

**The European Commission**

Brussels

November 6th, 2018

**Complaint official - BirdLife consultation response to the Danish Ministry's amendment to the Executive Order on the designation and administration of international nature conservation areas and the protection of certain species (Natura 2000)**

Dear Commissioner,

BirdLife Denmark/Dansk Ornitologisk Forening (BirdLife/DOF) wants to complain about the latest amendment on administration and conservation of Natura 2000 in Denmark signed by the Minister 30/10/2018.

What may superficially resemble a reliable and balanced replacement of private grasslands, marsh lands, forests and agricultural fields with state-owned forest areas seems, on closer examination, to be an entirely inadequate proposal about compliance with the obligations laid down in the Natura 2000 directives and non-compliant with EU legislation in a number of ways.

BirdLife/DOF therefore rejects the proposal in the strongest possible terms:

1. Danish Special Protected Areas (SPAs) are reduced with 30,570 hectares by Executive Order no. BEK 1240 of 24/10/2018, which came into force on November 1<sup>st</sup>, 2018. It is our opinion that the Danish government with this order has not fulfilled its obligation according to Article 4 in the EU Bird Directive, since no information has been published to document that the new bird protection areas provides the same level of protection of the species mentioned in paragraphs 1 and 2 within the geographical sea and land areas where the Directive applies. We do expect that this documentation must be given for every species affected by the changes incl. the changes in land use, which now may appear in the de-protected areas. BirdLife/DOF questions whether it is even legitimate and legal to repeal the Natura 2000 protection of such large areas. There is by no means any precedent for this in the EU.

2. A closer examination reveals that the intended 'trade' between private and state-owned conservation areas will lead to de-protection, resulting in significant reduction in important EU bird conservation areas. This will involve forests, natural areas and agricultural areas that provide biotopes for species that Denmark is obliged to protect and conserve (Annex I species and species with regular occurrence of numbers of birds above the 1% flyway population criterion).
3. It is apparent that the reduction in the extent of bird conservation will *not* be compensated for by specifying other areas for the affected species in the conservation list. Instead, habitat areas offered as substitutes will be designated for some very different habitat types and different protected species.
4. The Ministry of Environment and Food justifies the extensive de-protections by stating that these are mainly agricultural areas. BirdLife/DOF must emphasize that a number of agricultural areas both are and have been of major international significance as biotopes for some of the bird species that Denmark is particularly obliged to protect in accordance with the EU Directive on the conservation of wild birds. This includes swans, geese and certain wader species (e.g. golden plover) as well as birds of prey such as Montagu's harrier and marsh harrier, all of which are also Annex I species.  
Instead of withdrawing such areas from the Natura 2000 network, the Danish state should take a proactive stance towards a far greater degree of protection and offer land owners subsidy schemes in order to promote crops benefiting the species in question.
5. Danish 'complacency' in relation to the gradual reductions in biotopes and nature quality in the Wadden Sea and the National Park there must be considered a serious Danish breach of the Natura 2000 directives. Many former marshland and grassland habitats have since their nomination as bird protection areas gradually changed in nature quality and have now ended up as conventional agricultural fields. Instead of de-protecting these, they ought to be reestablished as biodiversity rich natural grasslands. Under all circumstances many of these areas are still important to certain breeding and foraging birds of prey, swans, geese and waders e.g. golden plovers.  
The fact that Denmark is now wishing to withdraw these areas from Natura 2000 protection is a further serious breach of the directives and the European Commission is urged to intervene.

The fact is that the state of Denmark has still not provided any form of scientific, let alone specialist justification or documentation on the rationale of the many proposals for de-protection of Natura 2000 areas, which is highly open to criticism. In the case of all the original specifications, boundary designations and amendments to conservation lists, proposals were justified or at least assessed by academically qualified and independent experts from DCE (Kalø), Aarhus University. This also pertains to the more than 20,000 hectares of Ramsar-sites which are now de-protected as a part of the reduction of EU-conservation areas, where a group of experts originally used more than four years in designing their boundaries to ensure efficient protection of migrating birds. The Ministry of Environment and Food has not involved any experts or specialists in connection with this politically dictated de-protection.

BirdLife/DOF urges Denmark to go in the opposite direction, and the Society has proposed several new Natura 2000 areas; some of them adjacent to existing areas, some of them completely new.

Researchers and nature conservation organizations broadly agree that the greatest threat to nature nowadays is posed by fragmentation and a lack of space, with natural areas standing as tiny islands in a sea of intensively farmed land and infrastructure.

Nevertheless, with its proposal the Danish government is going in exactly the opposite direction by reinforcing the fact that Denmark is one of the EU member states with the smallest amount of designated protected countryside, which is extremely regrettable.

**On this background we kindly ask the European Commission to intervene and ensure the protection of the very important Danish Natura 2000 sites for birds and their habitats.**

Kind regards,

**BirdLife/Dansk Ornitologisk Forening**

*Egon Østergaard*

Chair

*Knud N. Flensted*

Biologist



**Annex 1: Translation of the response from BirdLife/Dansk Ornitologisk Forening concerning the Ministry of Environment and Food's draft amendment to the executive order on specification and administration of international nature conservation areas and conservation of certain species (the Habitat Order).**

To: The Ministry of Environment and Foods

17 September 2018

**Ref. no. 2018-5670: Consultation response from BirdLife/DOF concerning the Ministry of Environment and Food's draft amendment to the executive order on specification and administration of international nature conservation areas and conservation of certain species (the Habitat Order).**

The Danish Ornithological Society (BirdLife/DOF) hereby submits comments on the submitted draft amendment to the executive order on specification and administration of international nature conservation areas and conservation of certain species (the Habitat Order). In comparison with previous drafts, the proposal has in particular been amended by adding a number of state-owned areas as habitat and bird conservation areas. What may superficially resemble a reliable replacement of private forest and agricultural areas with state-owned forest areas seems, on closer examination, to be an entirely inadequate proposal as regards compliance with the obligations laid down in the Natura 2000 directives. BirdLife/DOF therefore rejects the proposal in the strongest possible terms.

Firstly, BirdLife/DOF questions whether it is even legitimate and legal to repeal the Natura 2000 protection of such large areas. There is by no means any precedent for this in the EU.

Secondly, closer examination reveals that the intended 'trade' between private and state conservation areas indicates that bird conservation areas will be deprotected to a great extent and that habitat areas offered as substitutes will be marked for some very different habitat types and protected species.

For all the areas withdrawn (namely bird conservation areas), BirdLife/DOF will uphold and refer to all the comments submitted previously by the Society and our local branches. Moreover, BirdLife/DOF will in particular emphasise a number of specific examples of the lack of impartiality and documentation for the proposed withdrawals.

**Natura 2000 areas:**

In general, there is no precise statement on the size of areas to be withdrawn from and added to each individual Natura 2000 area. However, it is clearly apparent that overall, there will be a marked reduction in the extent of bird conservation areas and that these marked declines will not be compensated for by specifying other areas for the affected species in the conservation list.

As far as the forests are concerned, it is noted that significant and important breeding grounds for species such as the white-tailed eagle are being withdrawn by Natura 2000. This is applicable to Vemmetofte Strandskov, for example, where the red kite and honey buzzard also breed or have bred. In Vestsjælland, DOF has pointed out the need to designate the Alleshave peninsula as a bird conservation area, as this area

is a significant feeding ground and connecting area for geese and the whooper swan. Up to 710 feeding whooper swans have been counted in the area, as well as up to 600 taiga bean geese from the threatened subpopulation in central and northern Scandinavia.

In many areas, such as Sydsjælland, and not least in the Wadden Sea area, there has been extensive withdrawal of agricultural areas with grass and crop rotation areas adjacent to fjords, lakes and other wetlands. These areas are and for many years have been particularly important resting and feeding grounds for swans, geese and certain wader species (golden plover in particular).

There have been some very extensive withdrawals for wetlands and biotopes for web-footed birds and waders (swans, geese, ducks and the golden plover). For instance, Stadil Fjord and Vest-Stadil Fjord have been reduced by 1349.4 ha and just 1.1 ha has been added.

Sønder Lem Vig and Geddal Enge: DOF has proposed specification of Geddal Enge as a bird conservation area as well. Geddal Enge is owned by the Danish Nature Agency. Breeding Annex I species have been recorded here since 2000: little tern, avocet, spotted crake, bittern and marsh harrier. More than 30 resting Annex 1 species: hen harrier, ruff, osprey, white-tailed eagle, golden plover, bar-tailed godwit, wood sandpiper, kingfisher, short-eared owl, Bewick's swan, red-backed shrike, common spoonbill, common crane and peregrine falcon. The Ministry has not made a decision on the proposal and submits no comment. Surely it would not be a problem to define an already state Natura 2000 habitat area as a bird conservation area as well, as the area is compliant with EPA criterion no. 3b iv?

Lønborg Hede: DOF has proposed extension of Lønborg Hede, and that N73 Lønborg Hede should also be specified as a bird conservation area. Of course, this has not been done. Nevertheless, the adjusted Lønborg Hede should be specified as a bird conservation area. Most of the area is owned by the Danish Nature Agency. The heath has been one of the EU's LIFE heath projects. The following Annex I species breed there: Common crane – all breeding grounds are referred to in the consultation response, kingfisher, wood lark, red-backed shrike and nightjar. Resting Annex 1 species: white-tailed eagle, short-eared owl and whooper swan. DOF has also proposed extending Lønborg Hede with Sømose, which is located on the west side of Lønborg Hede and adjacent to it. Common cranes are breeding in Sømose. This has also been disregarded. Surely it would not be a problem to define an already state Natura 2000 habitat area as a bird conservation area? This area is compliant with EPA criterion no. 3b iv. As far as we can see, Sømose is compliant with EPA criterion 3a i. It is also compliant with the agreement in the governments Nature Package, which states that it may possibly be extended with new areas. Sømose is a Section 3 area.

Ringkøbing Fjord and Nymindestrømmen, and Skjern Enge: DOF has proposed that F43/F118 be extended to include Fahlbæk Marker (intensive agricultural areas on ochreous shallow soil), which borders on Skjern Enge (currently F43, F118 in future) and Ringkøbing Fjord's eastern Ramsar and bird conservation area. The following Annex I species breed or probably breed: bluethroat, short-eared owl (probably) and corncrake. The following Annex I species rest: dotterel (the best, most stable resting area in Denmark), Bewick's swan and whooper swan. Other resting/feeding birds:

white-fronted goose, barnacle goose, pink-footed goose, white-tailed eagle, marsh harrier, hen harrier, merlin and peregrine falcon.

The same is applicable for Tisvilde Hegn and Melby Overdrev, for example, which is state-owned and already habitat areas. The forest here (and the common/heath), next to Gribskov, is one of Denmark's

most important bird forests for Annex I species such as black woodpecker, wood lark, red-backed shrike, honey buzzard and, previously, tawny pipit. Rare and threatened species such as nightjar, wryneck and stonechat are also present. It therefore seems extremely peculiar that the state-owned areas of Tisvilde Hegn and Melby Overdrev are not specified as bird conservation areas.

This is merely referred to by way of example, indicating that a large number of habitat areas are also important bird areas, and they could certainly also be specified as bird conservation areas, e.g. Helnæs Made, Avernakø, Østerø Sø and Thurø Rev.

For example, a valuable bird and natural area at Kroghage on Sydfalster is being withdrawn in the eastern part of Kroghage, where one of Denmark's last pairs of barred warbler, another Annex I species, bred.

**Ramsar areas are being reduced significantly:** BirdLife/DOF hereby contests the administrative and legal basis for the procedure being applied by the Ministry of Environment and Food in its reduction of the Danish Ramsar areas. It is noted that the Ministry of Environment and Food has already amended the boundary lines of the Ramsar areas on MiljøGIS, which is highly open to criticism, as the reduction of Ramsar areas by a gross 21,935 ha and a net 13,122 ha is particularly extensive and a significant reduction in Denmark's contribution to the purpose of the Convention with regard to the conservation of wetlands and waterfowl. At the Wadden Sea alone, a gross area of 5448 ha – corresponding to just under 55 square kilometres – is being withdrawn. The reduction of the size of the Ramsar areas is otherwise distributed over 27 of Denmark's 28 Ramsar areas. It is noted that the amendments already made have been published and were announced as having come into force before the end of the consultation and apparently without compliance with the procedures of the Ramsar Convention. The detailed background for these comments is provided by the enclosed legal and administrative note (Annex 1).

**Species:** In Annex 6, DOF notes that the Ministry of Environment and Food proposes removal of the **Slavonian grebe**.

BirdLife/DOF protest against this as the significant and regularly recurring populations of Slavonian grebe have been indicated in a number of Danish bird areas. It is therefore obvious that this species should be added to the conservation list at the time of the first revision, or that bird conservation areas be specified for the species in Denmark. The species should therefore not be struck out by Annex 6. Correspondingly, the great northern diver, storm petrel and Leach's petrel should be added to the annex due to significant, regular populations, chiefly in the Skagerrak and Kattegat. The same is applicable to the following Annex I species, which are currently breeding in Denmark: Caspian tern (recolonised and now 20-25 pairs of birds breeding regularly) and great white heron (recently colonised, now with 10-15 pairs).

This deprotection is highly open to criticism and in contravention of EU legislation in several ways. Firstly, many the proposals made by the Ministry of Environment and Food will lead to deprotection, resulting in significant reduction in important EU bird conservation areas. This will involve forests, natural areas and agricultural areas that provide biotopes for species that Denmark is obliged to protect and conserve (Annex

I species and species with regular populations above the 1% criterion). Proposals relating to a large number of these areas have been commented on specifically, as stated previously, and submitted by DOF's local branches, locality caretakers and species caretakers on behalf of BirdLife/DOF. Other organisations, authorities and individuals have also pointed out the highly unfortunate consequences of the Ministry of Environment and Food's proposals on restrictions.

Despite extensive proposals for designation of *more* Natura 2000 submitted by a number of municipalities and organisations, the Ministry of Environment and Food has gone in the opposite direction. Only a very small proportion of the IBAs (Important Bird Areas) that BirdLife/DOF have proposed involved in Natura 2000 ([http://pub.dof.dk/dof/Rapport/Status\\_og\\_udviklingstendenser\\_for.pdf](http://pub.dof.dk/dof/Rapport/Status_og_udviklingstendenser_for.pdf)) have been included in the proposals submitted by the Danish Environmental Protection Agency. There is no documentation or justification as to why proposals for extensions have not been accommodated.

As the Ministry of Environment and Food justifies, in the notes to the consultation responses, the extensive deprotections by stating that these are mainly agricultural areas, BirdLife/DOF must emphasise that a number of agricultural areas both are and have been of major international significance as biotopes for some of the bird species that Denmark is particularly obliged to protect in accordance with the EU Directive on the conservation of wild birds. This includes swans, geese and certain wader species (e.g. golden plover), as well as birds of prey such as Montagu's harrier and marsh harrier, both of which are also Annex I species. Instead of withdrawing such areas from the Natura 2000 network, the state should take a proactive stance to a far greater degree and offer landowners subsidy schemes in order to promote crops benefiting the species in question.

Furthermore, BirdLife/DOF must draw your attention to the fact that a very large proportion of the Natura 2000 areas in the Wadden Sea area (and also within Wadden Sea National Park) for which exemption from EU conservation is requested has developed from relatively extensively managed marshes and meadows into more intensive grasslands and even cornfields over the years since their specification as EU bird conservation areas in 1983. It is applicable to Tøndermarsken, Ballummarsken and Ribemarsken, for example, despite the fact that a number of the areas are still of major significance to certain species, including Montagu's harrier (Annex I species), which also breeds in intensively managed cornfields. Withdrawal of the area in Thy National Park from Natura 2000 is also proposed, which is disgraceful and in contravention of the intentions and current protection.

Danish 'complacency' in relation to the gradual reductions in biotopes among these agricultural areas (with previous meadows) as biotopes for birdlife must in itself be considered a serious Danish breach of the Natura 2000 directives. The fact that Denmark is now wishing to withdraw these areas from Natura 2000 protection is a further serious breach of the directives and the European Commission is urged to intervene.

Many of the withdrawals are based on neglect of the fundamental fact that preservation of a given habitat and a given biotope for species on the conservation list is also dependent on maintaining a sufficient buffer zone from both contaminating and disruptive activities and facilities in adjacent areas. This significant situation is also applicable in a very large proportion of the 'peripheral areas' that the Ministry of Environment and Food is proposing to withdraw from Natura 2000.

There is extensive documentation to indicate that defragmentation and more space for nature presents one of the greatest challenges when it comes to maintaining biodiversity, not least in Denmark. The government itself, in its plan for a Green Map of Denmark (Grønt Danmarkskort), has pointed out the establishment of 'corridors' in order to achieve cohesion between natural areas; and in its report entitled "Behov på naturområdet – en sammenfatning af behov på naturområdet på eksisterende viden" [Need for natural areas – a summary of the need for natural areas based on existing knowledge], the Danish Environmental Protection Agency has pointed out that there is "a lack of space and continuity". Given this fact also, removing the protection of existing Natura 2000 areas would be shortsighted and counterproductive.

BirdLife/DOF also finds the fact that it has still not been possible to provide any form of scientific, let alone specialist justification or documentation indicating the reasonableness of the many proposals for deprotections of Natura 2000 areas to be highly open to criticism. In the case of all previous specifications, boundary designations and amendments to conservation lists, proposals have been justified or at least assessed by academically qualified and independent experts from DCE (Kalø), Aarhus University, for example. The Ministry of Environment and Food has not requested this in connection with this politically dictated deprotection.

BirdLife/DOF urges Denmark to go in the opposite direction, and the Society has proposed a number of new Natura 2000 areas; some of them adjacent to existing areas, some of them completely new. Researchers and nature conservation organisations broadly agree that the greatest threat to nature nowadays is posed by fragmentation and a lack of space, with natural areas standing as tiny islands in a sea of intensively farmed land and infrastructure. Nevertheless, with its proposal the government is going in exactly the opposite direction by contemplating the fact that Denmark will have even fewer protected areas in 2018. Denmark is already one of the EU member states with the smallest amount of designated protected countryside, and this is extremely regrettable. We need to take a completely different course and adopt a far more visionary strategy on behalf of nature. The agricultural areas where there is a desire to remove nature conservation status should instead be made more extensive so as to ensure more lasting nature here, with greater cohesion.

Many of the low-lying areas that there is now a desire to withdraw, legalizing even more intensive agriculture, are damp and poorly suited to agricultural production. Given climate change and the increase in precipitation, it would be irrational to make farming even more pronounced, as is already evident in a number of places around the Wadden Sea. Such areas should not be farmed. It would be far more constructive – for landowners as well – if these areas could form part of land distributions or be acquired by the state for natural purposes with high levels of biodiversity. Instead of withdrawing nature conservation, which the government is now contemplating, more agricultural areas should be set aside and slowly left to become valuable natural areas full of birdlife. Withdrawal from Natura 2000 would impede this development as EU funding for nature requires areas to be part of the Natura 2000 network, for instance. Therefore, both farmers and nature will lose out on funding from the EU if these areas are withdrawn from this protection. Moreover, withdrawing these areas from the Natura 2000 areas means that the owners will no longer be able to obtain compensation if Annex IV species become established on their properties, which may trigger restrictions in use of the area. If financial security is removed, this also

removes any incentive for owners to accept colonisation of such Annex IV species which will literally be outlawed with a single ministerial stroke of a pen.

Best regards,

**BirdLife/Danish Ornithological Society**

***Egon Østergaard***

Chair

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