



## **Killybegs Fishermen's Organisation and Irish South & East Fish Producers Organisations observations on the proposed North-West Irish Sea Special Protection Area**

### **1. Objection**

The Killybegs Fishermen's Organisation (KFO) and Irish South & East Fish Producers Organisation (IS&EFPO) object to the proposed designation of the North-West Irish Sea Special Protection Area (SPA), on behalf of their members. The basis of the objection is that ornithological data cited by National Parks and Wildlife Service (NPWS) does not provide the scientific support for the current delineation of the proposed SPA. The delineation should be based on the available ornithological data and the analyses undertaken to assimilate the data into the proposed SPA polygon clearly presented, open to scrutiny and be based on **objectively verifiable ornithological criteria**. This is not the case and we have detailed the reasons below under heading 3. *Scientific Basis for the Objection*.

We note the requirement in Section 4 of the Notice of Intention to Classify, that the objection must be accompanied by a declaration stating the interest in the proposed areas that the objector has. The KFO and IS&EFPO declare that their members have existing pelagic, demersal and crustacean fishing activities in the area covered by the proposed SPA, therefore they;

(a) have or are entitled to an interest in or over the area comprising the site

or

(b) have or are entitled to an interest in or over the area outside the site whose interest may potentially be affected by the proposal.

### **2. Background**

On the 13<sup>th</sup> July 2023 Minister of State for Nature, Heritage and Electoral Reform, Malcolm Noonan TD, announced details of Ireland's largest ever protected area for birds. The North-West Irish Sea Special Protection Area (SPA), covering approximately 2,333km<sup>2</sup> in area, was proposed to be classified under the EU Birds Directive [1]. The Department of Housing, Local Government and Heritage (DHLGH) issued a Regulation 15 Notification, which is the first stage in the classification of a proposed SPA in the Northwest Irish Sea and allowed for a three-month period during which observations may be submitted in relation to the proposed classification.

The KFO and IS&EFPO submitted observations to the Regulation 15 Notification on the 13<sup>th</sup> October 2023, in which we requested clarification on a number of matters. Of primary concern were the data used and analyses performed to derive the delineation of the proposed SPA. The *Site Synopsis* document (dated 17<sup>th</sup> July 2023) for the proposed SPA [2] stated that the proposed North-west Irish Sea SPA constitutes an important resource for marine birds and is ecologically connected to several existing SPAs in this area. Twenty-one named seabird species (Table 1) were listed as the basis for the proposed designation, with the evidence cited relating to two surveys in the western Irish Sea region in 2016. There were no citations to the report of the surveys provided in the notification and no detail on how the delineation of the proposed SPA was derived from the survey data. Therefore, it was not possible to assess the scientific basis for the delineation of the proposed SPA and to submit observations based on "*scientifically-based ornithological criteria*" as stipulated in the Regulation 15 Notification.

On the 29<sup>th</sup> September 2023, the KFO received an email from the Site Designations Unit in NPWS with a link to the *Site Specific Conservation Objectives* document (dated 19<sup>th</sup> September 2023) [3] for the North-west Irish Sea SPA. This document again listed the twenty-one seabird species and for each species provided a more detailed description of the conservation objectives. A long bibliography of “*Supporting documents, relevant reports & publications*” was also provided, though many of the references were to individual species chapters in identification guides or to “*unpublished reports to NPWS*”.

No analyses were provided that explained how the delineation of the proposed SPA was derived. This begs the question of whether there were any analyses performed or whether the proposed delineation was simply an arbitrary decision based on general scientific information on the bird species covered by the proposal. There is a need for clarity about this as without knowing the basis for the delineation it is impossible to determine if it is scientifically robust.

On this basis the KFO and IS&EFPO requested the following:

1. NPWS should provide detailed information about the analyses undertaken, to determine the current outline of the proposed SPA.
2. All data and analyses should be made publicly available to ensure transparency in the decision-making process.
3. It should be clarified whether existing fisheries surveys in the proposed SPA will be classified as ARCs, specifically ARC08 and ARC35, and whether this will have a negative impact on the undertaking of these surveys by national fisheries Institutes (Marine Institute or AFBI).

On the 27<sup>th</sup> October 2023 a letter from Designations Unit in NPWS was received, which acknowledged the receipt of the KFO and IS&EFPO observations but did not answer the questions posed and the request for further information. On the 15<sup>th</sup> November 2023 a Regulation 16 Notification was issued by the NPWS. As there was no further constructive stakeholder input possible into the process the only avenue open to further engagement was through lodging an objection. This is a regrettable situation and the KFO and IS&EFPO want to reiterate that it was entirely avoidable.

We understand that the Birds Directive does not have provisions requiring public consultation on the designation of Natura 2000 sites, though this is largely because the Directive was conceived and formulated before such stakeholder engagement was considered to be a vital step in any such process. The Commission stated in its 2022 *Staff Working Document on Criteria and Guidance for Protected Areas Designations* [4] that “***it is (therefore) essential that Member States involve all relevant stakeholders, including land owners, managers and users, indigenous peoples, local communities and NGOs in the identification, designation and management of new protected areas, in a fair and participatory way, in line with the Aarhus Convention and in accordance with national procedures.***” Unfortunately, there was no effective stakeholder engagement or participation as part of the classification process and no transparency on the site selection and delineation.

### **3. Scientific Basis for the Objection**

It is important to first clarify that the KFO and the IS&EFPO recognise the need for the conservation and restoration of sensitive habitats and ecosystems and the protection of certain vulnerable species. To this end the KFO and the IS&EFPO do not object to the classification of certain areas as SPAs for birds. This is a necessary process and should be based on robust scientific data and analyses, with due consideration of other species and other activities in the area. The KFO and the IS&EFPO do object to the lack of transparency around the analyses undertaken by NPWS to determine the delineation of the

proposed SPA and also object to the extrapolation of underlying data in order to increase the spatial area of the proposed SPA.

Paragraph 3(e) of Regulation 16 (*Classification: Notification regarding particulars of special protection areas*) of Statutory Instrument 477 of 2011 [5] states

*“(3) The Minister shall compile information on each site that he or she has identified as eligible for classification as a special protection area, including—*

*(e) the scientific and legal criteria and reasons for the identification of the site as eligible for classification as a special protection area.”*

The Regulation 16 Notification specified that the proposed classification was *“informed by two surveys of the western Irish Sea region in 2016”* and though not cited in that document, reference to the *Site Specific Conservation Objectives* document [3] indicated that these were most likely to be the aerial surveys detailed in Jessopp et al. (2018) [6]. These appear to be the only surveys that cover the area of the proposed SPA and were conducted from a fixed wing aircraft in the Irish Sea in Summer, Autumn, and Winter 2016. Flying speed was 90 knots (167km/hr) at an altitude of 76m above the sea surface. Fifty-five parallel survey transects spaced approximately 2 nautical miles apart, and between 20-30 nautical miles in length covered the east coast of Ireland in the Irish Sea (Figure 1). Analyses of the data included counts of individuals of each species observed and an assessment of the potential relationships between species occurrence and bathymetric features such as shallow sandbar areas using density distributions of sightings with accompanying depth information. Kernel utilization distributions (UDs) were used to investigate seasonal changes in the distribution of sightings, highlighting areas of highest sightings density. Though it was noted that ***“utilization distributions are therefore not intended to delineate important areas for protection to meet obligations under the EU Birds and Habitats Directives, but to identify areas of high sightings density which may give insights into features underlying the distribution of species in time and space.”***

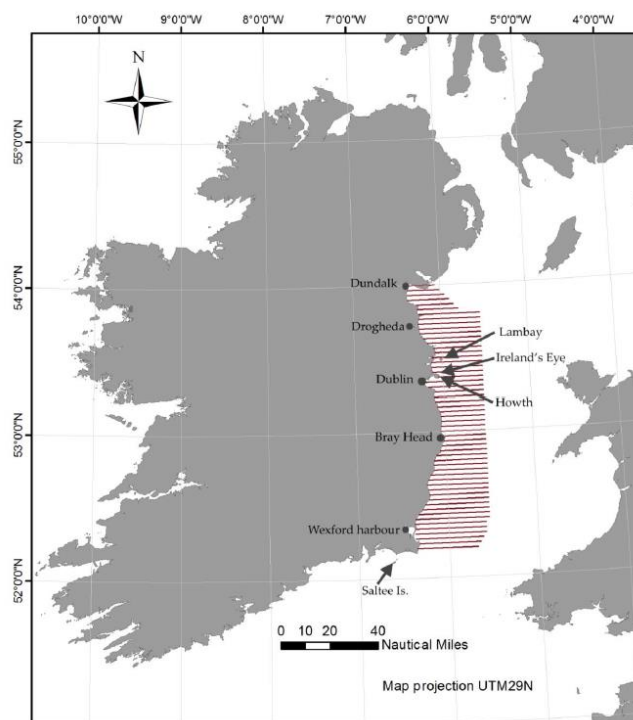


Figure 1. A map showing the parallel transects flown in summer, autumn and winter 2016 in the Irish Sea. From Jessopp et al. (2018).

Over the survey period (3 surveys) across the entire western Irish Sea area surveyed, there were 13,492 sightings of 45,409 seabirds representing 29 seabird species or species groups [6]. One must remember that the survey area was significantly larger than the proposed SPA (Figures 1 and 2) and no attempt appears to have been made by NPWS to analyse a subset of the data from only to the proposed SPA location. The survey was also conducted over multiple weeks and repeated in three seasons within a single year and as such the total figures will likely contain multiple counts of the same individuals. Therefore, at the very least each survey should be assessed individually if the purpose is to perform individual counts.

Regardless the figures are at odds with the figures noted in the Regulation 16 Notification, which stated that “*Informed by two surveys of the western Irish Sea region in 2016, an estimated 120,232 and 34,626 individual marine birds occurred in the North-west Irish Sea cSPA during Autumn and winter respectively*”. In fact, none of the figures listed for each species in the Regulation 16 Notification and Site Synopsis documents match the counts in Jessopp et al. (2018), which appears to document the only surveys performed in the offshore part of the proposed SPA. Further there is also a mismatch with the figures in the individual species Conservation Objective reports within the *Site Specific Conservation Objectives* document [3]. That document cites other data sources and species counts performed in coastal areas and in existing SPAs. Therefore, it appears that whilst the Regulation 16 Notification states that the classification is informed by the 2016 surveys, the figures presented are in fact not related to those surveys. If this is the case, then this data cannot be used to justify the delineation of the proposed SPA. That can only be based on data gathered in that area and not data that has been extrapolated from adjacent areas.

Table 1. The twenty-one bird species listed in the Regulation 16 Notification as special conservation interests and their respective listing. The level each species was recorded to during the aerial surveys and the estimated water depth of peak distribution is also displayed.

| Common Name              | Latin Name                        | Birds Directive | Recorded in Jessopp et al. (2018) | Depth at peak distribution (m) |
|--------------------------|-----------------------------------|-----------------|-----------------------------------|--------------------------------|
| Red-throated Diver       | <i>Gavia stellata</i>             | Annex I         | Not to species level              | 5-10                           |
| Great Northern Diver     | <i>Gavia immer</i>                | Annex I         | Not to species level              | 5-10                           |
| Fulmar                   | <i>Fulmarus glacialis</i>         | No              | Yes                               | 70                             |
| Manx Shearwater          | <i>Puffinus puffinus</i>          | No              | Yes                               | 75-80                          |
| Cormorant                | <i>Phalacrocorax carbo</i>        | No              | Not to species level              | 10-15                          |
| Shag                     | <i>Phalacrocorax aristotelis</i>  | No              | Not to species level              | 10-15                          |
| Common Scoter            | <i>Melanitta nigra</i>            | Annex II        | Yes                               | 5-10                           |
| Black-headed Gull        | <i>Chroicocephalus ridibundus</i> | No              | Yes                               | 10-15                          |
| Common Gull              | <i>Larus canus</i>                | Annex II        | Not to species level              | 10-15                          |
| Herring Gull             | <i>Larus argentatus</i>           | Annex II        | Not to species level              | 10-15                          |
| Lesser Black-backed Gull | <i>Larus fuscus</i>               | Annex II        | Partially to species level        | 10-15                          |
| Great Black-backed Gull  | <i>Larus marinus</i>              | Annex II        | Partially to species level        | 15-60                          |
| Kittiwake                | <i>Rissa tridactyla</i>           | No              | Yes                               | 20-25                          |
| Roseate Tern             | <i>Sterna dougallii</i>           | Annex I         | Yes                               | 35-40                          |
| Common Tern              | <i>Sterna hirundo</i>             | Annex I         | Not to species level              | 20                             |
| Arctic Tern              | <i>Sterna paradisaea</i>          | Annex I         | Not to species level              | 20                             |
| Little Tern              | <i>Sterna albifrons</i>           | Annex I         | Yes                               | 15-20                          |
| Guillemot                | <i>Uria aalge</i>                 | No              | Not to species level              | 25-30                          |
| Razorbill                | <i>Alca torda</i>                 | No              | Not to species level              | 25-30                          |
| Puffin                   | <i>Fratercula arctica</i>         | No              | Yes                               | 40-45                          |
| Little Gull              | <i>Hydrocoloeus minutus</i>       | No              | Yes                               | 15-25                          |

It is also notable that the surveys reported in Jessopp et al. (2018), which were conducted from a fast-moving aircraft, were unable to identify 12 out of the 21 listed species to species level. Therefore, data

were aggregated at a higher level with species combined as indicated in Table 1. This further highlights the uncertainty of the origin of the individual species estimates listed in the Regulation 16 Notification.

A more detailed review of the depth distribution figures in Jessopp et al. (2018) also indicated that most of the species were observed to have the highest distributions at depths shallower than 50m and in 12 out of 21 cases shallower than 25m (Table 1). Only two species had a peak distribution deeper than 50m and neither is an Annex I listed species, yet c. 50% of the proposed SPA is situated in an area with water depths exceeding 50m (Figure 2). It is important that NPWS clarify what data and analyses were used as the basis for including these areas as there does not appear to be any scientific justification.

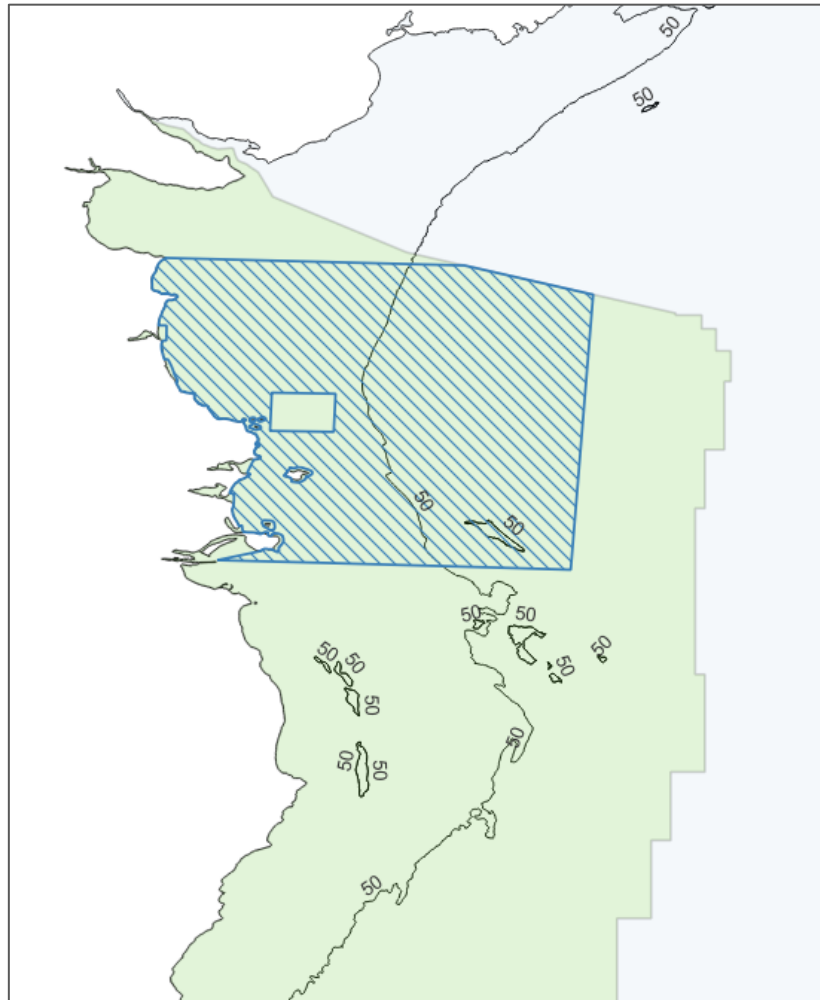


Figure 2. A map of the proposed SPA (blue lines), the Irish EEZ (green shading) and the 50m depth contour.

At this stage it is also informative to look at the criteria a site must meet to be classified as an SPA under the EU Birds Directive (2009/147/EC). This is outlined in Article 4 of the Birds Directive (Figure 3) and has a significant focus on species listed in Annex I of that Directive. Only six of the twenty-one species listed in the Regulation 16 Notification are Annex I species (Table 1). As noted in the EU Commission's 2022 Staff Working Document on Criteria and Guidance for Protected Areas Designations [4] the Birds Directive "is not specific in terms of criteria for identifying those most suitable territories, but the Court of Justice of the EU has specified that they need to be based on **objectively verifiable ornithological criteria**". It further states that more detailed criteria have been developed by BirdLife International for Important Bird and Biodiversity Areas (IBAs) [7] and by the IUCN for Key Biodiversity Areas (KBAs) [8] and notes that "although these criteria are not directly linked to a requirement to

*legally protect the identified areas, they provide a good scientific basis to guide the selection of areas to be protected.”*

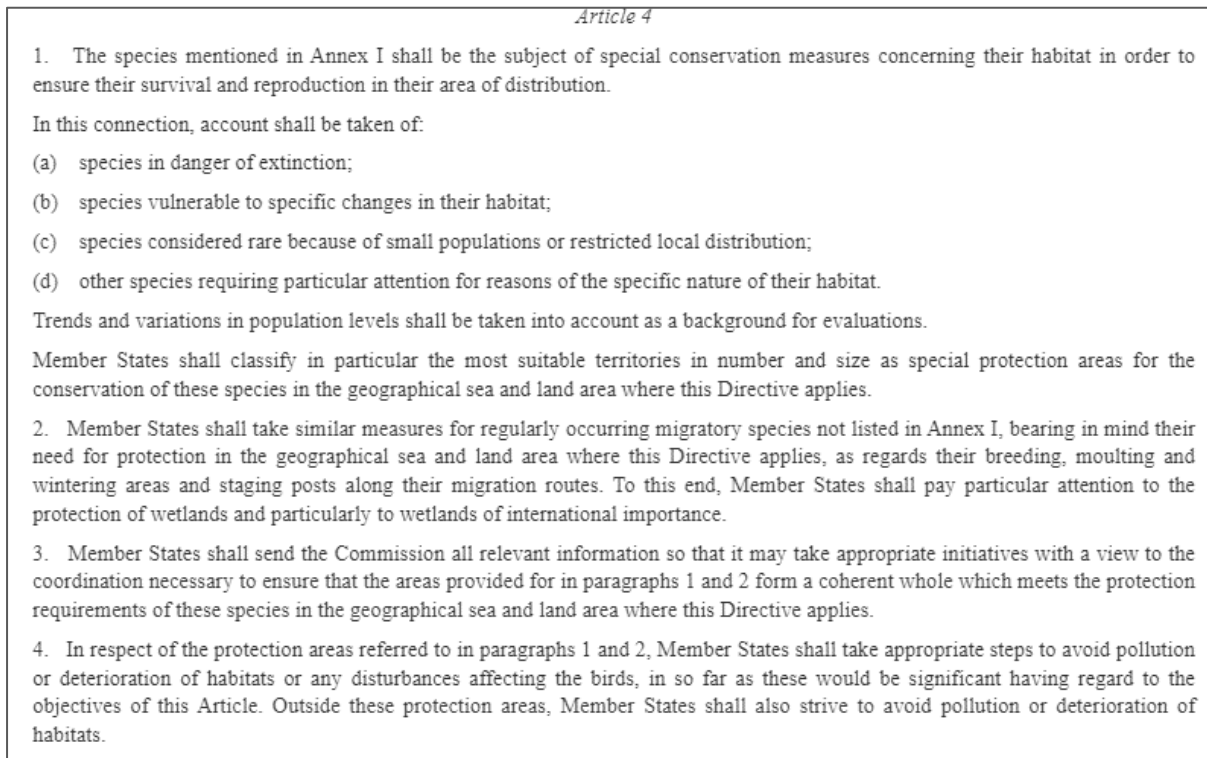


Figure 3. Article 4 of the EU Birds Directive 2009/147/EC.

Examination of the NPWS *Stages in the Site Designation Process* document [9] revealed a different set of criteria, though there may be overlap with the aforementioned sources [7,8], which make reference to specific numbers of birds in an area and also percentages of a given species in an area relative to the all-Ireland population or biogeographical population (Figure 4). It is unclear in the document where these criteria originated as they do not appear to be defined in the EU Birds Directive [1] or in the Statutory Instrument No. 477 of 2011 European Communities (Birds and Natural Habitats) Regulations 2011 [5] and no citation was provided. It is important to clarify this as it is these criteria which appear to have been applied to the classification of the North-west Irish Sea SPA.

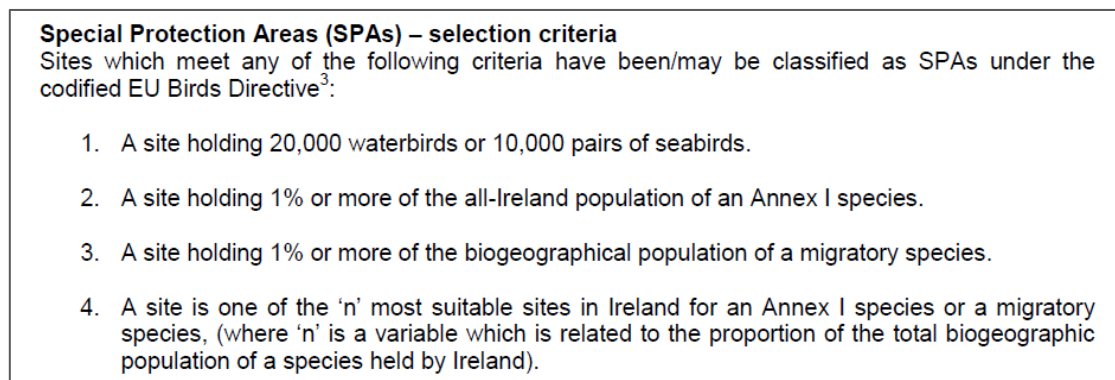


Figure 4. The selection criteria for Special Protection Areas (SPAs) as defined in the NPWS *Stages in the Site Designation Process* document.

Reference to the *Site Specific Conservation Objectives* document [3] did not reveal the sources of the criteria but it was eventually found in the the NPWS document *A review of the SPA network of sites in*

*the Republic of Ireland* [10]. The criteria were in part based on criteria developed under the Ramsar Convention for the selection of internationally important wetland sites [11]. As such their applicability to a largely offshore marine SPA is questionable as is their legal basis. It would be useful for NPWS to explain why these are appropriate **objectively verifiable ornithological criteria** that are suitable for defining a largely offshore marine SPA.

Regardless these appear to be the criteria under which the proposed SPA has been assessed and the Regulation 16 Notification referred to the estimated number of birds and to several species exceeding 1% of the total estimates size of the winter assemblage. Again, it should be noted that the figures provided do not match with those reported in the 2016 aerial surveys [6] and as such the basis for the delineation of the proposed SPA is flawed.

Further, no comparative data from the “*all-Ireland population*” of the Annex I species or from the “*biogeographical populations*” of the migratory species was provided or cited by NPWS. Therefore, it was not possible to objectively assess if the species observed during the aerial surveys meet these thresholds. Similarly, as the surveys covered a significantly larger area than the proposed SPA and the data does not appear to have been sub-divided and analysed specifically in relation to the proposed SPA location, then summary data specifically related to the proposed location does not appear to be available for scrutiny. This highlights the issues with the approach taken by NPWS to define the proposed SPA.

#### **4. Conclusions**

The KFO and the IS&EFPO have been forced to submit an objection to the proposed SPA as this is the only avenue open to stakeholders. This is unfortunate and regrettable situation and would have been avoided had a proper stakeholder engagement process been implemented. As SPAs will form part of Ireland’s 30x30 Marine Protected Area (MPA) network, the process should include implementation of the recommendations of the 2020 MPA Advisory Group Report on Expanding Ireland’s MPA Network [12] in that “**Early and sustained stakeholder engagement should be integral to the selection and management processes for MPAs. Engagement should be inclusive and equitable and the process should be designed to ensure that it is transparent, meaningful and facilitating.**”, and also the recommendation of the European Commission’s 2022 Staff Working Document on *Criteria and Guidance for Protected Areas Designations* [4], which stated that “**it is therefore essential that Member States involve all relevant stakeholders, including land owners, managers and users, indigenous peoples, local communities and NGOs in the identification, designation and management of new protected areas, in a fair and participatory way, in line with the Aarhus Convention and in accordance with national procedures**”. Had these recommendations been followed then the current situation could have been avoided prior to the Notification of Intention to Classify being issued. The KFO and IS&EFPO would be happy to be involved in and make a meaningful contribution to any such process.

As was seen with the Notice of Intention to Designate Porcupine Shelf and Southern Canyons as Special Areas of Conservation (SACs) there appears to have been little if any scientific analyses undertaken to support the delineation of the proposed SPA. The cited evidence and publicly available data do not support the current outline and do not fulfil the requirement that it must be based on **objectively verifiable ornithological criteria**.

The KFO and the IS&EFPO request that available data be reviewed and compiled in a transparent manner and that a robust and transparent analysis of the data relevant to the proposed SPA be conducted again.

## 5. References

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