

**1) 9 August 2012**

**From** Jenny Shepherd

**Questions:**

*“Why does Natural England’s Notice of Proposal and Consent for the Walshaw Moor Estate make an explicit exemption from the Heather and Grass Burning Code? It says that mapping the area’s habitats, which must be completed by March 2013, must include ‘sensitive areas’ as identified in the Heather and Grass Burning Code – with the exception that “it shall not be necessary to identify the category described as ‘Peat bogs and wet heathland’ “. Doesn't this make a mockery of the fact that Natural England’s Notice of Proposal and Consent also says: ‘Sensitive areas: no burning’*

*By ruling out any need to identify the sensitive areas category of ‘peat bogs and wet heathland’, Natural England seems to be saying to WME, ‘You must abide by the law that rules out burning sensitive areas – except if the sensitive area is peat bog or wet heathland. And then the rule doesn’t apply.’*

**Answers:**

This one went back and forth 3 times, until I received a copy of the Appropriate Assessment/Habitats Regulation Assessment (see below, RFI 1017) which explains that wet heathland will be mapped with degraded blanket bog, rather than separately, because

*“(9.2.12) It would be impracticable, at this site, to map wet heath as a single habitat-type as it is present in small areas and lines within and at the edges of blanket bog and dry heath, commonly at scales too small to be readily shown.”*

I think this is an acceptable reason.

**2) 28 September 2012 - RFI 1017**

**Q1:** *What form and process does Natural England’s “appropriate assessment” take when drawing up Consents and Management Agreements for land management on Natura 2000 sites (aka Europe 2000 sites)?*

**A1:** *An Appropriate Assessment (AA) is carried out when any plan or project which is not directly connected with or necessary to the management of a Natura 2000 network site (defined as a Special Protection Area (SPA) classified through the EC Birds Directive 1979 and/or a Special Area of Conservation (SAC) designated through the Habitats Directive 1992) is likely to have a significant effect on that site, either on its own or in combination with other plans or projects. The assessment is made of the implications of the plan or project for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment, Natural England can agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned. Our process is carried out using a standardised form which is supported by Natural England internal Habitats Regulations Guidance Notes and specialist regulation and evidence advisors. The Appropriate Assessment is a written document.*

I asked for clarification because I didn't understand what some of this meant. For answers to this request for clarification, see RFI 1731, 6 Nov 2012, below under 3).

**Q2:** *Is an Appropriate Assessment the same as carrying out a Habitat Regulations Assessment?*

**A2:** *No, a Habitats Regulations Assessment (HRA) is an unofficial term for a process widely used to draw together the several tests required by the Habitats Regulations under Regulation 21 of the Habitats Regulations 2010. The Appropriate Assessment (AA) is a later stage of the HRA.*

**Q3:** *How many Natural England Consents for Natura 2000 sites permit blanket bog burning and draining?*

**A3:** *Blanket bog burning: I'm afraid that Natural England does not hold the information in the aggregated form that your request implies. However, I have been able to ascertain that: 106 SSSIs have some type of consent to burn on blanket bog habitat. Please be aware that some SSSIs are not also European designated sites. However, there may be a number of other consents that are temporarily superseded by other agreements eg Environmental Stewardship, but we don't hold a central record of these.*

*491 Environmental Stewardship (ES) agreements where both blanket bog and a prescription that includes burning exist. Within ES there are several options for moorland that include burning in the prescription. However in each case there is a choice of:*

- *no burning*
- *burning and/or herbicide treatment*
- *burning and/or cutting*

*However, it is important to stress that just because this prescription is within the agreement there cannot be an assumption that burning has or will take place. Having the prescription within the agreement just confirms that:*

- *no burning*
- *burning and/or herbicide treatment*
- *burning and/or cutting*

*is applicable. To confirm if burning has or will take place it would require us to manually go through the documentation for each of these agreements*

*Blanket bog draining*

*From the information Natural England holds, there are no Natural England consents which would permit the drainage of blanket bog.*

I questioned the statement that there are no Natural England consents that would permit the drainage of blanket bog, because NE Consent for WME explicitly allows draining of blanket bog within 50 metres of grouse butts. The NE reply is below, under 4)

**Q4:** *Please can I have a copy of Natural England's appropriate assessments for each of these Consents?*

**A4:** *Please find in the folder Q4 – AAs the appropriate assessments that Natural England holds. (link to uploaded files)*

**Q5:** Are farmers/landowners whose land is in a Natura 2000 site legally required to produce a Habitat Regulations Assessment for Natural England, before Natural England can issue a Consent?

**A5:** No. Natural England is the competent authority with the duty under regulation 21 of the Habitats Regulations 2010 to carry out an Appropriate Assessment (AA) under the circumstances described in our response to question 1 above. As stated above in our response to question 2, the Appropriate Assessment forms one part of the Habitats Regulations Assessment (HRA) process.

However, owners and occupiers of land within a SSSI and Natura 2000 network site are legally required to give written notice of their intent to carry out an operation which may directly or indirectly impact on that site and which is covered by the Site of Special Scientific Interest (SSSI) provisions outlined in Section 28E of the Wildlife and Countryside Act 1981 (as amended). They must supply sufficient information in order for Natural England to be able to determine that notice and in order for Natural England to carry out a Habitats Regulations Assessment.

**Q6:** Please can I have a copy of the Habitat Regulations Assessment for Walshaw Moor Estate's land management proposals, prepared by Mike Webb of SLR consultancy for the 2012 Public Inquiry that heard WME's appeal against Natural England's modification of the WME Consent under the Wildlife Act 1981?

**A6:** For the reasons explained in the answer to question 5, it was not possible for Mike Webb to include an Appropriate Assessment in a witness statement - he not being a Competent Authority as set out in the Regulations. However, the Proof of Evidence of Mike Webb did include a document to inform an Appropriate Assessment of the proposals of the Walshaw Moor Estate Limited at that time. Consequently, during the proceedings, an Appropriate Assessment of the Estates' proposals was completed using his information. Please find in the folder Q6 - SLR HRA PI.

**Q7:** Please can I have a copy of Natural England's Statement of Case in relation to its 2010 Modification of Consent for WME? and its Statement of Case in relation to its 2011 Modification of Consent for WME?

**A7:** Natural England did not produce a Statement of Case relating to each modification. A Statement of Case is produced at the outset of a public inquiry to set out each parties case. We enclose a copy of Natural England's Statement of Case presented to the Inquiry. Please find in the folder Q7 - NE SoC.

**Q8:** Please can I have a copy of all documents and expert witness testimony presented by or on behalf of Natural England, to the Walshaw Moor Estate/Natural England Public Inquiry?

**A8:** Please find in the folder Q8 - NE PI Docs

**Q9:** Why did Natural England drop its prosecution of Walshaw Moor Estate for carrying out damaging activities on a Site of Special Scientific Interest without consent, which is an offence under the Wildlife and Countryside Act 1981?

Specifically:

- What was the effect on the prosecution proceedings of Andrew Wood's emails to Martin Gillibrand in December 2011, where he explained that Natural England saw Walshaw

- Moor Estate as an isolated case, and that Natural England did not intend to modify other consents or HLS agreements along the lines of the 9th December modification of WME's consent - which would have the effect of banning burning on other Natura 2000 sites?*
- In an email reply, Martin Gillibrand notes that what Andrew Wood is saying is not what Natural England's lawyers are saying. Is Martin Gillibrand's statement accurate? If so, why did Andrew Wood contact Martin Gillibrand to put a personal view which differed from Natural England's legal position?*
  - Did Natural England's prosecution collapse because Andrew Wood's emails to Martin Gillibrand allowed WME's lawyers to claim that Natural England was acting in a discriminatory manner against WME?*

*The reason I ask question 9 is that Martin Gillibrand's 9th Feb 2012 Witness statement for WME's application to the High Court of Justice 2011 for a Judicial Review (Claim No CO/12569/2011) says that he doesn't understand why Natural England have "singled out" WME for "special treatment in this matter. To my knowledge it is the only estate that has been the subject of a no burn/no grazing/ no vehicle use on blanket bog".*

*His witness statement draws on the December 2011 email exchange between him and Andrew Wood. It continues (para 16)*

*"When I pressed Andrew Wood of Natural England about this, he replied by email that to the effect that there was no intention to implement this new regime on any other grouse moor than the claimant. If this is the case it seems hugely discriminatory."*

**A9:** *Natural England's dispute with the Estate has been resolved from a regulatory perspective on the basis of the new Notice and Consent a copy of which was published on our website on 23 March 2012. The Notice and Consent will ensure that what takes place on Walshaw and Lancashire Moor in the future is managed and controlled. They replace the unacceptable burning regime that was being conducted under the auspices of the existing 1995 consents prior to the dispute being resolved.*

*To address your specific points:*

- Andrew Wood's statement had no effect on the prosecution proceedings. It was drafted in response to a judicial review threat and therefore was very specific to that challenge. The criminal proceedings were entirely separate. As stated in our press release the prosecution proceedings were settled as part of a wider agreement with the Walshaw Moor Estate.  
*Andrew Wood did not express a personal opinion, nor, in our view, an opinion that was different to the approach taken by Natural England in this case as expressed by its legal team. Martin Gillibrand clearly took a different view of the exchange.**
- Natural England's prosecution did not collapse. As stated above the criminal proceedings were settled as part of a wider settlement agreement with Walshaw Moor Estate.*

My Comment: Looking at Natural England's Statement of Case and witness statements for Public Inquiry, will make it possible to judge whether or not Natural England got what it wanted in the new Notice & Consent. (In NE terms, whether the dispute was in fact "resolved from a regulatory perspective".) **I haven't yet finished this task.**

**Q10:** *Please will you explain the response of Janette Ward, Director of Regulation, Natural England to a question from Paul Uddal MP in the House of Commons Environmental Audit Committee in May 2012?*

*Paul Uddal MP asked this question about Natural England's new management agreement with Walshaw Moor Estate:*

*"the management agreement you have is ambiguous on the idea of the whole impact environmentally, on the entire estate, whereas it is specific on some bits of the estate in terms of where there should be grass or heather burning... One of the issues was also around drainage channels. Does the agreement cover that, and did you guys check in terms of whether any unauthorised drainage channels were dug out on the moors? Does the agreement cover it and then was there any checking on that?"*

*Janette Ward replied,*

*"The agreement is taking us into the future, and that is what the agreement is about. As part of the agreement there is a management scheme which is designed to restore drainage on the moor through a procedure that is called moor gripping. What it will do is restore water levels on certain parts on the moor so restoring their wildlife interest."*

*Ms Ward's answer is at odds with the Walshaw Moor Environmental Stewardship Agreement. The ESA includes capital funding of almost £400K to be spent between 2012-2015 on "major preparatory work for heathland recreation", which is mainly "aimed at blocking grips across extensive areas of the moorland."*

*Janette Ward's answer is also at odds with the the Notice and Consent agreed between Natural England and Walshaw Moor Estate in March 2012. The Notice and Consent specifies that maintenance of existing infrastructure is permitted – except no maintenance of moorland drainage is permitted, apart from next to surfaced roads/tracks, walls and within a 50 metre radius around grouse butts.*

*Please can you explain why Janette Ward's response to Paul Uddal MP's question is so at odds with Natural England's Notice and Consent, the terms of the WME Environmental Stewardship Agreement and common sense - how can gripping or moorland drainage restore water levels?*

**A10:** *Janette Ward's reply should have stated that "As part of the agreement there is a management scheme which is designed to remove drainage on the moor which has been achieved through a procedure that is called moor gripping". As such this statement is not at odds with the agreement or consent.*

**Q11:** *Please will you also provide an answer to the question of whether Natural England did check whether Walshaw Moor Estate had dug any unauthorised drainage channels in the moors before the new agreement was signed?*

**A11:** *There was no reason or suspicion to check whether any unauthorised drainage channels were created before the new agreement.*

*My comment -BUT: see Natural England's Statement of Case for Public Inquiry, 9.17: "In addition to clearing out and thereby re-activating some of the historic gripping, the appellant has excavated new grips without consent." And what about NE's prosecution against estate for alleged illegal damage to SSSI/SPA/SAC through drainage, track construction and grouse butt installation? And if you walk to Heather Hill you can see a lot of new drainage channels that were dug without consent. Asked about this in follow up EIR*

request 17\_11-2012 see 4) **RFI 1786** below for NE answer . Also, see NE Statement of Case for Public Inquiry.

3) **RFI 1731, 6 Nov 2012** response from NE:

*The following statement tries to answer your four questions on the Habitats Regulations process:*

*-The Conservation of Species and Natural Habitats Regulations 2010 (as amended) transpose the EC Habitats Directive into national law and provide that there should be Appropriate Assessment of new plans or projects in Article 6.3 of the Directive. This provision is catered for in Article 21 of the domestic Regulations which require Natural England (it being the competent authority) to consider or review plans or projects applied for or granted, affecting a European site (Natura 2000, SAC and/or SPA), and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected.*

*-In order to assess whether a plan or project “may affect the site and/or if it is directly connected with or necessary to management for nature conservation” a notice must provide sufficient detail to determine whether an Appropriate Assessment is needed.*

*-The initial test, in effect, seeks to ascertain whether the proposal is required to maintain, protect or enhance the site or its notified features.*

*-If it is found that the plan or project is not required to maintain, protect or enhance the site or its notified features it must be further assessed under Article 21 by carrying out an Appropriate Assessment before consent may be issued. After that assessment Natural England can then consent the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. Therefore, a notice and consent that permits burning and draining of blanket bog on a European site would only be issued without carrying out a an Appropriate Assessment if it can be seen to be directly connected with or necessary to management for nature conservation or, the proposal does not affect a European site, in which case the regulations are not applicable. An example of this might be a burning and draining that is part of an intervention project, necessary as part of an agreed restoration plan.*

*You can find details of Natura 2000 (N2K) and SAC/SPAs on Natural England’s website. <http://www.naturalengland.org.uk/search/default.aspx>*

*-With regard to your specific question on Walshaw Moor, the consent to burn and maintain certain drainage was assessed as having the potential to affect the site and that these operations were not directly connected with or necessary to management for nature conservation. Therefore, an Appropriate Assessment was undertaken. This assessment concluded that the new management arrangements, by introducing specific controls as part of agreed restoration programme, made it possible to ascertain that they would not adversely affect the integrity of the European site. The Appropriate Assessment/HRA has been included.*

*-On the specific question relating to habitat mapping, the consent requires areas to be mapped in accordance with the details of the consent, a copy of which we have previously provided. The map will identify areas which are either dry heath, active or*

*degraded blanket bog to which a burning rotation will be applied. These areas will be a mixture of what you term peat bogs or wet heathland habitats. There will be a longer rotation on active blanket bog of 20-25 years and these areas will be mapped. Areas dominated by cotton-grass or Molinia and any areas where heather is not dominant (50% cover or less) will not be burnt. These again will include peat bog or wet heathland habitats. The habitat map is to be completed by 31 December 2013.*

4) My further question to RF1710 re blanket bog draining. This became **RF1786**

**Question:** *Dear Darren Green*

**Access to information request – RFI 1710**

*Thank you for the very comprehensive reply to my Environmental Information Regulations request which I sent to you in late September this year.*

*I would like to challenge your reply in section 3- Blanket bog draining, that*

*“ From the information Natural England holds, there are no Natural England consents which would permit the drainage of blanket bog”*

*I believe that this is incorrect in relation to the March 2012 Consent for Walshaw Moor Estate Ltd. This is because this Consent allows the maintenance of drainage within a 50 metre radius of grouse butts. There is a long line of newish grouse butts on the very degraded, heavily drained blanket bog on Heather Hill. Maintenance of these drains, as permitted in the Consent, will surely prevent the recovery of this blanket bog.*

*I attach photos showing the Heather Hill grouse butts, drains and degraded state of the blanket bog.*

*From this evidence it seems clear that the March 2012 Consent for Walshaw Moor Estate Ltd allows highly damaging drainage of blanket bog on Heather Hill to continue.*

**Answer: Tom Keatley replied:**

*“I have been asked to respond to your recent question on blanket bog drainage which we received on 17 November 2012, in relation to the March 2012 Consent for Walshaw Moor Estate Ltd. Your request has been considered under Environmental Information Regulations 2004.*

*The drainage you refer to is deemed to fall under the terms of the Consent as maintenance of existing infrastructure and therefore does not need further permissions. In cases such as these it is considered that this drainage would have limited effect as its efficacy is limited by the wider grip blocking programme and therefore Natural England has confidence that it would not have a significant impact on the wider area of blanket bog or hinder its recovery.*

*I feel a telephone conversation may be a more expedient way of addressing your questions and would be pleased if you would prefer to contact me to agree a mutually convenient time to discuss the matter further.”*

Notes from the ensuing telephone conversation will follow when I've word processed them.

5. Defra Request for information RFI1, fao Secretary of State Richard Beynon

**Q:** *In February 2012, Walshaw Moor Estate Ltd employed a public relations company called Media House, at a time when WME was appealing in a Public Inquiry against Natural England's modification of Consent under the Wildlife Act 1981, and preparing for a judicial review into a second modification of Consent by Natural England, which sought to ban burning on Walshaw Moor Estate.*

*Please would you let me know if Media House has lobbied you or anyone else working in Defra, on behalf of its client Walshaw Moor Estate Ltd?*

*If so, please would you send me a complete record of how, when and where Media House carried out this lobbying, what the contents of the lobbying were, and how you or any other members of the government responded to the lobbying?*

**A:** *Dear Ms Shepherd*

**REQUEST FOR INFORMATION: CONTACTS WITH MEDIA HOUSE REGARDING WALSHAW MOOR ESTATE**

*Thank you for your request for information about lobbying by Media House regarding the Walshaw Moor Estate, which we received on 17 September. We have handled your request under the Environmental Information Regulations 2004 (EIRs).*

*I apologise for the length of time it has taken to reply.*

*Following a search of our paper and electronic records, I have established that the information that you have requested is not held by Defra*

*Under our duty to advise and assist applicants in pursuance of regulation 9, I can confirm that to the best of our knowledge the information is not held by another public authority either*

**My conclusions so far...**

Using all this info, questions that now need answering are:

- a) is the new consent and management agreement an improvement on the previous situation?
- b) is Natural England properly enforcing wildlife and habitats law on Walshaw Moor Estate?
- c) is the Environmental Stewardship Agreement a proper use of public funding?
- d) why has it been so hard to get all this info - why wasn't it in the public domain in the first place, as the Aarhus Convention would require?

Energy Royd posts **No real evidence...** <http://www.energyroyd.org.uk/archives/6315> and **Environmental Audit Committee let Natural England off the hook about enforcing law on Walshaw Moor Estate** <http://www.energyroyd.org.uk/archives/4948> are first stabs at answering these questions. They include links to various docs obtained through EIR requests

