

# **Countryside and Rights of Way (CROW) Act 2000**

## **PROPOSAL FOR A LONG-TERM DIRECTION BY THE RELEVANT AUTHORITY**

### **SUMMARY FOR PUBLIC CONSULTATION**

Prepared by Natural England

#### **1. INFORMATION ABOUT THE PUBLIC CONSULTATION**

<b>Case Reference Number:</b>	2020049167
<b>Name of site/ land parcel:</b>	Stear Peninsula (ST274459)
<b>Access Authority:</b>	Somerset County Council
<b>Relevant Authority:</b>	Natural England
<b>Local Access Forum:</b>	Somerset Local Access Forum

Natural England has received a representation under section 26 of the Countryside and Rights of Way Act for a direction to exclude access to the public as indicated on the attached map in order to prevent disturbance to sensitive bird species.

Natural England proposes to give a direction on the site that would exclude access for longer than six months continuously. The CROW Act requires us to consult publicly on all such proposals for long-term directions.

#### **2. SUMMARY OF RELEVANT AUTHORITY PROPOSAL**

##### Background

The 93 km (58 mile) stretch of the England Coast Path (ECP) from Brean Down to Minehead (BDM) was opened to the public on 15 March 2016. Coastal access rights came into force along this stretch of coast by order of the Secretary of State (SoS) at that time. The area covered in this consultation has had access excluded under a direction that was proposed and approved by the SoS, excluding access to saltmarsh and flats under s25A, since that time.

The area of concern at Steart Peninsula is part of the Bridgwater Bay National Nature Reserve (NNR). It is heavily designated, being part of the following designated areas:

- Bridgwater Bay Site of Special Scientific Interest (SSSI)

- Severn Estuary Ramsar
- Severn Estuary Special Protection Area (SPA)
- Severn Estuary/ Môr Hafren Special Area of Conservation (SAC)

Bridgwater Bay NNR contains one of the biggest intertidal mudflats in Britain as well as the largest area of salt marsh in Somerset. Around 200 bird species have been recorded at the reserve and flocks of up to several thousand birds are present at the busiest times of year. Large numbers of wintering waders and waterfowl visit the site and some species use the area as a stop-off on migration routes.

The large tidal range (second largest in the world) of the Bristol Channel exposes huge mudflats and salt marshes, which are teeming with microscopic animal and plant life. These support millions of larger creatures such as shrimp, shellfish and worms, the main diet of the many wading birds and wildfowl that can be seen on the site.

#### S25A direction

The coastal margin all round Steart Peninsula has been excluded under s25A restriction case 2014107416, as Saltmarsh and Flats habitats that are unsuitable for access. The area of coastal margin foreshore around Steart Peninsula has been removed from the s25A direction as the area concerned is not all saltmarsh or mudflat habitat type, and it is not unsuitable for access. However as it is highly designated and home to many sensitive bird species a representation has been received from the Wessex Area Team of Natural England, making the case that this area should be excluded under s26 for nature conservation.

Therefore access has been excluded under a short term s26 direction, case number 2021039351, which will close the area until 15 August 2021. During this period the consultation for this long term s26 direction will run, under case number 2020049167.

Please see the documents for the s25A case that has recently been out to consultation and determined:

<https://consult.defra.gov.uk/natural-england/open-access-restriction-at-stert-flatst-s25a/>

## Bird population data

The SSSI Responsible Officer for the reserve has provided the following summary of data from the British Trust for Ornithology (BTO) Wetland Bird Survey (WeBS). It applies to the area shown in the map below known as Bridgwater Bay - Sector 13412.



The table below is based on the BTO WeBS Core Count (i.e. roosting waterbird) data, collected between 2014/15 and 2018/19, and excludes data for land to the north of Bridgwater Bay SSSI, the WWT Stert Marshes Nature Reserve and Pawlett Hams to the South:

<b>SEVERN ESTUARY SPA - 5 YEAR MEAN PEAK COUNTS (2014/15 TO 2018/19) FOR WATERBIRDS OF BRIDGWATER BAY (SECTOR 13412)</b>					
<b>Waterbird Species</b>	<b>5 Year Peak (Sector 13412)</b>	<b>5 Year Mean Peak (Sector 13412)</b>	<b>5 Year Mean Peak (SPA)</b>	<b>% of SPA Population (&gt;1% classified significant)</b>	<b>Bridgwater Bay SSSI Feature</b>
<b><i>SPA Qualifying Species (Article 4.2 of EC Wild Birds Directive) - Overwintering (October to March)</i></b>					
Dunlin ( <i>Alpina</i> )	15111	9392	24561	38 %	*
Redshank	4165	2824	4714	60 %	*
Shelduck (November to	2252	1147	4796	24 %	*

June)					
Gadwall	13	6	156	4 %	
<b>SPA Qualifying Species (Article 4.2 of EC Wild Birds Directive) - Moulting Population (July to October)</b>					
Shelduck (July to October)	4617	3540	4796	74%	*
<b>SPA Qualifying Waterbird Assemblage: Listed Species - Overwintering (October to March)</b>					
Curlew	1293	946	2511	38 %	*
Grey Plover	235	174	250	70 %	*
Ringed Plover	30	23	867	3 %	*
Teal	386	217	4397	5 %	*
Wigeon	972	622	6262	10 %	*
Pintail	169	101	597	17 %	
Tufted Duck	21	14	625	2 %	
Spotted Redshank	4	2.6	6	43 %	
<b>SPA Qualifying Waterbird Assemblage: Listed Species - Spring Passage (April-June)</b>					
Whimbrel	82	44	140	31 %	*
Ringed Plover	200	112	867	13 %	*
Dunlin (Schinzii)	1970	849	24561	3.5 %	*
<b>SPA Qualifying Waterbird Assemblage: Listed Species - Autumn Passage (July-September)</b>					
Whimbrel	13	6	140	4 %	*
Ringed Plover	620	282	867	33 %	*
Dunlin (Schinzii)	2380	1108	24561	4.5 %	*
<b>SPA Qualifying Waterbird Assemblage: Non-Listed Species – Overwintering (October to March)</b>					
Knot	2360	1753	1927	91 %	*
Turnstone	472	296	474	62 %	*
Snipe	68	17	479	4 %	*
Mallard	510	313	1858	17 %	*
Black-Tailed Godwit	306	140	796	18 %	*
Bar-Tailed Godwit	88	31	125	25 %	
Avocet	779	505	595	85 %	
Golden Plover	2460	790	3165	25 %	
Lapwing	1402	843	10187	8 %	
Shoveler	79	22	326	7 %	
Little Ringed Plover	5	1.2	13	9 %	

This data shows the high percentage of the Severn Estuary SPA population that utilises this sector alone, for many species, and also illustrates the overall significance of Bridgwater Bay SSSI to waterbirds.

High Tide Roost survey (BTO, 2016)

This major survey was undertaken since the coastal access rights commenced on this stretch, and assists in understanding the usage of the area by bird populations. It is the third phase of a wider assessment to identify roost sites in the Severn Estuary SPA and this phase provides information on wintering waterbird high tide roosts at Bridgwater Bay (Phase 3). Three roost sites from the survey are relevant to this proposed direction, Roost sites 13D, 13E and 13F. These are shown in Map 19 of the report below and at:

<http://publications.naturalengland.org.uk/publication/5645233772036096>

It found the primary species roosting in these three sectors are Shelduck, Grey Plover, Ringed Plover, Curlew, Knot, Dunlin, Redshank, Wigeon, Teal, Pintail, and Whimbrel (spring/autumn passage).



**Legend**

 WeBS sector boundaries

**Roost Status**

-  Primary Roost
-  Potential Primary Roost
-  Non-primary Roost
-  Pre-roost site only

## Shelduck

The reserve is of international importance as one of the largest European moulting grounds for shelduck, with up to 5000 birds present each July. Crucially they are especially prone to disturbance as they are flightless during moulting.

Most British Shelduck (*Tadorna tadorna*) migrate to the German North Sea Coasts in July to moult. However a population of 4000 to 5000 Irish Shelduck moults in Bridgewater Bay NNR around the Steart Peninsular. The first migrants appear in July, with a second peak in August and possibly a third wave in September with birds present through October. (The Shelduck Population in the Bridgewater Bay Moulting Area (S.K. Eltringham and H. Boyd, 1960)).

Another report that has been published since commencement of the coastal access rights and is of relevance as it has helped understand shelduck behaviour (NNB Generation Company (HPC) Ltd Shelduck Monitoring and Mitigation Scheme, Ian Simms, October 2018.).

It notes in summary that:

*On the falling tide many moulting shelduck forage at the water's edge, moving out across the mudflats towards the mean low water mark, where they roost on a sand bar running west from Chisel Rocks, when their food source is unavailable\*.*

*On the rising tide moulting shelduck repeat the process, feeding along the waterline, towards their high tide roost in the zone around Stert Point, Stert Island and nearby in Bridgewater Bay, generally arriving two hours before high tide, then dispersing by two hours after high tide.*

*\* The availability of a major part of their diet, the mollusc *Hydrobia ulvae*, is the main driver affecting their feeding rates. These molluscs occur near the mud surface on rising and falling tides and burrow lower down in the mud during low and high tide periods (Burton et al., 2004).*

## Other Species

The site also supports nationally important numbers of wintering dunlin, and in the last decade wintering populations of Avocet, Golden Plover, Knot, Curlew,

Teal, Lapwing and Redshank have at times exceeded national thresholds, with also large numbers of wigeon and grey plover.

Avocet bred on the reserve in 2012 for the first time since the species became extinct in Somerset during the 1940s.

Curlew are known to be particularly sensitive to disturbance and as one of the 'listed' species of the assemblage are worth noting here. The table above shows that in this sector there are 38% of the Severn Estuary SPA population, and they are a named feature of the SSSI.

### Curlew

As part of Natural England's Defining Favourable Conservation Status (DFCS) project Natural England has just published the document 'Definition of Favourable Conservation Status for Curlew (RP2926)'

<http://publications.naturalengland.org.uk/publication/6058509227786240>

This document sets out Natural England's view on the contribution England needs to make to achieve Favourable Conservation Status (FCS) for the Eurasian Curlew (*Numenius arquata*). The England contribution is defined in terms of the natural range and population of the species and the extent of habitat necessary for long-term maintenance of populations.

The document describes the current threat status to Curlew:

#### **Red list status:**

- Global: IUCN red list: Near threatened  
<http://www.iucnredlist.org/details/22693190/0>
- European: IUCN European red list: Vulnerable  
<http://www.iucnredlist.org/details/22693190/1>
- GB: Birds of Conservation Concern 4: Red list  
[https://www.bto.org/sites/default/files/shared\\_documents/publications/birds-conservation-concern/birds-of-conservation-concern-4-leaflet.pdf](https://www.bto.org/sites/default/files/shared_documents/publications/birds-conservation-concern/birds-of-conservation-concern-4-leaflet.pdf)

For the non-breeding population it is estimated that numbers declined in the UK by around 12% from 2003/04 to 2013/14 (Frost and others 2016).

However, whilst evidence suggests that the loss of breeding habitat is the main cause of the decline of Curlew in the UK, the BTO is studying the potential link between Curlew abundance and management of coastal areas, including the outcome of displacement of individuals from feeding sites on mudflats (Massimino, et al, 2017).

## Redshank

The BTO does maintain a specific alert status for Redshank on the Severn Estuary, which currently reads:

*Numbers of Redshank over-wintering on Severn Estuary SPA have been decreasing in the medium-term having previously been relatively stable. Consequently no Alerts have been triggered for this species. Numbers of this species over-wintering within South west and Wales Regions combined have been decreasing in the medium-term having previously been relatively stable. Numbers of this species over-wintering in Great Britain have been stable in the medium-term having previously declined. The trend on the site appears to be tracking that of the region although not the British trend. The increasing proportion of regional numbers supported by this site suggest the environmental conditions remain relatively favourable and also indicates that this site is becoming increasingly important on a regional scale for this species.*

Woodward, I.D., Frost, T.M., Hammond, M.J., and Austin, G.E. (2019).

<https://app.bto.org/webs-reporting/alerts.jsp>

There is also a bird trend:

<https://app.bto.org/birdtrends/species.jsp?s=redsh>

The reed beds support numerous small birds such as reed and sedge warbler whilst skylark nest on adjacent common land. At low tide oystercatcher and turnstone feed on exposed shingle whilst many birds of prey including short-eared owl, harriers and peregrine hunt over the peninsula.

Vegetation at the site is an important food source for some birds and parts of the saltmarsh are grazed by sheep to maintain a palatable sward for wigeon grazing.

Wildfowling is permitted in some areas while the main body of the reserve is a wildlife sanctuary.

For more information on the NNR please see:

<https://www.gov.uk/government/publications/somerset-national-nature-reserves/somerset-national-nature-reserves>

### Current Access

This section of the ECP is well used by local walkers, as is the coastal margin covered by Wall Common.

Wall Common is the area of Common Land to the south-west of the fence line, as shown here:



There have been significant problems with people and people with dogs entering the coastal margin in this area and causing disturbance to birds, even though it has been technically closed under s25A. It is thought that the main reason for this lack of compliance with the s25A exclusion was the reasoning given on the signage. It showed that access was excluded as it was thought to be saltmarsh or mudflat that is unsuitable for access, however part of the margin here is not saltmarsh or mudflat, and the saltmarsh is suitable for access. This has now been corrected with this particularly sensitive area around Steart Peninsula closed under s26, on nature conservation grounds, until 15 August 2021. It is hoped that having corrected this, and the refreshed signage now clearly explaining the sensitivities, that people will understand and abide by the closure.

### **i) Summary of proposed direction to restrict access**

The main concern at this site is that people and people with dogs accessing the coastal margin around Steart Peninsula are disturbing the following bird species at different times of the year:

- Moulting Shelduck between July and October
- Breeding Ringed Plover and Oystercatchers between March and April
- Redshank return to overwinter from mid-July
- Overwintering birds e.g. Curlew and Dunlin

This shows that disturbance to sensitive species is possible year round.

#### Why is a statutory restriction necessary?

When determining a Coastal Access direction Natural England follows the principles given in Natural England's Approved Coastal Access Scheme, 2013. Section 6.6.26 provides the scope for directions for nature conservation:

*6.6.26 Section 26(3)(a) of CROW provides powers for Natural England to give directions for the purposes of conserving flora or fauna or geological or physiographical features. There is no power to apply for nature conservation directions, but people may alert us at any stage if they have relevant concerns. Chapter 7 explains more about our approach in relation to the likely concerns.*

Chapter 7 provides guidance in sections based on land cover or landform. The area in this proposed restriction is made up mainly of saltmarsh, but also some grazing marsh, reed beds, shingle, some small dune areas and saline pools at Fenning Island.

Therefore for the purpose of this report we refer to Section 7.15, which covers saltmarsh and flats. The principles are similar under each land form, but as saltmarsh is the prevalent habitat in this area this report refers to that section of the Approved Scheme.

#### *Disturbance to birds*

##### *The need for intervention*

*7.15.27 Birds nest on the ground on parts of the upper salt marsh closer to where people are likely to be walking past. These are vulnerable to people or their dogs trampling on their nests because they are usually difficult to see. People or their dogs can also disturb nesting birds by passing very close to the nest, causing them to abandon their nests or leave them for short periods which may expose them to adverse weather conditions or allow predatory species (including dogs)*

*to take eggs or young birds. Some species which nest on salt marsh are subject to special protection.*

*7.15.28 Birds which feed or roost on salt marsh and flats are also vulnerable to disturbance and may be subject to special protection. Disturbance can be critical during severe weather and late winter when food is in short supply and birds must develop fat reserves for the spring migration to breeding grounds.*

*Invertebrates and molluscs are less abundant in sand than in mud, so correspondingly fewer birds are attracted to feed on sandy flats than on muddy flats. However, where sandy flats do support significant populations of feeding and roosting birds, they may also be vulnerable to disturbance.*

*7.15.29 Disturbance in either case is significantly more likely if people let their dogs run about on areas of salt marsh or flats for exercise.*

*7.15.30 Where we use the power to exclude access to salt marsh or flat on the grounds that it is unsuitable for public access, the need for further intervention will be significantly reduced. However, disturbance may also occur in some situations where people walk past such areas on adjacent land. Birds may become used to people walking along a predictable route, provided they keep their dogs under effective control. The degree of habituation varies according to a combination of factors in play at each site. Relevant factors include:*

- the amount of suitable habitat that is available and its distance from the trail or spreading room;*
- the species present and the size of flocks (larger flocks are more likely to fly off when people are present);*
- the distance between people and birds; and any natural vegetation or other barriers acting as a screen between people and birds.*

As described in the WeBS data above this area is hugely significant for Severn Estuary SPA populations of a number of species. There are large numbers of sensitive species present all year, with breeding, overwintering and moulting shelduck from July to October. Birds are feeding roosting and moulting in this area and are particularly prone to disturbance at high tides and when moulting. The suitable habitat either side of Stert Point is within close proximity of the ECP with little screening from natural vegetation.

This section of the England Coast Path is well used but as described there has been a high level of disturbance in this area from people and people with dogs. This is thought to be down to people not understanding the reasons for the previous closure. The s25A exclusion has now been removed and if this was not replaced in the long term, it is likely that disturbance would increase further giving substantive concern to the Senior Reserve Manager and SSSI Responsible

Officer.

Informal management is part of the solution here but it is felt it needs to be backed up with a legal exclusion. There is a fence line at the western boundary of the proposed exclusion area that separates the area of coastal margin that the reserve staff need to keep free of disturbance from an area that people will be able to continue to use. This fence line has recently been rebuilt and the signage refreshed. However without the legal exclusion under the correct section of the act (s26) it is felt these informal measures won't be sufficient.

**ii) Why is a statutory restriction necessary?**

The Approved Coastal Access Scheme, 2013 states:

*Directions to restrict or exclude access*

*7.15.35 Where access is not excluded on a salt marsh or flat using our power under section 25A of CROW on the grounds that it is unsuitable for public access, directions may be necessary during sensitive periods to prevent disturbance to populations of birds that are subject to special protection.*

*7.15.36 The nature of any directions that are necessary on these grounds will depend on the likely levels and patterns of access in the areas affected:*

*Where the trail is closely adjacent to the affected area, or where people use tidal causeways to reach accessible islands, we will typically require them to keep dogs on a lead during sensitive periods. Where people are likely to walk over the areas used by the birds it may be necessary to exclude access rights.*

The WeBS data above shows that this area is hugely significant in the protection of waterbirds, with this sector having significant percentages of the Severn Estuary SPA population for many species.

There are breeding populations of Ringed-plover and oystercatchers present in March to June that are prone to disturbance. There are overwintering populations of species sensitive to disturbance such as Curlew, Redshank and Dunlin, with some Redshank arriving as early as mid-July. As described above Curlew and Redshank are known to be very sensitive to disturbance and have declining populations. All the overwintering species are particularly vulnerable to disturbance when using the high tide roosts, a number of which are shown in the BTO report to be located around Steart Peninsula. This vulnerability is for about 2 hours either side of high tide twice a day.

The moulting Shelduck are particularly prone to disturbance as they are flightless and it is considered that people walking through their moulting area can cause significant disturbance. They are a feature of the SSSI, SPA and Ramsar designations.

As described above with the trail passing in close proximity to the affected area, access levels and patterns of access have shown that people are likely to walk over the areas used by birds.

**Therefore** Natural England considers that there are sensitive species present all year, feeding, roosting and moulting. Given the importance of these populations, internationally for moulting shelduck, their sensitivity to disturbance, and the potential for disturbance, it is proposed a year round long term total exclusion is required.

### 3. SUBMITTING COMMENTS ABOUT THE PROPOSED DIRECTION

If you wish to comment on the review of this direction then you must do so before 14 April 2021 directly to Richard Thomas at [Richard.Thomas@naturalengland.org.uk](mailto:Richard.Thomas@naturalengland.org.uk). A map accompanies this notice and is attached and can be seen on the [consultation pages](#) on Citizen Space<sup>1</sup>.

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<sup>1</sup> <https://consult.defra.gov.uk/>

## Using and sharing your consultation responses

In line with Natural England's [Personal Information Charter](#), any comments you make, and any information you send in support of them, will help us to determine the application and/ or determine if the restriction is still necessary in relation to the review or reassessment of a current direction.

We may wish to pass such comments or information to others in connection with our duties and powers under the open access legislation. This may mean for example passing information, including your name and contact details, to the Secretary of State or their appointees, the Planning Inspectorate or to the relevant access authority(s).

We will summarise all responses and place this summary on [the Government's consultation website](#). This summary will include a list of names of organisations that responded but not the names, addresses or other contact details of individual respondents.

There may also be circumstances in which we will be required to disclose your response to third parties, either as part of the statutory process for consideration of representations and objections about our decision, or in order to comply with our wider obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.