems that this has changed hardly at all.

Indeed, I note your list of sources of material posted for the general public to consider locally when contemplating consultation. I see no attempt at publication in the Lympstone area listed, and would ask you to tell me whether any notices &c were put on public display as listed elsewhere in one of the many annexes to you consultation report. I study the parish council noticeboard nearly every day, and I can recall no such notice. One of the schemes, I believe, involves an area of Lympstone parish, and I am surprised that your plan s were not generally available as are the current proposals for regulating footpaths and rights of way. Lympstone has been a harbour used by boatowners, both professional and leisure, of many kinds, ever since a boatyard built naval craft for the Napoleonic wars, and, before that, as a whaling port in the 1770's and an importer of lime to the limekilns on my property as shown in a watercolour dated 1794. Has this longterm use and the extent of the parish boundaries, still 'beaten' every four years in part by water, been taken into account?

If we are talking natural habitats, I would mention the adverse effect of the 'ban zone' at Dawlish Warren would have on the breeding habits of the species *homo sapiens*, which for several generations has crossed from Exmouth to Dawlish Warren for seclusion during the mating season. Has this been considered?

[REDACTED]

Resident 2

From: [REDACTED]
Sent:
To: Exe Estuary - Mailbox

Subject: Exe Estuary proposed zonation

Dear [REDACTED]

I would like the following to be added to the comments in the latest round of proposals:

It is evident that neither the EEMP or the SEDHRC are at all interested in the feedback you have received. There is no real acknowledgement on your part about the concerns that the science on which the proposals are based is deeply flawed (At least one professor of Ecology has written to elected members earlier this year challenging the validity of the report). The changes made are tiny differences of degree, not differences of kind.

The RYA has been ignored. You still have no evidence that sailing causes disturbance. We understand that the three district councils surrounding the estuary want the CIL funds that are only available when habitat mitigation is demonstrated; this is an easy and cynical way to comply with that, regardless of whether there is a basis for these zones in the first place.

It is possible, with proper consultation to arrive at a workable arrangement and I would commend the way in which Poole Harbour Authority has promoted awareness and protection for its sea birds and waders through a different approach. It has not imposed zones. The harbour authority engaged with water users on equal terms from the outset. The EEMP has not, and until this year has kept itself as far from the public as it could until public pressure mounted. (Much has already been said about previous lack of engagement and transparency)

I know of no estuary users who respect the tactics that have been employed throughout the process. We are extremely disappointed and cynical about this process and in this instance I firmly believe that the wildlife agenda has been hijacked in order to raise money to justify the developments around the estuary.

Yours sincerely,

From: [REDACTED]
Sent: 09 August 2017 12:23
To: Exe Estuary - Mailbox

Subject: Re: Exe Estuary proposed zonation

Dear [REDACTED]

Thank you for your response. My comments are on the amended proposals which is a continuation of the original proposals. I have filled in the on line survey but I don't think you can make that the only way in which the public can respond? That is not the impression I get from the consultation guidelines published by central government, anyway,

The professor who wrote to the three elected members earlier this year most definitely disputed that water users are causing bird disturbance and clearly points to land based activities. He questions the validity of the approach and conclusions in the report.

Judging from the RYA letter sent in the summer the RYA do not consider the consultation process and recommendations are in any way mutually acceptable.

The Poole Harbour zones are not VEZs and the way in which they were identified and agreed has been totally different.

Most of us who attended the public consultation meeting have absolutely no faith in this process and as you know the sailing clubs have all rejected the proposals due to lack of meaningful evidence. They have not done it lightly either, as it would be better to have a strong working relationship.

We are all very disappointed and it is sad that there is no respect or understanding between us on the Exe in the same way that has been achieved for other areas. I think that sums it up.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Resident 3

Name: [REDACTED]

Email: [REDACTED]

Message: Having used water craft on the Exe estuary for the last 35 years I am sure that the birds are not effected by the presence of boats. All birds are able to fly away but choose to stay in large numbers . [REDACTED] has spent several decades of research coming to this conclusion. It would be foolish to ignore him. We do not need this zoning.

Exe Disturbance Study: Summary

The Exe Disturbance Study (December 2011), which was commissioned by the Exe Estuary Management Partnership, presents the results and analysis from two winters of extensive surveys on the Exe estuary of recreational activities and birds responses to activity, and draws conclusions based on that analysis. Conclusions include

- There is evidence that disturbance is currently influencing the distribution and behaviour of birds on the Exe. These impacts may be sufficiently widespread and frequent to result in the estuary being less able to support the waterbirds for which it is protected.
- In general terms the numbers of birds appear low at the busiest locations of the Duck Pond and at Topsham in relation to adjacent count sectors.
- The parts of the estuary with the lowest levels of access (such as Shutterton Creek) are also the parts of the estuary with the highest bird counts.
- At various locations the number of birds varied in response to the levels of access over the previous 45 minutes; i.e. when more people had been present, fewer birds were recorded.
- A range of activities result in areas of intertidal habitat being 'unavailable' to the waterbirds for which the estuary is protected.
- A kitesurfer or windsurfer can result in around 8ha of intertidal habitat being 'unavailable' to the birds for the duration of the activity.
- In comparison with other sites studied, the Exe appears busier and has higher proportions of disturbance events per hour.
- By reducing the area available for the birds to feed disturbance is likely to result in a reduction in the ability of the estuary to support the bird populations for which it is protected.

The disturbance study did not attempt to assess the consequences of the effects highlighted above on the fitness and survival chances of the affected waterbird populations. The available budget for the study would not allow such in-depth assessment. However it nonetheless provides a clear picture that birds are being substantially affected by current levels of access to and around the estuary.

Work has been undertaken to develop individual-based models to predict the consequences of environmental change for shorebird and wildfowl populations. All models are limited by how up to date and comprehensive the data is that is used to populate them. One such model was primarily developed for oystercatchers on the Exe estuary, when access levels were likely to be very different to those currently experienced and certainly those forecast into the future arising from a rapidly increasing local population. Modelling by West *et al* in 2002 predicted the impact of human disturbance on oystercatchers using the Exe estuary in winter. The modelling showed that disturbance had the potential to be more damaging than actual habitat loss, but suggested that at the levels of access then occurring on the Exe, disturbance was not predicted to result in increased mortality.

Currently, of the 10 species that have been evaluated for the Exe Estuary by the Wetland Bird Survey¹ Alerts² system, which identifies changes in numbers of waterbirds, High and

1 WeBS, a partnership between the British Trust for Ornithology, RSPB and the Joint Nature Conservation Committee in association with the Wildfowl and Wetlands Trust, which monitors non-breeding waterbirds in the UK, to identify population sizes, determine trends in numbers and distribution, and identify important sites for waterbirds.

2 The WeBS Alerts system provides a method of identifying changes in numbers of waterbirds at a variety of spatial and temporal scales. The WeBS Alerts report provides a review of the status of species on sites in the UK which are designated due to their conservation value. Species that have undergone major changes in numbers are flagged, by the issuing of an Alert.

Medium Alerts have been triggered for five species over different timescales:

High alert: Oystercatcher (since classification) and Lapwing (short term, long term and since classification)

Medium alert: Dark-bellied Brent Goose (since classification); Red-breasted Merganser (medium term and since classification), Grey Plover (medium term and since classification), oyster catcher (medium and long term) and lapwing (long term).

Since the Estuary is classified a Special Protection Area under the Wild Birds Directive³ and a Ramsar site under the Ramsar Convention⁴, we have international obligations to protect it and the waterbird populations for which it is classified. This enshrines the precautionary principle, ie. it is not acceptable to wait until disturbance levels are such that the estuary's waterbird populations is in decline before taking action; measures must be put in place to avoid harm in the first place.

3 Council Directive 2009/147/EC on the conservation of wild birds.

4 The Convention on Wetlands of International Importance.

Mud and birds, without the poppycock

¹ Footprint Ecology, Forest Office, Cold Harbour, Wareham, Dorset, BH20 7PA;

² British Trust for Ornithology, The Nunnery, Thetford, Norfolk, IP24 2PU;

³ Natural England, Dragonfly House, 2 Gliders Way, Norwich, Norfolk NR3 1UB

Introduction

In the June edition of this bulletin, [REDACTED] article on shorebird disturbance entitled “Mud, Birds and Poppycock” accused conservationists and decision makers of “scientific naivety” and an “over-enthusiastic and unbalanced application” of the relevant legislation (the EU ‘Birds Directive’ and ‘Habitats Directive,’ and domestic ‘Habitats Regulations’). Unfortunately, the article failed to recognise the issues relating to the cumulative impacts of new development over a wide area and implications of gradual but steady increases in access over a prolonged period. The original article rightly highlights that translating the observable effects of disturbance to meaningful impacts on individual fitness should be the ultimate goal of disturbance studies; and individual-based modelling has greatly advanced understanding in this area. However, it is not practicable for such in-depth studies to cover all species at every site where potential conflicts between human activity and wildlife occur. Long term changes in access use and environmental change are also hard to predict. Yet the need for assessing the risks from new and existing developments and their associated human activities remains.

While single disturbance events may be trivial in terms of impact, the legislation requires assessment of local authority plans, which may relate to large volumes of housing (often tens of thousands of houses). There are clear risks from increased disturbance given such a scale of development. Assessment must follow particular steps to show a plan is compliant with the legislation, and one such step is to demonstrate no adverse effect; alternatively plan makers can recognise the risk and ensure it is avoided or mitigated for. The latter approach accepts the uncertainty and provides plan makers with a way forward to enable development. We have written this article to clarify the legislative context and show how innovative and positive solutions have been established to achieve plan-led European site protection and allow development to proceed smoothly. We focus on the impacts from disturbance at estuary sites and (in line with the original article), we use the Exe Estuary to illustrate some of the points made.

The planning system and relevant legislation

Local authority plans set out housing levels and distribution over extended periods to ensure development is at the right level and in the right places. Plan-making involves comprehensive evidence gathering and assessment, securing compliance with relevant legislation and policy. Assessment of housing needs, infrastructure capacity and flood risk, for example, all contribute to establishing the needs, constraints and opportunities for the local area. The protection of internationally important wildlife is similarly integral to plan making and is a legal requirement. Any potential impacts on European sites (i.e. Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) classified or designated in accordance with the EU ‘Birds Directive’ and ‘Habitats

Directive' respectively) arising from plans are considered through a Habitats Regulations Assessment (HRA) before the plan is implemented. A HRA follows a step-by-step process and considers all aspects of the plan, including the growth proposed over the whole plan period. This presents the opportunity for assessing the potential impact of the plan as a whole, informing emerging policy and development allocations and seeking solutions that enable development to proceed wherever possible, where protective measures for European sites can be implemented. The original article in the spring bulletin omits the strategic context of plan-level assessment and the challenges (and opportunities) presented when assessing the impacts associated with tens of thousands of new dwellings.

A culture in which it is believed that “any human activity on the coast is bound to be detrimental”

Plan-level HRA is far more than a simple consideration of an individual dog walker; it is about understanding the risks arising from the plan over its lifetime, and then ensuring that measures are in place to prevent such risks from being realised, and consequently contravening the Directives. On a single site, localised disturbance in a small part of the site for a small amount of time may be deemed unlikely to result in a likely significant effect, as birds are highly mobile, and on a large site there will be nearby options where birds can feed. Switching to such locations within an estuary might take seconds, and the impact from a single brief event will therefore be negligible. However, disturbance that regularly affects larger parts of sites may have more serious effects, similar to habitat loss.

In the example of the Exe Estuary SPA, taking the three local authorities directly adjacent to the site, plans allow for a combined total of over 40,000 houses over the period to around 2030, most of which are proposed in relative proximity to the estuary. In order to provide the evidence for the assessment work, local authorities commissioned a range of visitor survey work. Postcode data from site visitors are shown in Figure 1. The data show visitors originated from a wide area, but – as might be expected – a marked concentration from areas local to the estuary. The evidence-base revealed new housing (from local plans) within a 10 km radius of the estuary was set to increase by 29% and we predicted an increase in access of 27% to the site. These are very marked changes.

Focus on shorebird numbers

The original article states that the Directives aim to maintain shorebird numbers, but omits reference to site conservation objectives, which are fundamental to informing a HRA. Conservation objectives for the Exe Estuary SPA, for example, do include maintaining populations of each of the qualifying features, but also refer to the range of factors that contribute towards site integrity, including maintaining the “extent and distribution of the habitats of the qualifying features”; “the structure and function of the habitats”; “the supporting processes on which the habitats rely” and “the distribution of qualifying features within the site”. The qualifying features for the Exe Estuary SPA include a range of waterbird species, as well as the whole waterbird assemblage. A HRA should thus have regard for the ecological functioning of a site and its full suite of interest features. It is not simply focussed on shorebird numbers.

The precautionary principle

In the example of the Exe Estuary, visitor studies (conducted during the winter) highlighted recreational use that included dog walking, walking, fishing, bait collection, kite surfing, windsurfing,

canoeing and personal watercraft. Such access takes place on the intertidal, on the water and along the shore. Data such as the home postcodes provide a clear link to housing. These activities are widespread around the estuary and are not focussed in the warmer months. The estuary's waterbirds are exposed to the effects of recreation events because the estuary is small (fewer options for birds to feed), has access along most of its shore, is relatively narrow and supports a limited number of roost sites. Disturbance monitoring (which encompassed roughly a third of the intertidal area of the estuary) showed that bird distribution and access were clearly not segregated in time and space. It also showed that even single events (such as kite surfing, which is not restricted to high tides) can affect birds across virtually the whole estuary.

Any plan-level HRA must consider the effects on the site for the lifetime of the development, i.e. a permanent potential impact, and one which may even become more intense over time if recreational activities change over time (e.g. with climate change). The assessment must also consider all interest features; both the waterbird assemblage as a whole and individual species, some of which can be present on the estuary from July through to March. Given these considerations, the evidence on visitors and linkage with disturbance, and the scale of housing change, there is clear evidence of risk.

Precaution is built into the legislation to account for uncertainty, and it ensures protection where there is doubt. The difficulty in applying the precautionary principle is the need to distinguish between justified caution in the absence of information, and making the assumption that everything may have an impact unless it is proven otherwise. The precautionary principle is relevant where there is a potential link between a conceivable impact from the plan and the European site interest features and there should be a credible scientific argument to identify the possibility of an impact. That is clearly the case on the Exe Estuary. Additional evidence to show the exact scale of impact (or lack of impact) would be beneficial, but it would be highly complex or even unfeasible given the permanent nature of the housing and the range of interest features. Individual-based models were used on the Solent as part of the evidence to inform the HRA work and those models could only be built for some of the interest features and for a part of the SPA; nonetheless they predicted impacts on survival rates based on current recreation levels and predicted further impacts as a result of future development.

Mitigation as a positive solution

Rather than block development and cause unnecessary delays, if risks are identified at plan level, then solutions can be integrated into the plan, enabling suitable growth in the right place at the right time, in the same way that policy may similarly give direction in relation to flood management or land contamination, for example. Around the Exe Estuary, local authorities have joined forces and set up a joint approach, which involves a relatively small charge being levied per dwelling built in the areas where we know people visit the estuary. That money is then used to establish measures such as dedicated areas for access (dog walking), better zoning for watersports, better communication/signage for visitors, changes to access infrastructure around the estuary, etc. These measures, selected to ensure no increase in disturbance as a result of new development, will be carefully monitored and the monitoring used to hone their effectiveness. Regular review ensures new evidence or monitoring results can be used to refine or change the mitigation. The measures remove the risk identified at plan level. Developers know upfront any costs, individual developers do not need to undertake detailed assessment work (HRAs are required at project level too), and

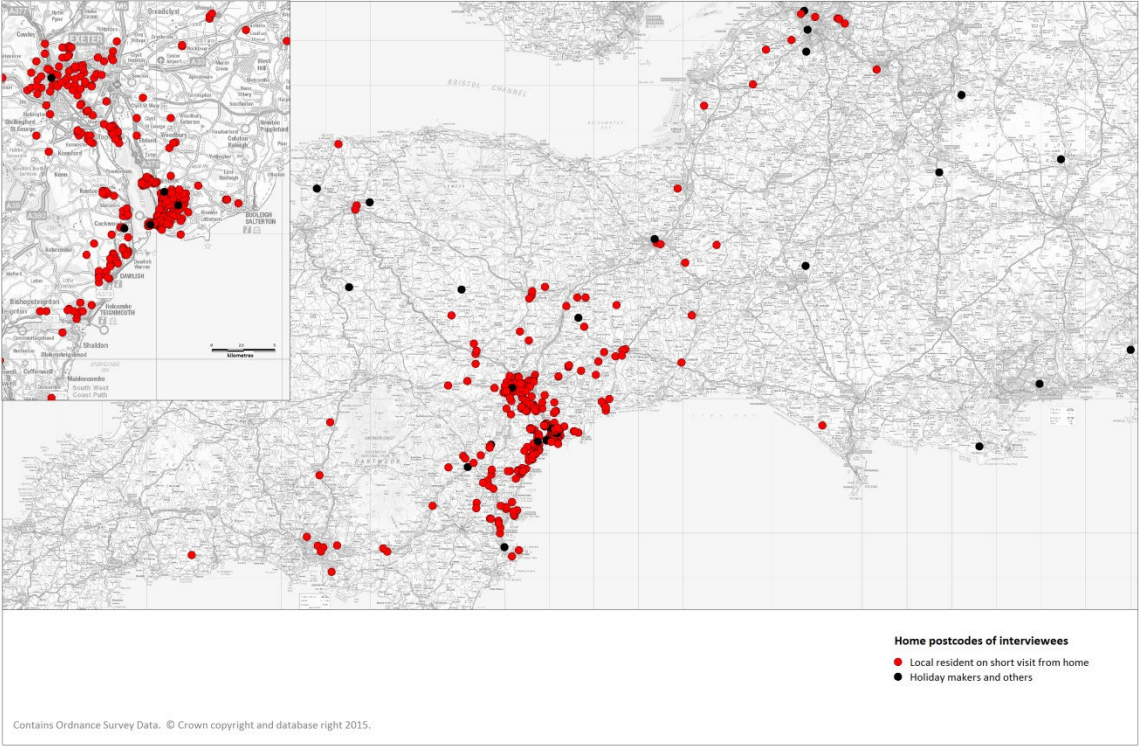
mitigation measures are secured in a way that allows measures to join up and be planned carefully. Funds are secured in a fair and proportionate way and collected in the same way that developers might contribute to highways improvements, schools, recreation grounds, etc. The solutions enable development to proceed, and can have positive outcomes for visitors and wildlife.

Successful solutions have also been adopted around a range of sites, including at other protected sites such as SPAs around the Solent. A similar approach has also been long running around a range of heathland sites (where impacts relate to disturbance to ground nesting birds, fire risk, habitat damage, etc.), such as the Dorset Heathlands and Thames Basin Heaths SPAs. While the costs (per dwelling) vary, contributions do not necessarily affect viability. For example, the per-dwelling cost in the Solent has been £172. Given the cost provides certainty to the developer and removes the need for them to commission consultants to do detailed assessment work or to provide mitigation themselves, the benefits are clear. The option is always there for developers not to contribute to the mitigation scheme but instead to produce their own project level evidence and targeted mitigation, but this is a route very few take.

Conclusions

Bringing together ecological (birds) and social (housing numbers, visitor levels) data to provide the information to inform planning decisions and conformity with legislation is a challenge, but has provided evidence-based, workable solutions. The article in the spring bulletin failed to show the breadth of information used for decision-making and was incomplete with respect to the legislation. Contrary to the article, there is no “eco-negativism” or “infringement of civil liberties”; rather, strategic mitigation solutions enable the Directives to be implemented in the spirit they were intended, and exciting and innovative solutions positively engage stakeholders. There is a growing will amongst plan-makers, statutory bodies, ecologists and developers to enable delivery of sustainable development and European site protection in an integrated and forward-looking way. Looking to the future, we recognise the potential to look across estuary sites in England to identify those that are most vulnerable to impacts from housing, by nature of the levels of current development, shape, accessibility etc. and to highlight those sites where future development is likely to be of least concern.

Home postcodes from visitor surveys undertaken in February and March 2010 (from Liley, Fearnley & Cruickshanks 2010)



Resident 4

Name: [REDACTED]

Email: [REDACTED]

Message: Navigable waters require a certain depth: not all the River Exe estuary is therefore navigable. However the VEZ include waters which are clearly navigable at certain states of the tide. The safety of small craft depends on the ability to navigate outside main channels. The VEZ proposals will exclude water-uses from these navigable waters which have been accessible since they came into being thousands of years ago. My understanding is that this can only be changed by an Act of Parliament. This clearly is not such an Act, and is unenforceable. Meaningful consultation could solve the perceived problem for our feathered friends.

Resident 5

From: [REDACTED]

Sent:

To: Exe Wildlife Refuges

Subject: Exe estuary

Good afternoon [REDACTED]

I do go along with [REDACTED] servation areas on the Exe for wild life, but you must have the back up to enforce this law, this would require a boat on the Exe 12 months a year.

Best of luck,

Regards
[REDACTED]

Resident 6

From: [REDACTED]

Sent:

To: Exe Wildlife Refuges

Subject: Wildlife refuges

I would draw attention to the legal requirement to protect the wildlife of the estuary - this responsibility has been sadly ignored by the Harbour Authority for many years now. Disgraceful.

Wildlife refuges are the very least that can be done. Unquestionably, voluntary codes need to be backed up by statutory or regulatory measures and for effective enforcement appropriate investment has to be made, eg. a patrol boat operating at all seasons manned by people with the necessary authority.
[REDACTED]

Resident 7

Name: [REDACTED]

Email: [REDACTED]

Messa [REDACTED] ely as an independent lawyer (a retired Solicitor) and not in any other capacity or office holder or adviser howsoever, wheresoever and whatsoever.

Having read all the current paperwork, my professional concern is that the suggested VEZ contains no proposals whatsoever that cannot be equally achieved under a Voluntary Code of Guidance and Conduct, within the framework of the existing bye-laws and statutory protections - and at much less expense..

In my opinion, your VEZ proposal is a "half-way house" which seeks to achieve a quasi-statutory effect and purpose but by using an apparent form of "Consultation" as a process which avoids or side-steps the rigours and formal statutory procedures of seeking further bye-laws and imposing statutory obligations, whereunder a Public Enquiry can hear evidence and have it tested by cross-examination. Under your VEZ proposal, it can be seen, in effect, that ECC is acting as "judge and jury" of the process as it can make what it will from the consultations, with the concomitant risks of legal principles being compromised by political decisions. As a lawyer, my duty is to defend and uphold The Rule of Law at all times in all circumstances. In this proposal I do foresee grounds for challenging a decision, if made, which is seen as "perverse or wholly against the actual evidence" by way of seeking Leave for Judicial Review. Therefore, I submit that the way to achieve your objectives in these particular circumstances is to re-cast the Proposal for a VEZ into one of a Voluntary Code of Conduct and Guidance for all Users of the Estuary, which will; then command the support of us all but at much lesser cost than the present proposal would engender.

Dated:- 8th August 2017

With my

Resident 8

Name: [REDACTED]

Email: [REDACTED]

Message: I have been a member of Lympstone Sailing Club for fifty years, and was Commodore some twenty five years ago, but I no longer hold any official position in the club. My wife, her family and I have lived within a few feet of the water's edge at Lympstone for all that time. I represented the club on various all-estuary bodies, including the one that led to the establishment of the post of Estuary Officer. During that time I have heard many reports of the increasing proliferation, variety and richness of bird life on the Exe. In my view it is completely preposterous to impose any ban or restriction on sailing, which lasts only six months a year, and then only for an hour or two at a time. More disturbance to bird life is caused by the much more frequent road traffic on the B3180 over Woodbury Common or the A3022 over Aylesbeare Common. Only when such roads have been completely closed to vehicular traffic will it be time to start meddling in a right for anyone to use and enjoy the estuary as they wish as has been done at least since the Romans were here. Bans such as those suggested will antagonise the estuary community whose support is essential to the authorities, and are nothing less than an infringement to basic human rights which are far more important than the welfare of bird life, which from day to day observation from the riverside seems to be doing pretty well - as we are frequently told. There are too many authorities around who seem to try to justify their existence by interfering in things which have worked perfectly well for years without their intervention.

Resident 9

Name: [REDACTED]
[REDACTED]

Message: Hello

Not a good idea.

I race a dinghy and it has no impact on the wild life.

I have also taken my child for leisure sailing and taught her about nature by sailing past the shore. How could this have happened if you impose your proposal.

Education education education is far more effective than unenforceable dictatorial attitudes.

Names and contact details are to be kept confidential!

End

Resident 10

Name: [REDACTED]
[REDACTED]

Message: Sir or Madam,

I strongly object to the current proposals of the Voluntary Exclusion Zone of the Exe. The reasons are many, I sail at Starcross Yacht Club and have been a member for many years, whilst we as a club and me as an individual have always strongly supported the protection of our valuable habitats and wildlife, we have always supported the protection of this area, especially Dawlish Warren, without which the Exe estuary, as we know it, would not exist.

I feel that the current proposals to 'exclude' water-users from publicly navigable waters are unenforceable and counter-productive, as 'good' users of the area would make for far better conservation, as we would look after our environment, as we do currently. A parallel can be drawn with African endangered species, where they are hunted to near extinction, but can be turned round by realising the commercial asset of users wanting to photograph them.

This makes the whole system work as everything is dependent on each other.

I feel you have not taken into account the majority of water-users opinions in the consultation process. I strongly urge you to reconsider your proposals and would like to hear from you, the outcome of this.

Yours faithfully,
[REDACTED]

Resident 11

Name: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]ts, and feel a sense of responsibility towards those on Dawlish Warren which arises largely because it is an area that I regularly navigate as a sailor. Exercising my public right to navigate is crucial to my sense of belonging and responsibility for the estuary so any regulations should not interfere with this right..

Resident 12

Name: [REDACTED]
[REDACTED]

Message: This is another attempt at control of citizens who are responsible anyway. Controls like this will drive people and revenue away from the area

Resident 13

From: [REDACTED]

Sent:

To: Exe Wildlife Refuges

Subject: protecting the estuary

I would like to add my support to your voice. Please let me know if I can do anything at all to help, as I have just seen the man on telly who thinks the River's 'play' areas should be extended, and I am truly horrified by his comments.

I have left a comment to your web page.

Yours sincerely,

[REDACTED]