



# **Falmouth Bay to St Austell Bay potential Special Protection Area (pSPA)**

**Report of Consultation by Natural England, 2015**

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## Executive Summary

A 12 week formal consultation was carried out on the site proposals from 20<sup>th</sup> January 2014 to 14 April 2014. An additional 14 week period for consultation was provided from 14 April to 21 July 2014 in response to feedback from stakeholders.

Natural England contacted nearly 700 major stakeholders and known interested owner-occupiers in total. Fifty four stakeholders responded during the formal consultation via email, letter, Smart Survey or telephone. Thirty five of the consultation responses required detailed consideration, with eighteen of these concerning the scientific evidence supporting the recommendations. Sixteen stakeholders were supportive of the proposals with two supportive of the proposals but raising concerns about certain aspects of the recommendations. Eighteen of the stakeholders objected to the proposals, with twenty stakeholders neither supporting nor objecting to the recommendations. Concerns expressed by five stakeholders may be considered outstanding and for Defra's consideration. A further twelve stakeholders did not reply following correspondence from Natural England and may consider their objections to be outstanding.

Of the thirteen local authorities and other competent authorities contacted, four objected to the proposals, one supported the proposals, with eight neither supporting nor opposing the proposals.

Six stakeholders objected to the seaward boundary of the pSPA, either questioning or requesting clarification regarding the methodology and data defining the boundary recommendation. Five stakeholders queried the landward boundary, three stakeholders questioned the east-west boundary and a further seven stakeholders raised concerns regarding the scientific methodology applied or species recommended. Fourteen stakeholders (three local authorities/other competent authorities, eight organisations and three individuals) raised objections relating to the socio-economic impact of the designation. One stakeholder raised concerns regarding the consultation process.

Natural England originally consulted on a seaward boundary for the Falmouth Bay to St Austell Bay pSPA at 49m. Revision to the seaward boundary was proposed as a result of discussions at the Natural England Board meeting held during November 2014. Following further discussion with JNCC about the most appropriate model to derive the seaward boundary Natural England has decided to recommend a seaward boundary which approximates the 41m depth contour line. A map of this amended boundary can be found in Annex 5.

## Outstanding issues and concerns

Natural England would like to highlight the issues raised by:

- **Falmouth Harbour Commissioners** with respect to the methodology for defining the seaward boundary. For a summary of these issues and how Natural England responded to the concerns raised, please refer to page 19 in the Detail of Consultation Responses chapter.
- **FabTest Marine Renewables Test Site.** FabTest's consultation response queried the methodology used in defining the seaward boundary and use of non-site specific data rather than evidence of habitat use at the south Cornwall site; the lack of evidence presented regarding the diving depths of great northern diver on the south Cornwall coast; and requested clarification as to why the Important Bird Area (IBA) boundary should not be adopted. Please refer to pages 27 & 28 in the Detail of Consultation Responses chapter.

- **Baker Consultants** relating to the scientific methodology and process. Baker Consultants submitted a response on behalf of an undisclosed client which is linked to the Freeth Cartwright Solicitors challenge outlined below. They contest that: the exclusion of aerial survey data is unjustified; methods used in defining the seaward boundary are unscientific and unprecedented; survey data show species do not meet SPA selection guidelines; the recommendation for Slavonian grebe as a qualifying feature is unjustified; reported data for this species is inconsistent; the landward boundary recommendation is not supported by scientific data; and the recommendation not being underpinned by a Site of Special Scientific Interest (SSSI) is unsound. Baker consultants also suggested that the best option for determining the seaward boundary would be to collect more aerial survey data, using new digital technology (refer to page 23) . For further detail of issues raised and how Natural England responded to these concerns, please refer to pages 21 – 23 inclusive of the Detail of Consultation Responses chapter. Details of the recent correspondence received from Bakers Consultants on 14th Nov 2014 and Natural England’s response to these concerns can be found in Annex 4.
- **Freeth Cartwright Solicitors** presented legal challenge to Natural England on behalf of an undisclosed client during February 2014. The challenge was that the process for formal consultation was premature, unlawful and without legal effect. Freeths Solicitors (note recent change in organisation name from Freeth Cartwright Solicitors to “Freeths Solicitors”) presented further challenge related to Natural England’s response to Baker Consultants consultation response. Freeths Solicitors concerns related to the presentation of new scientific data as referenced by Natural England in response to the Baker Consultants consultation response. For further details on the issues raised and how Natural England responded to these concerns, please refer to page 29 in the Detail of Consultation Responses Chapter. Annex 3 provides further detail regarding the emerging scientific evidence. Annex 6 provides the revised site citation as per the emerging evidence presented in Annex 3.
- **CHADFISH** (Cadgwith and Helford Fishermen’s Association) representative [REDACTED] . [REDACTED] raised concerns regarding the apparent arbitrary nature of the proposed boundaries, the methodology of establishing bird counts and the appropriateness of the seaward boundary approximately following the 49m contour. Furthermore the consultation response requested for removal of the Falmouth Bay area from the recommendations. For a summary of these issues and how Natural England responded to the concerns, please refer to page 24 in the Detail of Consultation Responses chapter.

### Final Conclusions:

This Consultation Report outlines the concerns that have been raised by the stakeholders throughout and post formal consultation and summarises how Natural England have responded. Although we have not received recent correspondence from the stakeholders raising further concerns, we also have not received communications stating that stakeholders are now satisfied with our response. Therefore all the objections received are still considered by Natural England as outstanding.

Our final conclusions are that the site should be classified because:

- The data is sufficient to demonstrate the importance of the site in terms of the qualifying criteria;

- Although it is unclear how much the inter-tidal area is used by the qualifying species, the birds appear to make some use of this area when inundated, therefore we cannot safely deviate from the guidelines which is to recommend to Mean High Water (MHW) level; and
- The proposed approach to setting the seaward boundary, based on generic habitat characteristics, is appropriate given the data available, allowing designation of the site in the near future and providing certainty for stakeholders. We are not recommending additional digital aerial surveys on the grounds that these would likely require two or three years of survey and would carry significant costs estimated at £375,000.

### **Final Recommendations:**

Natural England recommends that Defra should:

1. **Consider** the concerns raised by the public regarding the boundary, the need for additional consultation, inclusion of Slavonian grebe etc.;
2. **Agree** the recommendation for an amended seaward boundary from that which was consulted on;
3. **Agree** the amended citation to include the changes to WeBs data;
4. **Agree** that Slavonian grebe should be included as a feature;
5. **Agree** that the inclusion of the intertidal area is appropriate; and
6. **Confirm** that the pSPA should be classified as per the consultation with the recommended amendments.

## Introduction

The purpose of this Consultation Report is to clearly set out all correspondence received by Natural England and the associated responses during the Falmouth Bay to St Austell Bay potential Special Protection Area (pSPA) formal consultation which ran from 20<sup>th</sup> January to 21<sup>st</sup> July 2014.

**Table 1: Summary of responses**

Site Name	Falmouth Bay to St Austell Bay pSPA
Formal consultation period (26 weeks)	20 <sup>th</sup> January 2014 – 21 <sup>st</sup> July 2014
Total number of stakeholder responses	54
Owner/occupiers	3
Organisations	25
Individuals/Unsolicited	13
Relevant/competent authorities	13
Number of supporting responses	16
Number of responses supportive of the proposals but objecting to/raising specific issues	2
Number of general enquiries/neutral responses	20
Number of objections	18
Scientific objections	15
Socio-economic objections	14
Socio-economic & scientific objections	12
Number of consultees with outstanding objections	5 <sup>1</sup>

Details of Natural England's Non-Financial Scheme of Delegation (NFSoD) can be found in Annex 1.

## Background

Natural England works as the Government's statutory adviser to identify and recommend Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in England to meet the requirements of the European Birds and Habitats Directives.

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<sup>1</sup>Please refer to the Consultation Conclusion heading on page 11 for further details.

The Birds and Habitats Directives require the creation of a network of protected areas for important or threatened wildlife habitats across the European Union known as 'Natura 2000' sites. Once sites are identified as proposed SPAs or possible SACs, they are recommended to government for approval to carry out a formal public consultation. Government decides which sites are put forward to the European Commission for inclusion in the Natura 2000 network.

### **Falmouth Bay to St Austell Bay pSPA consultation**

The Falmouth Bay to St Austell Bay pSPA is located off the South Cornwall Coast, extending from mean high water to a maximum of approximately 6km (11 km) offshore. The pSPA covers the marine environment between Nare Point in the west and Southground point in the east, including intertidal parts of the Helford River and Fal Estuary complex.

The Joint Nature Conservation Committee (JNCC) identified 45 Areas of Search (AoS) that were suspected to support important aggregations of wintering divers, seaduck and grebes that might warrant protection in SPAs. One of these AoS was the sea area adjacent to the coast of south Cornwall.

A review of inshore waterbird distribution data spanning the period 1979 to 1991 in south-west England was undertaken by RSPB and revealed two areas of "particular importance". These included Hartland Point in north Devon, and Veryan Bay, Gerrans Bay, Falmouth Bay and Carrick Roads in Cornwall. Following the review, systematic surveys of the areas identified confirmed that internationally important aggregations of divers and grebes existed within the Carrick Roads and Veryan / Gerrans / Falmouth Bays. The area was subsequently proposed as an Important Bird Area (IBA)<sup>2</sup>, whose status was later confirmed by systematic surveys which highlighted the suitability of the site for SPA classification for overwintering black-throated diver (*Gavia artica*), great northern diver (*Gavia immer*) and Slavonian grebe (*Podiceps auritus*).

### **The Consultation Process**

There was a 12 week formal consultation carried out on the site proposals from 20<sup>th</sup> January 2014 to 14 April 2014. An additional 14 week period for consultation was provided from 14 April to 21 July 2014 in response to feedback from stakeholders that it would be helpful to make the 2013 Vulnerability Assessment which informs the Impact Assessment for the site available to everyone to help inform contributions to the current consultation.

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<sup>2</sup>The south Cornwall IBA extends up to 6km out to sea, and was selected by BirdLife International for its numbers of black-throated divers, great northern divers and Slavonian grebe. The IBA provides no statutory protection for the pSPA species and basing SPAs on IBAs is not performed as a matter of policy in the UK.



The purpose of this consultation was to seek the views of all interested parties on:

- the scientific case for the classification of the pSPA; and
- the assessment of the likely economic, environmental and social impacts of the designation of the site, as set out in the Impact Assessment.

### **Raising awareness of the consultation**

Natural England contacted all major stakeholders and known owner-occupiers with an interest in the area being designated as an SPA. Nearly 700 stakeholders were contacted in total, by email or post, announcing the submission and the start of formal consultation. Each stakeholder was provided with a covering letter and a consultation document which provided links to site recommendations and supporting documentation. In the event stakeholders were unable to access the worldwide web, hard copies were provided on request. In addition, informal dialogue had been carried out with relevant individuals and organisations before the formal consultation period.

During the consultation Natural England staff led stakeholder engagement, which took the form of individual conversations with stakeholders and attendance at a number of meetings including presentations to provide briefings on site recommendations. An interview on local BBC radio was provided as well as a number of press releases in local media. A drop-in session was held for all interested parties to discuss the proposals, during which Natural England staff were available to answer questions and concerns. Port visits were also carried out to engage with fisheries stakeholders. Natural England has made every effort to be available to talk to via telephone or email, and any further documentation has been made readily available on request.

Four weeks before the end of the formal consultation period Natural England issued a reminder to stakeholders through e-mail and via press and social media notifications, to encourage a response before the closing date. The consultation questions related to the scientific evidence can be found in Annex 2.

### **Consultation Responses**

NE was contacted by **fifty four** stakeholders during the formal consultation via email, letter, Smart Survey or telephone. **Thirty five** of the consultation responses required detailed consideration. **Sixteen** stakeholders were supportive of the proposals with **two** supportive of the proposals but raising concerns about certain aspects of the recommendations. **Eighteen** of the stakeholders objected to the proposals, with **twenty** stakeholders neither supporting nor objecting to the recommendations.

Concerns expressed by **five** stakeholders may be considered outstanding and for Defra's consideration. A further twelve stakeholders have not explicitly withdrawn their objections following correspondence from Natural England and may still consider their objections to be outstanding.

Of the thirteen local authorities and other competent authorities contacted, **four** objected to the proposals, **one** supported the proposals, with **eight** neither supporting nor opposing the proposals.

**Six** stakeholders objected to the seaward boundary of the pSPA, either questioning or requesting clarification regarding the methodology and data defining the boundary recommendation. **Five** stakeholders queried the landward boundary, **three** stakeholders questioned the east-west boundary and a further **seven** stakeholders raised concerns regarding the scientific methodology applied or species recommended. **Fourteen** stakeholders (**three** local authorities/other competent authorities, **eight** organisations and **three** individuals) raised objections relating to the socio-economic impact of the designation. **One** stakeholder raised concerns regarding the consultation process.

## Consultation Conclusion

Natural England notes concerns raised by a number of stakeholders regarding the assessment of qualifying features and the definition of the landward and seaward boundaries.

In relation to the seaward boundary, it notes the alternative suggestions that have been made, for example, amongst others, a boundary which relates to the maximum line of sight from the shoreline observations, or investing in further aerial survey work. A draft version of the Consultation Report was considered by the Natural England Board during November 2014. Further consideration was requested by the Board to confirm that the method used to define the seaward boundary in this case was appropriate to the circumstances of the Falmouth Bay to St Austell Bay site. Further details of this assessment can be found in Annex 5.

However, despite the outstanding objections it is recommended that the site should be classified as per the consultation (with the recommended seaward boundary alteration) because:

- The data is sufficient to demonstrate the importance of the site in terms of the qualifying criteria;
- Although it is unclear how much the inter-tidal area is used by the qualifying species, the birds appear to make some use of this area when inundated, therefore we cannot safely deviate from the guidelines which is to recommend to Mean High Water (MHW) level; and
- The proposed approach to setting the seaward boundary, based on generic habitat characteristics, is appropriate given the data available, allowing designation of the site in the near future and providing certainty for stakeholders.

Natural England would like to highlight for Defra's consideration the issues raised by **Falmouth Harbour Commissioners** with respect to the methodology for defining the seaward boundary. Natural England responded in writing to clarify the points raised. For a summary of these issues and how Natural England responded to the concerns raised, please refer to page 19 in the Detail of Consultation Responses chapter. Further communication was received from FHC stating all issues raised during the consultation should remain current, unaddressed and for Defra's consideration.

Natural England would like to highlight for Defra's consideration the issues raised by the **FabTest Marine Renewables Test Site**. FabTest's consultation response queried the methodology used in defining the seaward boundary and use of non-site specific data rather than evidence of habitat use at the south Cornwall site; the lack

of evidence presented regarding the diving depths of great northern diver on the south Cornwall coast; and requested clarification as to why the Important Bird Area (IBA) boundary should not be adopted. Natural England responded in writing to clarify the points raised. For a summary of these issues and how Natural England responded to the concerns raised, please refer to pages 27 & 28 in the Detail of Consultation Responses chapter.

Natural England would like to highlight for Defra's consideration, a number of concerns raised by **Baker Consultants** relating to the scientific methodology and process. Baker Consultants submitted a response on behalf of an undisclosed client which is linked to the Freeth Cartwright Solicitors challenge outlined below. They contest that: the exclusion of aerial survey data is unjustified; methods used in defining the seaward boundary are unscientific and unprecedented; survey data show species do not meet SPA selection guidelines; the recommendation for Slavonian grebe as a qualifying feature is unjustified; reported data for this species is inconsistent; the landward boundary recommendation is not supported by scientific data; and the recommendation not being underpinned by a Site of Special Scientific Interest (SSSI) is unsound. Natural England responded in writing to address the points raised and a meeting between Natural England and Baker Consultants was held on the 14<sup>th</sup> October 2014. During the meeting, a number of alternative boundary options were discussed which included a visible 2km limit (from shore) approach as well as a boundary replicating the existing Important Bird Area (IBA). For further detail of issues raised and how Natural England responded to these concerns, please refer to pages 21-23 inclusive of the Detail of Consultation Responses chapter. Following the 14<sup>th</sup> October 2014 meeting, Natural England provided Baker Consultants with a letter summarising the main points of discussion during the meeting. On 14<sup>th</sup> November 2014, further detailed correspondence was received from Baker Consultants which either raised a number of new concerns, or reiterated initial points of concern raised during earlier dialogue and/or re-stated initial concerns with further explanation. Details of the recent correspondence received from Bakers Consultants on 14<sup>th</sup> Nov 2014 and Natural England's response to these concerns can be found in Annex 4. Consensus regarding all points of concern as outlined in their consultation response was not reached. Therefore, all points raised by Baker Consultants may be considered as outstanding and for Defra's consideration.

**Freeth Cartwright Solicitors** presented legal challenge to Natural England on behalf of an undisclosed client during February 2014. The challenge was that the process for formal consultation was premature, unlawful and without legal effect. Natural England addressed the concerns raised and provided an additional period for public consultation of 14 weeks. Freeths Solicitors (note recent change in organisation name from Freeth Cartwright Solicitors to "Freeths Solicitors") presented further challenge related to Natural England's response to Baker Consultants consultation response. Freeths Solicitors concerns related to the

presentation of new scientific data as referenced by Natural England in response to the Baker Consultants consultation response. Natural England responded to clarify that the new data emerged following the preparation of the scientific recommendations (Departmental Brief) and was referenced to corroborate the existing evidence as outlined in the Departmental Brief. Further correspondence was received during Feb 2015 indicating that the proposed seaward boundary revisions as detailed in Annex 5 should be subject to further public consultation. For further details on the issues raised and how Natural England responded to these concerns, please refer to page 29 in the Detail of Consultation Responses Chapter. Annex 3 provides further detail regarding the emerging scientific evidence. Annex 6 provides the revised site citation as per the emerging evidence presented in Annex 3.

Natural England would like to highlight for Defra's consideration, a number of concerns raised by **CHADFISH** (Cadgwith and Helford Fishermen's Association) representative [REDACTED]. [REDACTED] raised concerns regarding the apparent arbitrary nature of the proposed boundaries, the methodology of establishing bird counts and the appropriateness of the seaward boundary approximately following the 49m contour. Furthermore the consultation response requested for removal of the Falmouth Bay area from the recommendations. Natural England held several meetings with [REDACTED] and a number of written communications were provided to address the points raised. For a summary of these issues and how Natural England responded to the concerns, please refer to page 24 in the Detail of Consultation Responses chapter. Further communication was received from [REDACTED] indicating the issues raised should be considered outstanding and for Defra's consideration.

## Detail of Consultation Responses

Table 2: Response categories

Categories of Responses	
Number	Type
1.	Simple acknowledgement/neutral response
2.	Support
3.	Do not understand the implications/request clarification/general views
4.	Objection in principle to designation
5.	Objection on scientific grounds to the boundary (seaward, landward or east-west)
6.	Objection on scientific grounds regarding species or surveys
7.	Objection on other scientific grounds
8.	Objection on socio-economic grounds
9.	Objection – other

The stakeholder's representation is outlined together with Natural England's response and recommendation to Defra in Table 3, below. Natural England can provide Defra with copies of all consultation responses received and Natural England's response to the points raised on request.

Consultees are categorised as follows:

- A - Owner/Occupiers
- B - Local authorities/other competent authorities
- C - Interested parties/Organisations
- D - Members of the public and unsolicited responses

Table 3: Consultation responses

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
<b>A. Owners and occupiers</b>				
	Supportive of the proposals	2	Acknowledgement provided.	None raised
	Supportive of the proposals	2	Acknowledgement provided.	None raised
Anon	Supportive of the proposals. Requested clarification of 1. The impact of the designation to landowners in terms of the MHW landward boundary.	2	Acknowledgement and provided 1. Clarification that the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour. Provided clarity regarding the potential impacts to landowners should the site proceed to classification.	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
<b>B. Local authorities/other competent authorities</b>				
A&P, Falmouth Docks & Engineering Co Ltd & the Falmouth Docks competent authority	<p>Opposed to the proposals. Raised a number of concerns as follows:</p> <ol style="list-style-type: none"> <li>1. Scientific validity of the data applied to determine the seaward boundary being based on a modelled approach and the use of Scottish data (i.e. non-site specific data);</li> <li>2. Concerns regarding the diving depths of great northern diver on the south Cornwall coast (habitat; preference of this species is used to define the seaward boundary);</li> <li>3. Concerns around the type of (supporting) data referenced;</li> <li>4. Queried the survey methodology where it states “ideally more than one method should be used” and guidelines in terms of the aerial and shore-based surveys;</li> <li>5. Requested assurances regarding the survey methodology in terms of the likelihood of “double counting” birds;</li> </ol>	3/4/5/6/8	<p>Acknowledgement provided and detailed response sent providing justification for the seaward boundary:</p> <ol style="list-style-type: none"> <li>1. Clarified the methodology applied to define the seaward boundary and justification regarding the use of generic data from a different site. Additionally, displayed that divers were identified outside of the proposed boundary and therefore the recommended boundary option should not be considered over-precautionary;</li> <li>2. Cited examples from scientific literature where diving depths of great northern divers was comparable with water depths of the proposed seaward boundary for south Cornwall;</li> <li>3. Clarified the supporting data referenced in the Departmental Brief;</li> </ol>	Not explicitly stated, but consultee may consider their issues to be current.



CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
A&P, Falmouth Docks & Engineering Co Ltd & the Falmouth Docks competent authority (continued)	<ol style="list-style-type: none"> <li>6. Concerns that black-throated diver were not recorded during the surveys in the Falmouth Bay and great northern divers were recorded in low numbers;</li> <li>7. Concerns that no option was made of a boundary between Gerrans bay &amp; St Austell Bay (including the northern area of Carrick roads).</li> </ol>		<ol style="list-style-type: none"> <li>4. Explained why aerial survey data were not found to be representative of density estimates and evidence supporting this conclusion. Provided assurances regarding quality standards of both JNCC and Natural England. Provided clarification regarding methodology for calculating qualifying numbers and demonstrated evidence of use;</li> <li>5. Demonstrated the evidence of use indicates great northern divers and Slavonian grebe are present in the contended areas in numbers exceeding defined threshold values. Added that recent survey data (Annex 3) indicates the contended areas are used by all three species;</li> <li>6. Demonstrated that out of the 35 shore-based count sectors, 29 were used at numbers exceeding the species-specific thresholds by at least one of the recommended species. Displayed consistency with the UK SPA guidelines by including sectors with low or zero threshold counts that are delimited by sectors with counts equal to or exceeding the threshold values.</li> <li>7. Explained as per Point 6.</li> </ol>	

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Cornwall Inshore Fisheries and Conservation Authority (CIFCA)	Neutral to the proposals. Raised queries/concerns relating to the vulnerability assessment which underpins the Impact Assessment.	1/3	Acknowledgement provided and detailed response regarding the vulnerability assessment.	None raised
Cornwall Council Harbour Board	Opposed to the proposals. Concerns raised include:  1. Lack of verification of the evidence base.	3/4/6	Acknowledgment provided. Meeting held during Oct 2014 for further discussion where further clarification was provided. Provided written clarification as follows:  1. Demonstrated that all data collection/analysis/application was performed in accordance with the JNCC UK SPA guidelines.	Not explicitly stated, but consultee may consider their issue to be current.
Cornwall Council Planning Department	Neutral to the proposals. Outlined a number of socio-economic concerns.	1	Acknowledgement sent	None raised
Crown Estate	Neutral to the proposals. Outlined a number of socio-economic concerns.	1	Acknowledgement sent	None raised
Environment Agency	Supportive of the proposals. Outlined a number of management views.	2	Acknowledgement sent	None raised
Falmouth Town Council	Opposed to the proposals in principle. Raised a number of concerns (primarily socio-economic) and  Queried the need for the designation considering the pSPA birds have been frequenting the area for a number of years.	4/8/9	Acknowledgement and presentation provided.  Clarified the obligations of EU member states under the Birds Directive to protect suitable territories for birds listed under Annex I of the directive	Not explicitly stated, but consultee may consider their issue to be current.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Falmouth Harbour Commissioners	<p>Opposed to the proposals. Concerns raised as follows:</p> <ol style="list-style-type: none"> <li>1. Scientific validity of the data applied to determine the seaward boundary being based on a modelled approach and the use of Scottish data (i.e. non-site specific data);</li> <li>2. lack of evidence presented regarding the diving depths of great northern diver on the south Cornwall coast (habitat preference of this species is used to define the seaward boundary);</li> <li>3. indicated agreement with concerns regarding the seaward boundary made by the Expert Independent Reviewers, and that the best of a poor selection of options is not an encouraging approach</li> </ol>	3/4/5/8	<p>Acknowledgement provided. Detailed response provided as follows:</p> <ol style="list-style-type: none"> <li>1. Referred to previous correspondence from Natural England regarding the seaward boundary. Provided clarification around the methodology applied to define the seaward boundary and justification as to why the use of generic data from a different site was appropriate. Additionally, displayed that divers were identified outside of the proposed boundary and therefore the recommended boundary option should not be considered over-precautionary;</li> <li>2. Provided examples from scientific literature where the cited diving depth of great northern diver was comparable with the proposed seaward boundary (49m contour) for south Cornwall.</li> <li>3. Demonstrated the appropriateness of the boundary method selected and that it did not represent an entirely unprecedented approach</li> </ol>	Falmouth Harbour Commissioners explicitly stated that all issues raised during the consultation should remain current, unaddressed and for Defra's consideration.
Maritime & Coastguard Agency	Neutral to the proposals. Requested clarification regarding potential implications to MCA activities.	1/3	Acknowledgement provided and detailed response	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Marine Management Organisation	Neutral to the proposals. Raised a number of points regarding fishery management in the pSPA.	1/3	Acknowledgement provided and detailed response	None raised
Ministry of Defence	Neutral to the proposals. Provided information regarding naval activities and potential impacts within the pSPA.	1/3	Acknowledgement provided and meeting held	None raised
St Mawes Pier & Harbour Co.	Neutral to the proposals. Raised a number of socio-economic queries as well as scientific queries as follows: <ul style="list-style-type: none"> <li>1. Whether the SPA recommendation is an extension of the existing Fal &amp; Helford Special Area of Conservation; and</li> <li>2. Whether the recommended features are wintering or passing through.</li> </ul>	1/3	Acknowledgement provided and detailed response as follows: <ul style="list-style-type: none"> <li>1. Provided clarification of the difference between SPAs and SACs and that the SPA recommendation is designed to protect wintering waterbirds as a result of EU member states requirement to create a network of protected wildlife areas, known as the Natura 2000 network. Clarified this was not an extension of the existing SAC; and</li> <li>2. Provided clarification that the site is being recommended for wintering waterbirds and the obligation to protect suitable territories for Annex I species under the Birds Directive.</li> </ul>	None raised
Trinity House	Neutral response. Requested clarification of duties as a relevant authority and assurances in terms of traditional practices and customary rights.	1/3	Acknowledgement provided and detailed response	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
<b>C. Interested Parties/Organisations</b>				
Angling School CIC	Supportive of the proposals. Indicated support for any net bans in estuaries and along the 10m depth contour.	2	Acknowledgement provided and detailed response	None raised
Baker Consultants (related to the Freeth Cartwright challenge)  Note: further face-to-face discussion occurred on the 14 <sup>th</sup> October 2014. Further response was received on the 14 <sup>th</sup> November 2014 (see Annex 4 for further details).	Opposed to the Proposals. Concerns raised include: <ol style="list-style-type: none"> <li>1. Unwarranted exclusion of the aerial survey data;</li> <li>2. insufficient survey data which did not demonstrate regularity of use within marine SPA guidelines;</li> <li>3. unscientific and unprecedented methods used in defining the seaward boundary;</li> <li>4. Slavonian grebe not present in sufficient numbers to warrant inclusion, with reference to 'minimum 50' guideline;</li> <li>5. the landward boundary is not justified by scientific data;</li> <li>6. the recommendation is not underpinned by SSSI;</li> <li>7. inconsistencies in the WeBS data reported for Slavonian grebe;</li> </ol>	3/5/6/7/ 8/9	Acknowledgement sent and detailed response: <ol style="list-style-type: none"> <li>1. Provision of supporting evidence to justify the exclusion of aerial survey population estimates which demonstrated that the aerial surveys, when compared with shore-based counts, underestimated the number of birds present;</li> <li>2. Outlined that the scientific evidence indicates the site has been regularly used for a period of at least 20 years by the qualifying features and that Natural England's recommendations are consistent with guidance on marine SPA classification;</li> </ol>	Baker Consultants indicated at the face-to-face meeting that Points 1-5 inclusive should remain as outstanding and for Defra's consideration.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Baker Consultants (continued)	<p>8. Alternative approaches were discussed during the Oct 2014 meeting which included a generic visible limit (from shore) approach to the seaward boundary and a boundary following the existing IBA seaward limit. The visible limit approach would effectively result in a seaward boundary approximately 2km offshore (2km distance is recognised as the maximum distance for identification to species level) and a boundary following the IBA seaward boundary would result in a boundary up to 6km offshore.; and</p> <p>9. Further suggestion was made to collect more data using new digital aerial survey techniques to inform a seaward boundary recommendation.</p>		<p>3. Explained existing aerial survey data could not be used, and demonstrated the seaward boundary option is based on generic habitat (depth) preferences of the recommended features, using established scientific techniques for SPA boundary setting. The use of generic data for individual sites is not unprecedented. The option presented is not considered to be over-precautionary as divers have been recorded outside of the seaward boundary;</p> <p>4. Outlined that preliminary outputs from the ongoing SPA review and consequent decisions from SPA and Ramsar Scientific Working Group identified that an insufficient proportion of the population of Slavonian grebe were included within the SPA network. Natural England's justification demonstrated that the number of Slavonian grebe within the site qualify under Stage 1.1 of the SPA selection guidelines and regularity of use is demonstrated by data from the Wetland Bird Survey (WeBS) (2007/08 - 2011/12) (note: recent update of WeBS counts available);</p>	

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Baker Consultants (continued)			<ol style="list-style-type: none"> <li>5. Demonstrated that the decision to draw the landward boundary to mean high water (MHW) is consistent with marine SPA guidelines and supported by observational data on diver behaviour;</li> <li>6. Demonstrated that there is no policy or legal requirement to underpin SPA with SSSI;</li> <li>7. Inconsistencies in reported WeBS data clarified with BTO. See Annex 3;</li> <li>8. Explained the 2km visible boundary approach would result in an arbitrary, unmeasurable boundary which ignores the presence of populations of birds further offshore. Neither Birdlife International nor RSPB have been able to verify the basis for defining the seaward limit of the IBA and therefore the approach cannot be scientifically evidenced; and</li> <li>9. Natural England maintained the recommended boundary option presents the most scientific option available and the site qualifies for classification under the UK SPA guidelines.</li> </ol>	

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
CHADFISH (Helford and Cadgwith Fishermen's Society) representative [REDACTED].	Opposed to the proposals. Concerns/suggestions raised include: <ol style="list-style-type: none"> <li>1. Removal of the Falmouth Bay area from the proposals as a key area for the fixed-net fishery;</li> <li>2. The boundary lines appear to be arbitrary;</li> <li>3. Sceptical of the methodology used to establish the bird counts especially those observed via aerial survey;</li> <li>4. The seaward boundary not accurately following the 49m contour which in places, sits over water depths of 60m.</li> </ol>	3/4/5/8	Acknowledgement provided and meeting held. Detailed response provided as follows: <ol style="list-style-type: none"> <li>1. Demonstrated the importance of the Falmouth Bay area in terms of the evidence of use;</li> <li>2. Clarified the methodology used to define the boundaries (landward, east-west and seaward)</li> <li>3. Demonstrated that the aerial surveys were not utilised to demonstrate qualifying numbers, and how the shore-based surveys and supporting evidence was used to demonstrate evidence of use;</li> <li>4. Cornwall Inshore Fisheries and Conservation Authority (CIFCA) involved in discussions with Natural England advisers to outline the justification for the seaward boundary in-line with UK SPA guidelines and also the practicalities of management to follow "straight lines" by "approximately" following the 49m contour.</li> </ol>	Further correspondence from [REDACTED] indicates all points of concern are for Defra's consideration.
Cornwall Councillor for St Austell Bay ([REDACTED])	Neutral to the proposals. Outlined a number of socio-economic concerns.	1/3	Acknowledgement provided and detailed response regarding socio-economic concerns.	None raised



CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Country Land & Business Association (CLA)	<p>Opposed to the proposals. Concerns raised as follows:</p> <ol style="list-style-type: none"> <li>1. The data-set which the recommendation is based are not sufficiently current nor of long enough duration to justify the designation;</li> <li>2. justification for the landward boundary is inadequate;</li> <li>3. disregarding the aerial survey data is unjustified and selective; and</li> <li>4. the recommendation is not underpinned by a SSSI</li> </ol>	4/5/6/8	<p>Acknowledgement and detailed response sent which addressed the concerns as follows:</p> <ol style="list-style-type: none"> <li>1. Demonstrated that the data collection/analysis/application complied with the JNCC UK SPA guidelines regarding age of data and period of collection. Furthermore Natural England's response outlined the historical data spanning several decades which supports the evidence of use;</li> <li>2. Demonstrated the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour;</li> <li>3. Demonstrated that the aerial surveys when compared with shore-based counts, underestimated the number of birds present; and</li> <li>4. Clarified there is no legal or policy requirement to underpin SPA with SSSI</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.
Cornwall Wildlife Trust	Supportive of the proposals. Outlined a number of socio-economic and management views.	2	Acknowledgement sent	None Raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Department for Communities & Local Government	No comments offered in response to the consultation	1	Acknowledgement sent	None Raised
Duchy of Cornwall	Neutral response. Requested clarification around the following: <ul style="list-style-type: none"> <li>1. Justification for the landward boundary to be set at MWH.</li> </ul>	1,3	Acknowledgement provided and <ul style="list-style-type: none"> <li>1. Explained the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour.</li> </ul>	None Raised
Eco-Bos Development	Opposed to the proposals. Concerns raised as follows: <ul style="list-style-type: none"> <li>1. The data-set which the recommendation is based are not sufficiently current nor of long enough duration to justify the designation;</li> <li>2. disregarding the aerial survey data is unjustified and selective;</li> <li>3. justification for the landward boundary is inadequate</li> <li>4. if the area is so important why has it not been designated as a SSSI prior to the pSPA recommendation; and</li> <li>5. the recommendations focusses heavily on the western area (Falmouth) of the site.</li> </ul>	4/5/6/8	Acknowledgement and detailed response sent which addressed the concerns as follows: <ul style="list-style-type: none"> <li>1. Demonstrated that the data collection/analysis/application complied with the JNCC UK SPA guidelines regarding age of data and period of collection. Furthermore, response outlined the historical data spanning several decades which supports the evidence of use;</li> <li>2. demonstrated that the aerial surveys when compared with shore-based counts, underestimated the number of birds present;</li> </ul>	Not explicitly stated, but consultee may consider their issue to be current.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Eco-Bos Development (continued)			<ul style="list-style-type: none"> <li>3. the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour;</li> <li>4. provided clarification around the drivers for various designations; and</li> <li>5. provided clarification that the survey effort was equal across the site and justification for the inclusion of the areas discussed (St Austell Bay)</li> </ul>	.
FabTest (Falmouth Bay Test Site, Marine Renewables Test Site)	<p>Opposed to the proposals. Concerns raised as follows:</p> <ul style="list-style-type: none"> <li>1. methodology used in defining the [modelled] seaward boundary being based on the application of data from a different geographical location (Scotland) rather than evidence of habitat use at the south Cornwall site;</li> <li>2. lack of evidence presented regarding the diving depths of great northern diver on the south Cornwall coast (habitat preference of this species is used to define the seaward boundary);</li> </ul>	3/4/5/8	<p>Acknowledgement provided. Detailed response provided as follows:</p> <ul style="list-style-type: none"> <li>1. Referred to previous correspondence with Falmouth Harbour Commissioners (FHC) regarding the seaward boundary. Provided clarification around the methodology applied to define the seaward boundary and justification as to why the use of generic data from a different site was appropriate. Additionally, displayed that divers were identified outside of the proposed boundary and therefore the recommended boundary option should not be considered over-precautionary;</li> </ul>	Falmouth Harbour Commissioners manage the FabTest facility and have explicitly stated the issues raised should be considered current, unaddressed and for Defra's consideration.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
FabTest (continued)	3. highlighted the Important Bird Area (IBA) as designated in 1996, and requested more evidence as to why the IBA boundary should not be adopted.		2. Provided examples from scientific literature where the cited diving depth of great northern diver was comparable with the proposed seaward boundary (49m contour) for south Cornwall; and 3. Provided clarity that the IBA provides no statutory protection for the pSPA species and that basing SPAs on IBAs is not performed as a matter of policy in the UK.	

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
<p>Freeth Cartwright Solicitors.</p> <p>Freeths Solicitors (directly related to the Baker Consultants consultation response)</p>	<p>Opposed to the proposals. Raised a number of legal challenges to the formal consultation process.</p> <p>Opposed to the proposals. Scientific concerns raised as follows:</p> <ol style="list-style-type: none"> <li>1. Queried the inclusion of new scientific evidence outlined by Natural England in the response to the Baker Consultants consultation response. Concerned that Natural England <i>relied</i> on the new evidence to support the case for the landward boundary recommendation, and also, to demonstrate the site as a suitable territory for the recommended species. Requested Natural England provide further period for public consultation in light of the new evidence.</li> <li>2. Assert that the proposed alteration of the seaward boundary represents a “new and different site” and should therefore be subject to further formal public consultation under Regulation 12B of the Conservation of Habitats and Species Regulations (2010).</li> </ol>	<p>4</p> <p>4/6</p>	<p>Acknowledgement and detailed response provided.</p> <p>Detailed response provided as follows:</p> <ol style="list-style-type: none"> <li>1. Clarified that the evidence in question (see Annex 3 for details) emerged following final preparation of the scientific recommendations. Further explained the new data served only to corroborate the landward boundary decision and support the evidence (as outlined in the Departmental Brief) which alone indicates the site as a suitable territory for Annex I species under the Birds Directive.</li> <li>2. Natural England is of the view that no further public consultation is required as the recommended alteration to the seaward boundary does not materially affect the scientific basis for the proposals.</li> </ol>	<p>Communications ongoing and therefore concerns raised should remain as outstanding and for Defra’s consideration.</p>

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Friends of the Earth	Supportive of the proposals.	2	Acknowledgement provided	None raised
Helford Property Estates	Neutral to the proposals.	1/3	Meeting held	None raised
Imerys Minerals Limited	<p>Opposed to the proposals. Concerns raised as follows:</p> <ol style="list-style-type: none"> <li>1. No evidence of usage of the Par Docks area in the pSPA boundary</li> <li>2. The data-set which the recommendation is based are not sufficiently current nor of long enough duration to justify the designation;</li> <li>3. justification for the landward boundary is inadequate; and</li> <li>4. indicated there is much data, reporting and assessment of the western area of the designation (Falmouth) with little regard provided to the eastern (St Austell Bay) area.</li> </ol>	3/4/5/6/8	<p>Acknowledgement provided and detailed response sent which addressed the concerns as follows:</p> <ol style="list-style-type: none"> <li>1. Demonstrated that the Par docks are is not included in the pSPA boundary recommendations;</li> <li>2. Demonstrated the data collection, analysis and application complied with the JNCC UK SPA guidelines regarding age of data and period of collection. Furthermore, response outlined the historical data spanning several decades which supports the evidence of use;</li> <li>3. Demonstrated the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour; and</li> <li>4. Demonstrated the survey effort from both shore-based counts and aerial surveys was spread equally across the proposed area</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Maenporth Estates	Neutral to the proposals. Raised queries regarding implications of the designation to their business and recreational activities	1/3	Acknowledgement provided and detailed response	None raised
Mevagissey Fishermen's Association	Neutral response. Raised concerns regarding safety aspects of displacing fishermen offshore should restrictions on fixed nets be imposed.	1/3	Acknowledgement provided	None raised
Network Rail	Neutral response. Requested clarification regarding the 5km buffer mentioned in the IA	1/3	Acknowledgement provided including clarification of the 5km buffer.	None raised
National Federation of Fishermen's Organisations	Neutral response. Indicated a reassessment of the SPA guidelines was required. Raised a number of socio-economic and safety points regarding fisheries in the pSPA. Queried a number of points in the vulnerability assessment which underpins the Impact Assessment.	1/3	Acknowledgement provided, presentation provided and detailed response regarding the vulnerability assessment queries.	None raised
Police Wildlife Crimes	Supportive of the proposals. Requested clarification regarding management	2/3	Acknowledgement provided and clarification around future management provided	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
RegenSW	<p>Opposed to the proposals. Raised a number of socio-economic concerns. Scientific concerns raised include:</p> <ol style="list-style-type: none"> <li>1. Queried the methodology used to define the [modelled] seaward boundary based on the application of data from a different geographical location (Scotland) and not correlated with the south Cornwall site.</li> </ol>	3/4/5/8	<p>Acknowledgement provided and detailed response as follows</p> <ol style="list-style-type: none"> <li>1. Provided clarification around the methodology applied to define the seaward boundary and justification as to why the use of generic data from a different site was appropriate. Additionally, displayed that divers were identified outside of the proposed boundary and therefore the recommended boundary option should not be considered over-precautionary.</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.
RNLI	Neutral to the proposals	1	Acknowledgement provided.	None raised
UK Chamber of Shipping	Neutral to the proposals. Indicate agreement that the harbour areas are not used by the pSPA areas	1	Acknowledgement provided and detailed response	None raised



CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Royal Cornwall Yacht Club	<p>Opposed to the proposals. Concerns raised include:</p> <ol style="list-style-type: none"> <li>1. Number of individuals identified are extremely small and only just above the 1% GB population threshold (except black-throated diver) and nowhere near the scale of population envisaged;</li> <li>2. likely that detailed counts of the regional populations would demonstrate larger overall populations;</li> <li>3. the visiting population appears to be stable already without a designation of this scale;</li> <li>4. the proposed area of 294km<sup>2</sup> seems excessive for such a small number of birds;</li> <li>5. there are already multiple protection areas of different types in the area; and</li> <li>6. a survey of potential impacts such as net-drowning should be performed to assess the risks to the birds before a designation such as this is proposed.</li> </ol>	3/4/7/8	<p>Acknowledgement provided. Detailed response provided as follows:</p> <ol style="list-style-type: none"> <li>1. Provided clarity around Article 4 of the Birds Directive where member states are required to classify the most suitable territories for defined species under Annex I and regularly occurring migratory species. Placed the pSPA population numbers in context with the UK wintering population estimates and outlined the supporting evidence which demonstrates evidence of regular use spanning several decades;</li> <li>2. Outlined the JNCC area of search (AoS) survey work and the importance of the south Cornwall site in this context;</li> <li>3. Clarified that SPAs are not recommended because particular species are seen as being at risk, rather they are recognised to support populations of threatened or declining species or populations as defined in the Birds Directive;</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
Royal Cornwall Yacht Club (continued)			4. As per Point 1 & Point 2; and 5. Explained the purpose of other designations in the area and that wintering waterbirds currently have no protection afforded under these designations; and 6. As per Point 1 & 3.	
Royal Cornwall Yachting Association	Neutral to the proposals.	1	Acknowledgement provided.	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
RSPB	<p>Supportive of the proposals. Concerns raised include:</p> <ol style="list-style-type: none"> <li>1. Exclusion of black-necked grebe and red-necked grebe;</li> <li>2. The Natural England has not clearly stated [in the Departmental Brief] that the data used for classification is likely to represent an underestimation of the population numbers, and that the cited populations will not be appropriate as baselines for defining conservation objectives; and</li> <li>3. Regarding the use of expert opinion to influence the decision to remove the creek/river areas in the estuarine areas of the site, and that there is a lack of understanding regarding the birds behaviour in respect of such areas.</li> </ol>	2/3	<p>Acknowledgement provided. Detailed response provided as follows:</p> <ol style="list-style-type: none"> <li>1. Referred to previous correspondence with RSPB regarding this matter and steer from the SPA Ramsar Scientific Working Group (SPARSWG). Reiterated Natural England's position with respect to this steer and suggested any outstanding issues be channelled via the SPARSWG;</li> </ol>	<p>Not explicitly stated, but consultee may consider their issue to be current.</p>

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
RSPB (continued)			<p>2. Referred to previous communications regarding this concern. Whilst accepting the estimates likely represent an underestimation of the population numbers on the site, Natural England's role is to present evidence in an appropriate and impartial manner with site selection based on scientific data and assessments performed according to the UK SPA selection guidelines; and</p> <p>3. Outlined the methodology for this approach and that the decision for exclusion/inclusion of these areas was based on evidence of use.</p>	
<b>D. Members of the public and unsolicited responses</b>				
Anon	Member of the public – Opposed to the proposals as the birds have been frequenting the area for many years without any protection.	4/8	Unable to provide acknowledgement	None raised
██████████	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised
██████████	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
[REDACTED]	Member of the public – Opposed to the proposals.  1. Queried the relatively short period of time the data was collected over and whether the pSPA birds would actually know the area is safe, if classified.	3/4/6/8	Acknowledgement provided. Detailed response provided as follows:  1. Outlined the survey data and history of regular use spanning several decades. Clarified the purpose of an SPA and the UK Government's commitment to the Birds Directive to identify and protect suitable territories for Annex I species.	Not explicitly stated, but consultee may consider their issue to be current.
[REDACTED]	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised
[REDACTED]	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised
[REDACTED]	Member of the public (fisherman) – opposed to the proposals.  1. Requested justification of why the boundaries are being recommended along the south Cornwall coast when the birds are known to frequent the entire of the SW coastline.	3/4/5/8	Acknowledgement provided. Detailed response provided as follows;  1. Outlined the numbers of qualifying species present in the recommended area and the importance of the site from a national perspective.	Not explicitly stated, but consultee may consider their issue to be current.
[REDACTED]	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised
[REDACTED]	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised

CONSULTEE	REPRESENTATION	Type *	Natural England response	OUTSTANDING ISSUES FOR CONSIDERATION BY DEFRA
[REDACTED]	<p>Member of the public – Opposed to the proposals.</p> <ol style="list-style-type: none"> <li>1. Questioned validity of the inclusion of the Fal River area and where the Departmental Brief states “no counts or evidence of usage”;</li> <li>2. Indicated it was not clear which areas were to be excluded from the pSPA; and</li> <li>3. Queried the basis for the recommendation of the landward boundary to mean high water</li> </ol>	3/4/5	<p>Acknowledgement provided. Detailed response provided as follows:</p> <ol style="list-style-type: none"> <li>1. Demonstrated the evidence of use for the contended area and clarified the statement in the departmental brief pertained to the upper Fal River which is not included in the recommendations.</li> <li>2. Provided a higher resolution map of the proposed boundary; and</li> <li>3. Demonstrated the decision to draw the landward boundary to mean high water (MHW) is consistent with SPA guidelines and supported by observational data on diver behaviour.</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.
[REDACTED]	Member of the public – supportive of the proposals.	2	Acknowledgement provided	None raised
[REDACTED]	<p>Member of the public (fisherman) – opposed to the proposals in principal</p> <ol style="list-style-type: none"> <li>1. Queried the purpose of the designation and concerns over potential impact to fisheries.</li> </ol>	3/4	<p>Acknowledgement provided and detailed response as follows:</p> <ol style="list-style-type: none"> <li>1. Provided justification for the recommendations as per the scientific evidence and historical evidence of use.</li> </ol>	Not explicitly stated, but consultee may consider their issue to be current.
[REDACTED]	Member of the public (fisherman) – Neutral to the proposals. Raised a number of concerns over potential impact to fisheries	1/3	Acknowledgement provided and detailed response.	None raised

## Annex 1: Non-Financial Scheme of Delegation

The Non-Financial Scheme of Delegation currently states the following for international site designation cases:

	<b>Function</b>	<b>Delegation</b>
<b>A</b>	Approval to submit formal advice (Departmental Brief <sup>1</sup> or Selection Assessment Document <sup>2</sup> ) to Secretary of State on the selection of a pSAC, pSPA or pRamsar site or proposed amendments to an existing cSAC, SCI, SAC, SPA or Ramsar site.	Chief Executive
<b>B</b>	Following the consultation, approval of final advice, with or without modifications, and report on the consultation, where:	
	a) objections or representations are unresolved	Board or Chairman on behalf of the Board
	b) there are no outstanding objections or representations (i.e. where no objections or representations were made, or where representations or objections were withdrawn or resolved)	Appropriate Director

<sup>1</sup>Departmental Briefs (for Special Protection Areas and Ramsar sites)

<sup>2</sup>Selection Assessment Documents (for Special Conservation Areas)

Part A – In the first instance the scientific case is developed and presented to the Chief Executive (and the Executive Board) who discuss the case and approve sign off as Natural England’s formal scientific advice to Defra. Defra then seek Ministerial approval for Natural England to consult on these proposals on behalf of Government.

Part B – Once the formal consultation process has completed, Natural England considers any scientific objections to the proposals and endeavours to resolve any issues or concerns raised by stakeholders during the consultation. If, after a reasonable process of liaison with stakeholders, there are outstanding issues that cannot be resolved Natural England finalises the report on the consultation for Defra and sets out its final advice on the case in the report. There may be changes proposed as a result of the consultation and outstanding issues for Defra’s consideration.

i) Where there are no outstanding objections, representations or issues with respect to the proposals the relevant Director can approve the consultation report for submission to Defra.

ii) Where there are outstanding issues which it has not been possible to resolve the responsibility for approval of the consultation report falls to Board, or Chairman on behalf of the Board.



## Annex 2: Consultation Questions

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### Scientific Case

- Q1: Do you accept the scientific basis for the site being put forward in this consultation? If No, then please could you explain why?
- Q2: Do you have any information additional to that included in the Departmental Brief about the distribution and populations of overwintering waterbirds in the Falmouth Bay to St Austell Bay areas that you would like to share with Natural England? Yes/No
- If Yes, please state if this information has been submitted with your response or how you intend to share this information.
- Q3: Do you have any further comments on the scientific selection of the site as a pSPA?

### **Wetland Bird Survey (WeBS) data**

Recent WeBS bird count data (2010/11, 2012/13 and 2013/14) from relevant WeBS count sectors within the site (Carrick Roads WeBS sector 10421 and Gerrans Bay WeBS Sector 10470) was referenced in Natural England's response to concerns raised in the Baker Consultants consultation response. Natural England's response to concerns raised by Baker Consultants provided a detailed analysis of the existing, publically available WeBS bird count data. Additionally, reference was made to bird count data from the aforementioned sectors which had been more recently added to the WeBS online database. Natural England's reference to the WeBS data served to further corroborate the existing scientific evidence-base as reported in the Departmental Brief.

It should be noted that WeBS data may be uploaded to the WeBS online database by WeBS volunteer counters either directly or paper copy submission for upload by BTO employees. The uploaded data entries are reviewed annually by BTO and a Wetland Bird Survey report is produced.

The WeBS data for the three recommended Annex I species under consideration was updated by the British Trust for Ornithology as follows:

**2010/11 WeBS count data:** Uploaded to the WeBS online database during August 2013. Departmental Brief approved for submission to Defra for consideration by the Natural England Executive Board on 10<sup>th</sup> June 2013. Defra submission to the secretary of State occurred on the 18<sup>th</sup> December. No changes were made to the recommendations during the interim period

**2012/13 WeBS count data:** Uploaded to the WeBS online database during August 2014. Data became an official government statistic during August 2014 (see Tables 1 and 2).

**2013/14 WeBS count data:** Uploaded to the WeBS online database during August 2014. Data will become a government statistic during March 2015 (See Tables 1 and 2).

As reported in the Departmental Brief for the site, an assessment of qualifying numbers for black-throated diver and great northern diver was made through the Joint Nature Conservation Committee (JNCC) shore-based surveys (2009/10 & 2010/11). The assessment of numbers for Slavonian grebe was made using WeBS count data. It was noted as a result of discussions with Baker Consultants that an apparent inconsistency existed in the reported WeBS count data for the 2009/10 season. WeBS data available from the BTO externally-facing website reported a peak mean for the period 2007/08 – 2011/12 of 12.8. WeBS data sourced from the WeBS master database produce a peak mean of 15 as reported in the Departmental

Brief, which has been traced to inconsistencies in the March 2010 records. Natural England requested clarification from British Trust for Ornithology (BTO) who manage the database, and has since received paper copy of the WeBS count sector from Gerrans Bay which corroborates the values extracted from the master database. The inconsistency has been traced to a filter applied to rare species in order to protect confidentiality of breeding sites. This has now been rectified by the WeBS team to apply solely to inland (and not coastal / marine) sites, meaning the externally-facing data now reflect the master database.

**Table 1:** Displaying the most recent WeBS data and five year peak mean 2007/08 – 2013/14 for Slavonian grebes in Carrick Roads and Gerrans Bay count sectors. Data not reported in the Departmental Brief is highlighted in red.

<b>Sector</b>	<b>07/08</b>	<b>08/09</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>	<b>13/14</b>
Carrick Roads	2	2	1	4	0	0	1
Gerrans Bay	4	13	20	10	18	9	12
<b>Sum</b>	<b>6</b>	<b>15</b>	<b>21</b>	<b>14</b>	<b>18</b>	<b>9</b>	<b>13</b>

**Table 2:** Displaying the five year peak means 2007/08 – 2013/14 for Slavonian grebes in Carrick Roads and Gerrans Bay WeBS count sectors.

<b>Five year winter period</b>	<b>Peak mean</b>
2007/08 to 2011/12	14.8
2008/09 to 2012/13	15.4
2009/10 to 2013/14	15.0

### **Wintering Divers and Grebes Foraging Ecology Report, 2014<sup>3</sup>**

A report commissioned by Natural England in 2014 entitled “Distribution and Ecology of wintering grebes and divers in the Falmouth-St. Austell pSPA” was referenced in Natural England’s response to concerns raised in a number of formal consultation responses. These included Baker Consultants; CHADFISH; Eco-Bos Development; and member of the public Robert Talbot.

The report was also referenced in response to A&P/FDEC and the CHADFISH formal consultation response to demonstrate the evidence of use by the recommended features of the area adjacent to the Falmouth Docks (lower Carrick Roads) and Falmouth Bay area.

<sup>3</sup> Liley, D., Fearnley, H., Waldon, J. & Jackson, D. (2014). Distribution and Ecology of wintering grebes and divers in the Falmouth-St. Austell pSPA. Unpublished report by Footprint Ecology for Natural England.

Natural England's response to the landward boundary recommendation referenced GIS data submitted by the authors of the report, which provided corroborating observational evidence of the use of the intertidal areas of the site by the recommended features. The landward boundary is recommended to Mean High Water in accordance with the Marine SPA Selection Guidelines<sup>4</sup> which states that where the distribution of birds is likely to meet land, landward boundaries should be set at Mean High Water (MHW) "*unless there is evidence that the qualifying species make no use of the intertidal region at high water*". The new evidence serves to corroborate the existing observational records of diver behaviour as outlined in the Departmental Brief.

Timeline for delivery of the report as follows:

- 30<sup>th</sup> May 2014:** Draft report submitted to Natural England;
- 13<sup>th</sup> June 2014:** Natural England comments provided to the contractor;
- 15<sup>th</sup> July 2014:** final draft report delivered to Natural England; and
- Current:** the report is currently awaiting external peer review with delivery expected spring 2015.

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<sup>4</sup> Webb, A. & Reid, J.B. (2004). *Guidelines for the selection of marine SPAs for aggregations of inshore non-breeding waterbirds*. Annex B in: Johnston, C., Turnbull, C. Reid, J.B. & Webb, A. (2004). *Marine Natura 2000: Update on progress in Marine Natura*.

#### **Annex 4: Details of additional response received from Baker Consultants Limited.**

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New concerns or re-stated concerns with further explanation as outlined in the Baker Consultants 14<sup>th</sup> Nov 2014 response can be summarised as follows:

- Further points relating to the debate about the legitimacy of rejecting the aerial survey data and the definition of the seaward boundary; and also the desirability of collecting more digital aerial survey data because of the temporal limitations of the current data (see Table 3, Points 2 & 6). The general views of Baker Consultants on this issue have been known for some time, and we have specifically noted the suggestion to collect more data;
- the view that new information, some of which was specifically brought into the discussion with Baker Consultants, should be formally consulted on (see Table 3. Points 5 & 19). There is no requirement for Natural England to consult a second time on information which has emerged since the Departmental Brief, and Natural England considers there would be insufficient benefit from a further consultation exercise;
- the view that the data from the Scottish sites is not sufficiently transferable to be used to define the seaward boundary in this English site (See Table 3, Point 9). Natural England has considered this concern. It has concluded that the Falmouth to St Austell Bay site falls within the range of depth profiles of the Scottish sites studies, and that there is sufficient evidence of a relationship between bird numbers and seabed depth, to apply the data from the Scottish sites;
- the view that Natural England should have chosen the black-throated diver, not the Great Northern diver, as the species which defines the seaward boundary (see Table 3, Point 10). Natural England notes that this would possibly push the boundary out further to sea, and considers the ecological literature that we have supports the choice of Great Northern Diver to define the seaward boundary;
- the view that Natural England has, since the Departmental Brief, changed the basis of the qualification for black-throated diver and Great Northern diver (to WeBS data) since the Departmental Brief, which should require further consultation (see Table 3, Points 12 & 13). This is a misunderstanding – Natural England has not relied on WeBS data for the qualifying criteria for this species;
- the view that there is insufficient evidence of regular use of the area by Slavonian grebe (see Table 3, Point 15). Natural England accepts that it used 4 years' data over a 5 year period to make this judgement. Having been informed by Baker Consultants that a 5<sup>th</sup> year's data is available, it is clear that this does not materially alter the evidence that qualifies this species for classification as an SPA feature;

- the view that Slavonian grebe does not warrant relaxation of the 'minimum 50 individuals' guideline, and the view that there should be further peer review of the recommended inclusion of Slavonian Grebe (see Table 3, Points 15, 16 & 17). Natural England believes this species clearly merits inclusion as an SPA feature, albeit that the 'minimum 50 individuals' guideline has been relaxed to ensure sufficient protection of this species. There is insufficient benefit to seek additional peer review; and
- the view that Natural England is under direction to classify the area irrespective of its merit (see Table 3, Point 21). Natural England acknowledges that it has been asked to work to a timetable that will allow the Government to identify as many as possible of the potential marine SPAs by December 2015. However, it is under no direction to and would not recommend any sites that do not merit classification

**Table 3:** Concerns raised by Baker Consultants dated 14th Nov 2014 and Natural England’s response to these concerns.  
\*indicates new concerns.

Baker Consultants concerns dated 14 November 2014	Natural England’s response to these concerns
<p>1. BC query the exclusion of the aerial survey data and dismiss NE’s “speculation” as to why the surveys did not detect the birds in the offshore area. BC agree that aerial surveys designed for offshore surveying may result in data loss in the inshore area and quote a number of references in support of this. BC indicate a number of reasons why NE’s approach to disregard the aerial survey data is misconceived and cite the Liley <i>et. al.</i> (2014) report as providing evidence to support this conclusion. BC suggest that the seaward boundary could in fact be set within the 2km near-shore zone based on the new digital aerial survey data or on dispersion data collected by Liley <i>et al.</i> (2014).</p>	<p><i>This point was initially raised in previous correspondence and addressed at the time.</i></p> <p>Natural England (NE) explained in previous dialogue that the aerial surveys appear to undercount the bird numbers inshore, and that in any case there was insufficient aerial survey data to apply the usual modelling approach to defining the seaward boundary. NE was aware of the suggestion to draw the boundary at 2km from the shoreline; NE’s conclusion was that this suggestion had less scientific justification than for example the maximum curvature approach.</p> <p>The Liley <i>et. al.</i> 2014 report is currently in draft format and undergoing external peer review. The report represents a “snapshot” in time (Feb-Mar 2014) and was commissioned by NE to build understanding of how wintering divers and grebes are utilising the pSPA. The survey period was dominated by an exceptional series of depressions and storms and therefore distribution data should be treated with an element of caution. Making inferences from the near-shore distribution of diver species to the offshore populations is difficult because areas beyond the visible limit (approx. 2km) were not surveyed during the study.</p>
<p>2. *BC conclude that aerial surveys were never intended to define the inshore populations and instead intended to provide data to define the seaward boundary. Consequently, it is suggested that any inaccuracy in under-counting the inshore bird population does not negate the accuracy of the offshore data.</p>	<p><i><b>This point was initially raised in previous correspondence and explained in more detail in the 14 Nov 2014 paper</b></i></p> <p>NE does not agree with this view; our experience is that aerial surveys attempt to count birds accurately across all the area they survey. Other marine SPAs (Carmarthen Bay, Outer Thames Estuary,</p>

	Liverpool Bay) have used aerial survey data to define the extent of distribution in both 'inshore' and 'offshore' areas; there has been no division between methods based on proximity to shore.
3. BC concerned about NE's assertion dated 29 Aug 2014 that the presence of 16% of diver records outside of the recommended seaward boundary displayed that the boundary is not excessively precautionary. BC states this finding does not quantifiably justify anything other than to show that divers occur at a similarly low density both beyond 2km within the pSPA and immediately outside the proposed seaward boundary. BC feels this supports the conclusion that the proposed area does not constitute "a most suitable territory" for either diver species.	<i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i>  NE accepts that there is no suggestion of a major decrease in bird numbers just at the point the boundary is suggested. NE was pointing out that the proposed boundary is not set at a highly precautionary point i.e. it is not encompassing near to 100% of the bird population.
4. BC recommend that a full non-breeding season's aerial survey is required via digital aerial survey method to define a new seaward boundary. BC provide a number of reasons why this approach is appropriate.	<i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i>  The 27.11.14 Board paper specifically notes this suggestion, though NE's view is that 3 years' additional survey work would be required to demonstrate "regularity of use".
5. *BC assert that WeBS data with aerial survey data to justify the exclusion of the aerial survey data, represented the presentation of new data and analysis. BC's view is that the data was not available in the Departmental Brief and therefore should be subject to formal consultation under Regulation 12B of the Conservation of Habitats and Species Regulations 2010.	<b><i>This is a new concern raised on 14 Nov 2014</i></b>  In dialogue with BC, NE had discussed WeBS data as additional information to support the evidence in the Departmental Brief for diver species. NE reiterates that WeBS data was not relied on in the Departmental Brief for evidence for classification. NE's view is that there is no need or requirement to consult further.
6. *BC indicate that the aerial survey data collected is temporally limited consisting of single survey visits for the months of Jan, Feb & Mar only. BC recommend further aerial surveys are required to examine whether the absence of divers offshore (as identified by the surveys to date) is or not a general pattern between and throughout the wintering season/s.	<b><i>The specific point about the temporal limitation of the current aerial survey work is a new concern raised on 14 Nov 2014.</i></b>  Natural England has argued that there is an insufficient amount of aerial survey data to derive the seaward boundary from such data. BC seem to be making the same point – that there is a limited set of data available to fully describe temporal patterns in diver distribution at the site. Also see response to point 4.



<p>7. BC references the peer review comments which indicated a weak correlation from the Scottish diver data between bird density and water depth. BC express concern about extrapolating Scottish data to the south Cornwall site. BC argue there are likely to be site-specific reasons why an even lower proportion of the divers using the south Cornwall pSPA area are found in these deeper water areas, and therefore it does not form a “most suitable territory” for diver species.</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p>NE has explained that the analysis was sufficient to conclude that within the proposed boundary there are likely to be areas of high, medium and low densities of the birds, whereas outside the boundary there are likely to be only low bird densities found.</p>
<p>8. BC indicate the novel approach applied to south Cornwall ignores the basic principles of gathering proper evidence and data in the usual way through surveys. BC provide a number of reasons why these methods are not comparable as the interest features are not bound by a central place such as nest site locality. BC indicate that non-breeding birds are likely to follow an “ideal free distribution” relating mainly to food availability.</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p>As outlined in NE's response on 29 Aug 2014, the seaward boundary option is based on generic habitat (depth) preferences of the recommended features, using established scientific techniques for SPA boundary setting. The limited amount of ecological literature on these birds suggests their feeding pattern is depth related. The use of generic data for individual sites is not unprecedented.</p>
<p>9. *BC indicate that there is no evidence to show similarities in bathymetry to support the assumption as stated in the Departmental Brief “<i>by looking at the bathymetry of the areas contained within the draft Great Northern Diver (GND) boundaries in Scotland, it is possible to define a draft boundary for the South Cornwall Coast that has similar bathymetric characteristics to the Scottish areas</i>”. BC also indicate there was no exploration of the variation in bathymetric features within Scottish waters as well as there being no correction for sampling effort between sites, years and contours which should have been input as explanatory variables in the analysis.</p>	<p><b><i>This general view was initially raised in previous correspondence but the 14.11.14 report fully explains the concern.</i></b></p> <p>It is accepted that the Scottish sites are varied in characteristics and will not exactly mirror the depth profile of the Cornwall site, but NE's response on 29 Aug 2014 explained that the depth profile in the Cornwall Area of Search (AoS) AoS fits within the range of depth profiles observed in the Scottish AoS.</p>
<p>10. *BC makes reference to the Liley et. al. (2014) report which indicates that great northern divers are bottom feeding whereas black-throated divers are likely feeding in the water column. BC indicate that whilst GND distribution may be effected by seabed depth, it is highly unlikely this is the case for Black Throated Diver (BTD). BC conclude that BTD are not constrained by seabed depth and therefore suggest that BTD</p>	<p><b><i>This is a new concern raised on 14 Nov 2014.</i></b></p> <p>We have no evidence to believe that BTDs are likely to be distributed further offshore than GNDs. From the literature, we expect Red-throated Divers (RTDs) to be distributed in shallower waters (as per Departmental Brief page 9), and we expect BTDs to behave similarly because of their similar size and ecology.</p>

<p>may be distributed even further offshore than GND and therefore the current boundary may not include the most “suitable territory” for this species.</p>	
<p>11. BC reiterated that the marine UK SPA selection guidelines (Webb &amp; Reid, 2004) make it clear that Stage 1 process for SPA selection is intended to be based on data less than 10 years old. They assert that data older than 10 years is only relevant to Stage 2 of the selection guidelines if Stage 1 tests have first been met. BC maintain that Stage 1 requirements have not been met for the diver species to allow progression to Stage 2. BC interpret regular use to mean an established pattern of use over the near-term and not sporadic use over lengthy periods of time. BC indicated the approach applied by NE is a novel departure from the selection guidelines and therefore should be subject to further formal consultation.</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p>NE maintains that the UK marine SPA selection guidelines have been followed and the site qualifies under Stage 1 process. Data from four years (2 years data less than 10 years old and 2 years data older than 10 years) are presented in the Departmental Brief. There are, therefore adequate data available, with priority given to the most recent data. Natural England’s view is that the evidence is sufficient to make a recommendation for classification for this site.</p>
<p>12. *BC indicate that NE are now proposing that BTD qualify under paragraph 3.15(ii) of the marine SPA guidelines (Webb &amp; Reid, 2004) using WeBS data instead of paragraph 3.15(i) as indicated in the Departmental Brief, and therefore further public consultation is required.</p>	<p><b><i>This is a new concern raised on 14 Nov 2014</i></b></p> <p>See response to Point 5. NE reiterates that WeBS data was not relied on in the Departmental Brief for evidence for classification. BTD qualifies under Stage 1 process, paragraph 3.15(i) of the marine UK SPA guidelines as outlined in the Departmental Brief which states “<i>the requisite number of birds is known to have occurred in two thirds of the seasons for which adequate data are available, the total number of seasons being not less than three</i>”.</p>
<p>13. *BC indicated that NE’s apparent reliance on WeBS data to demonstrate qualifying numbers for great northern diver results in this species not reaching the minimum 50 guideline. BC indicated that NE had not provided any justification whatsoever in relation to its decision to waive the minimum 50 guideline for this species. BC request further peer review is required for this species given the minimum 50 guideline.</p>	<p><b><i>This is a new concern raised on 14 Nov 2014.</i></b></p> <p>As explained above [see point 5 above], NE has not relied on WeBS data to recommend GND as a feature for inclusion in site classification, and as the data presented in the Departmental Brief show an average number of GNDs greater than 50, the guideline is not a factor in recommending this species.</p>
<p>14. BC indicate that NE had not provided any scientific data and / or meeting minutes or other documents relating to the UK Special Protection Area and Ramsar (Avian) Scientific Working Group (SPAR SWG) decision to relax the “minimum 50” guideline for this species. BC requested full and</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p>The decision to relax the “minimum 50” guideline for this species is</p>

<p>comprehensible explanation, evidenced by reference to the documents NE referred to regarding why the guideline has been relaxed for this species. BC indicated that breaching the “minimum 50” guideline represents a departure from long established NE/JNCC policy and therefore BC (and the general public) has been unable to make a full or informed appraisal of this point.</p>	<p>justified. NE reiterates that outputs from the imminent SPA review performed by the SPAR SWG indicate that the non-breeding (overwintering) SPA suite for Slavonian grebe in the UK was 'insufficient'. The general interpretation of the 'minimum 50 guideline' and the specific case of Slavonian grebe were discussed at the SPAR meetings on 10 November 2011 and 23 June 2014 respectively.</p>
<p>15. * BC indicated the Departmental Brief did not present sufficient data to meet the definition of “regular use” as defined by Webb &amp; Reid (2004) paragraph 3.15(ii) for Slavonian grebe. BC specified that the Departmental Brief presented only four years of data and not the required five years of data as required under 3.15(ii) as the 2010/11 data was omitted. BC queried why NE were then able to provide the data for this year in their response (dated 29 Aug 2014) and why this data was not included in the Departmental Brief as it was evidently available at the time of publication in a report cited as <i>Holt et. al.</i> 2012. BC indicated that as a result of the presentation of this new data further public consultation is required.</p>	<p><i>This point of view was initially raised in previous correspondence and addressed by Natural England at the time but the 14.11.14 paper clarified their concern.</i></p> <p>The key methods for demonstrating “regularity” is either through the requisite number of birds being present in two thirds of the seasons or mean of peaks of 5 years’ worth of data. NE maintains that Slavonian grebe meets both tests of “regularity”.</p> <p>In previous discussion, BC helpfully pointed out that while the Departmental Brief had relied on 4 years’ data, in fact a 5<sup>th</sup> year was available: the confusion arose from a discrepancy between the WeBS Website statistics and their underlying data reports. The addition of the ‘missing’ 2010/11 WeBS data results in a very minor change to the previously estimated 5 year peak mean (2007/08 – 2011/12), from 15.0 to 14.8 individuals (note the 1% qualifying threshold is 11 individuals). Consequently, the data on Slavonian Grebe demonstrates regularity of use and where the changes make no material difference to the original proposals as defined in the Departmental Brief, it is not beneficial or required to re-consult on this data.</p> <p>The Departmental Brief was finalised at Natural England’s Executive Board meeting in June 2013 (though it was held until December 2013 so it could be submitted to Defra alongside other documents being prepared). The WeBS 2010/11 data was uploaded to its online system in August 2013.</p>
<p>16. * BC requested clarification of the population size that the new</p>	<p><b><i>This is a new concern raised on 14 Nov 2014.</i></b></p>

<p>qualifying level has been set for this species. BC indicated Slavonian grebe does not warrant this relaxed guideline because in the context of the total biogeographic, northeast or northwest European populations, the UK wintering population is not significant. Furthermore BC indicated the bulk of the northwest EU population winters in Scotland and designating a site based on a small and isolated population does not constitute protecting a “most suitable territory”.</p>	<p>The reference population for qualification is 1% of the GB population (as per Stage 1.1 of the SPA Selection guidelines). Slavonian grebe is listed in Annex I of the Directive. NE considers that this site represents a ‘most suitable territory’ as we believe the SPA network to be insufficient for this species, and for the reasons set out in the Departmental Brief. This view was endorsed by the Joint Nature Conservation Committee (JNCC) when they approved (dated 5 Dec 2013) the scientific proposals set out in the Departmental Brief as meeting with UK marine SPA selection guidelines. Additionally, refer to Point 14.</p>
<p>17. *BC state they do not accept any of the points made as justification of the decision to not seek further peer review for the inclusion of Slavonian grebe in the recommendations. BC contest the decision not to seek further peer review.</p>	<p><b><i>This concern was known on 4 Oct 2014 and supplemented on 14 Nov 2014.</i></b></p> <p>NE notes that the inclusion of Slavonian grebe after peer review did not result in any alterations to the seaward, landward or east-west boundary. Additionally, NE does not consider it necessary to further peer review its status as a qualifying species for the reasons outlined in point 15. As the boundary did not change, and as the case for recommendation of Slavonian grebe was clearly made (and consulted upon) in the Departmental Brief, NE maintains additional peer review is unnecessary.</p>
<p>18. BC indicate the information provided does not demonstrate significant use of the intertidal area by any of the recommended species and therefore was not consistent with the marine UK SPA guidance in Webb &amp; Reid (2004).</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p>The additional information provided by Liley <i>et. al.</i> 2014, sought to corroborate the existing evidence as outlined in the Departmental Brief by further demonstrating there was some evidence of use of the intertidal area. It demonstrated some, albeit limited use. In addition there was evidence of sightings by a surveyor undertaking the shore-based count. There is no requirement in the marine SPA selection guidelines to demonstrate significant evidence of use of the intertidal region, rather to demonstrate evidence that there is no use of this area.</p>

<p>19. *BC indicated the Liley et. al. 2014 report which Natural England refer to is “new data” and therefore subject to further public consultation.</p>	<p><i>This is a new concern raised on 14 Nov 2014.</i></p> <p><i>There is no requirement to consult further on additional information received, and NE does not consider it sufficiently beneficial to do.</i></p>
<p>20. BC indicate the information (distribution maps displaying some GND feeding in the intertidal) provided by NE in support of the Mean High Water landward boundary decision was not available in the draft Liley et. al. (2014) report which NE supplied to BC on 29 Sept 2014.</p>	<p><i>This point was initially raised in previous correspondence and addressed by Natural England at the time.</i></p> <p><i>NE letter dated 20 Oct 2014 explains that the geographic coordinates for observations made in Liley et. al. (2014) are not included in the report, although the GIS package could be provided on request. No further request for this information has been made.</i></p>
<p>21. *BC suggest that NE are under direction to classify the area as an SPA irrespective of its value or its ability to meet the required standards and irrespective of the lack of data to support such classification</p>	<p><i>This is a new concern raised on 14 Nov 2014. NE has been asked to advise on suitable SPA designations in the marine environment to a timetable which will allow these to be identified by Government by the end of 2015. However, if some sites under consideration do not meet the criteria then we would recommend it is not designated. NE maintains that this site meets with the marine UK SPA selection guidelines (Webb &amp; Reid, 2004) as demonstrated in the Departmental Brief.</i></p>

## References

Liley, D., Fearnley, H., Waldon, J. & Jackson, D. (2014). Distribution and Ecology of wintering grebes and divers in the Falmouth-St. Austell pSPA. Unpublished report by Footprint Ecology for Natural England;

Webb, A. & Reid, J.B. (2004). *Guidelines for the selection of marine SPAs for aggregations of inshore non-breeding waterbirds.* Annex B in: Johnston, C., Turnbull, C. Reid, J.B. & Webb, A. (2004). *Marine Natura 2000: Update on progress in Marine Natura*

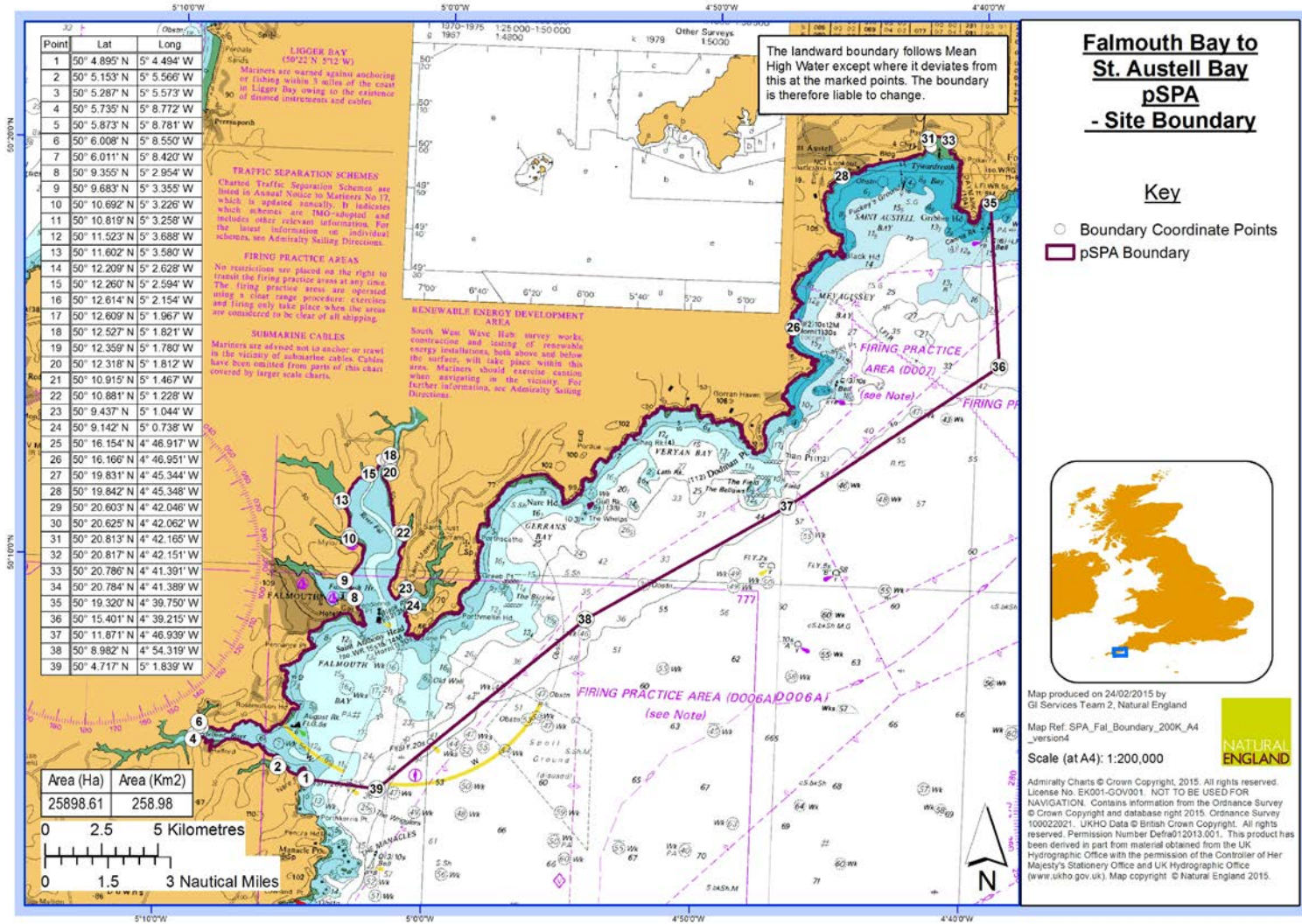
## **Annex 5: Revised Seaward Boundary Recommendation**

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Revision to the seaward boundary for the Falmouth Bay to St Austell Bay pSPA was proposed as a result of discussions at the Natural England Board meeting held during November 2014. Further work with JNCC was carried out as a result of these discussions to determine the best model with which to determine the seaward boundary and a revised boundary proposed as detailed in the Natural England February Board paper REF: NEB 50.

The UK SPA selection guidelines (Webb & Reid, 2004) indicates that a boundary needs to be identifiable on the ground, ideally following lines of latitude and longitude and having few vertices. Following this advice and discussions with the Responsible Officer for this site Natural England has decided to recommend a seaward boundary which approximates the 41m depth contour line through straight lines rather than attempting to follow it exactly. This approach is supported by feedback received during the formal consultation from future site managers (when discussing the 49m contour) that a boundary exactly following a depth contour line was not a feasible approach in the marine environment. Navigation at sea is easier when following straight lines and this approach will facilitate effective enforcement and management.

Revised site map for the Falmouth Bay to St Austell Bay pSPA with boundary coordinates and area.



**Annex 6: Revised Citation as per emerging data (WeBS data) presented in Annex 3.**

**EC Directive 2009/147/EC on the Conservation of Wild Birds Special Protection Area (SPA)**

**Name:** Falmouth Bay to St Austell Bay Special Protection Area (SPA)

**Counties/Unitary Authorities:** The SPA covers the area below mean high water between Nare Point and east of Gribbin Head, including intertidal parts of the Helford River and Fal complex. Its marine extension lies entirely in UK territorial waters meaning the entirety of the site is within or adjacent to the county of Cornwall.

**Boundary of the SPA:** See SPA map. The landward boundary of the SPA is set at Mean High Water, except for where the intertidal branches of the Fal complex do not support interest features; here the boundary spans the river or creek at its widest extent. The seaward boundary traces the 41 m depth contour of the seabed, meaning it extends approximately between 2.5 and 11 km from the landward boundary into the marine environment. The entire site is approximately bounded by Nare Point in the west and Gribbin Head in the east.

**Size of SPA:** The SPA covers an area of 258,98 hectares.

**Site description:** Falmouth Bay to St Austell Bay SPA is on the south coast of Cornwall, covering the marine environment incorporating five shallow, sandy bays; Falmouth Bay, Gerrans Bay, Veryan Bay, Mevagissey Bay and St Austell Bay. It also includes Carrick Roads, an estuarine area which meets the sea between Falmouth and St Mawes, and part of the tidal Helford River. The river complex areas are part of a ria system, typified by steep sides and slow tidal currents, with subtidal rocky shores and exposed intertidal mud on creeks and river branches. The diversity of marine habitats is reflected in existing statutory protected area designations, some of which overlap or abut the SPA.

**Qualifying species:** The site qualifies under Article 4.1 of the Directive (2009/147/EC) as it is used regularly by 1% or more of the Great Britain population of the following species listed in Annex I in any season:

Species	Count (period)	% of subspecies or population (pairs)	Interest type
Black-throated diver <i>Gavia arctica</i>	115 – wintering (2009/10 – 2010/11) <sup>5</sup>	20.5% Great Britain <sup>6</sup>	Annex I
Great northern diver <i>Gavia immer</i>	74 individuals – wintering (2009/10 – 2010/11) <sup>5</sup>	3.0% Great Britain <sup>6</sup>	Annex I
Slavonian grebe <i>Podiceps auritus</i>	15 individuals – wintering (2007/08 – 2011/12) <sup>7</sup>	1.4% Great Britain <sup>6</sup>	Annex I

<sup>5</sup> O'Brien, S.H., Win, I., Parsons, M., Allcock, Z. & Reid, J.B. (2014). *The numbers and distribution of inshore waterbirds along the south Cornwall coast during winter*. JNCC Report No. 498.

<sup>6</sup> Great Britain population cited in: Musgrove, A.J., Austin, G.E., Hearn, R.D., Holt, C.A., Stroud, D.A. & Wotton, S.R. (2011). Overwinter population estimates of British waterbirds. *British Birds* 104, 364-397

<sup>7</sup> Wetland Bird Survey (WeBS) <http://www.bto.org/volunteer-surveys/webs>



