

REQUEST FOR SUPPLEMENTARY INFORMATION (For Site Related Aspects of Nature Conservation issues)

I would be grateful if you would complete this request for supplementary information. The purpose of this request is to help the Commission to more fully and accurately identify and evaluate the essential site-based nature conservation issues raised by your letter. The provision of the requested information may be decisive for a proper handling of the environmental issue brought to the attention of the Commission, and, where appropriate, the making of representations to the national authorities.

I look forward to hearing from you within the next month.

Contact person: Christine Metcalfe

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Member States concerned: UK

Regions concerned : Scotland

1) Does the case have any direct link to Community nature conservation legislation?

Yes ☒X

No ☐

2) If yes to which directive ?

79/409¹ (the Birds Directive)

92/43² (the Habitats Directive)

Or which other legislation ?

Nature Conservation Act (Scotland) 2004

3) Give a clear description of the subject of the environmental issue brought to the attention of the Commission (max. 1/2 page)

Article 5(d) of the Birds Directive refers to 'deliberate disturbance.' The consented road will indeed constitute 'deliberate disturbance.' The refusal by the Forestry Commission Scotland to cease road construction activities during the nesting season no more than 1 km from the nearest nest site, instead of the suggested minimum 3 kms, makes disturbance inevitable and unavoidable in such a normally peaceful and quiet location. By failing to take an adequate scale of mitigation needed in relation to the West Loch Awe Timber Haul Route to avoid disturbance of the species protected on their nesting sites site, FCS is knowingly risking deterioration of habitat which is subsequently likely to have a significant effect as a result of the construction and use of the timber haul route. This is therefore now contrary to *Article 6(2) to (4) of Council Directive 92/43/EEC* of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7). FCS have consistently refused to consider or discuss the viable alternative route previously submitted by them to secure EU funding for the timber haul route (letter and map attached) which would avoid all disturbance or negative effects to the golden eagle pair.

Under the Habitats Directive, Lichen surveys (attached) have indicated that the destruction of both habitat, rare and endangered lichen species, is inevitable and irreversible due to the proposed bridge crossing. Again there are viable alternatives which have not been discussed in any detail with Scottish Natural Heritage.

¹ O.J. n° L103 of 25.04.1979 and O.J. n° L115 of 08.05.1991

² O.J. n° L206/7 of 22.07.1992



4)

Have you already contacted the responsible administrative authorities of your Member State concerning your case

☐ No Please explain why you have not contacted your national authorities before addressing the European Commission :

☒ Yes Which one : Forestry Commission Scotland. Scottish Minister for the Environment.

Consents Dept. re. planning breach concerning access.

Answer / Results in brief

The Scottish Minister for the Environment declined to reply, but passed the request to the Forestry Commission for a response. Both that letter and our response is attached here with a further copy sent separately to Patrick Wegerdt.

Forestry Commission Scotland have refused to discuss or address the alternative route raised, or adopt the distance needed during construction and use of the THR to reduce, but not avoid the likelihood of disturbance. They have further refused to discuss the alternatives suggested for the bridge crossing either with the Community Council or Scottish Natural Heritage.

Our concerns involving 'Salami slicing' of the original consent for the Carriag Gheal windfarm, whose turbines now require the THR for delivery, have not been addressed. However, a verbal discussion revealed that there are other consented applications which are exposing problems due to access being separated from consents given against EU regulations. The original CC letter to Paul Smith in the Gov.Consents dept. is attached.

Please add if possible copies of the correspondence. As referred to above.

Have national court proceedings addressing the matter been commenced or are they envisaged?

☒ No Due to lack of Community Council funds and insufficient time allowed to raise finance.
☐ Yes Please give details:

Please add copies of court pleadings if possible

5)

5.1. Are you aware if any EC financing is directly involved (e.g. structural funds, Life, etc.) :

Yes ☐ No ☒ We have a request lodged to Mr. Wegerdt for funding possibilities should these exist.

5.2. If yes please give details :

6) Location

6.1. GENERAL DESCRIPTION OF THE SITE(S) AFFECTED

Name of Site(s):

Inverliever Forest.....

Next big city close by : .None.....

Surface area (ha) : ..Unknown – but FCS would provide this information if required.....

Special Protection Area¹ : Yes ☐ No X ☒ Name :

Proposed site of community importance² : Yes ☐ No ☐ NATURA 2000 Code :waiting to hear from UK RSPB whether they have the area IBA listed as Annex 1 birds are present as this may mirror aspects of the Basses Corbiere judgment.

Is the area already under national protection ☐ No X ☒ Yes :

(which one)

Nature Conservation Act (Scotland)2004.

Scientific description :

Under the terms of this Act it is illegal to knowingly disturb the nest sites of, or kill Annex 1 birds. Golden Eagles fall into this category both under EU and UK law.

5.1. of the above Act would cover the fact that the rare lichens e.g. Menegazzia subsimilis, and liverwort Radula Voluta should be protected under 'Enlargement of sites of Sites of Special Scientific Interest. This is directly applicable to the adjacent SSSI already in existence.

¹ Special Protection Area according Article 4 Birds Directive

² proposed Site of Community Importance according Article 4 Habitats Directive

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6.2. MAP OF THE SITE OR SITES AFFECTED

MAPS ARE A VALUABLE AID TO UNDERSTANDING AND EVALUATING AN ENVIRONMENTAL ISSUE. WHERE POSSIBLE PLEASE THEREFORE SUBMIT A MAP OF GOOD QUALITY (I.E. WITH A SCALE OF 1:100000 OR LESS).

The map should show the location of the plan /project referred to in your letter, and, if known, the boundaries of any designated or proposed nature conservation site (e.g. special protection area under Directive 79/409/EEC (wild birds) or proposed site on national list under Directive 92/43/EEC (habitats)).

Colours and symbols are helpful means of clearly indicating and describing key information such as site boundaries and the location of any plan or project.

A clear legend giving the scale and explaining any colours or symbols used are also helpful.

All maps are being sent under separate cover.

Map 1 gives the approximate position of the proposed bridge and vulnerable lichen areas.

Map 2. Shows the location of the suggested alternative bridge crossing site as suggested by AKCC.

Map 3. Shows one alternative route suggested by AKCC which would make use of an existing track.

Map 4. Shows the problem area which is too close to existing golden eagle nesting sites.

Map 5. Is a copy of the map which accompanied the original FCS application for EU funding of the West Loch Awe Timber Haul Route. I also shows that the suggested alternative route corresponds with this.

Map 6. Shows a second alternative and existing lower route which has also not been considered or discussed.

☞ *Maps can be presented on a format larger than A4, if necessary.*

7. PRINCIPAL HABITATS DIRECTIVE ANNEX I HABITAT TYPES DIRECTLY AFFECTED

* : Tick if the habitat type is a priority one according to Annex I of the Habitats Directive

Code : Refer to the Habitats Directive

Name : Name of the habitat type according to the Habitats Directive

*	Code	Name	Surface area for the site ha
	A2	Bryophyte Radula Voluta	Very approx. ½ mile stretch of River Avich and bank.
		Menegazzia Subsimilis	On One Alder tree at the exact location of the proposed bridge.

Comments (conservation status if known, significant effects of the plan/project, references used)

bibliographic

As Radula Voluta is already almost entirely unique to and exceptionally rare in the UK and Eire, it is clear that this species has been overlooked as an Annex 1 habitat and species. It should urgently have its habitat listed as in need of EU protection. .

Two bryophyte surveys are being sent under separate cover and are notable as having 29 species listed as having and IR designation (International Responsibility). Furthermore it is admitted in the survey compiled by Mr. Acton that it is unknown whether these species exist elsewhere along the river, they may therefore be of great importance. There is an admission that there is moderate WSEIC interest but **high** EUOCIEC conservation importance due to the small area of the site and regionally scarce/rare/threatened species. There is an admission that there will be permanent negative effects from the project from the loss of the microclimate. It is stated (7.1) that the overall impact of the proposed

route on the epiphytic lichen habitat is assessed as *significant (a high magnitude impact of very high significance)*. 7.3 finds it 'difficult to assess' the impact for species requiring conditions to be permanently lost. One species (*Menegazzia Subsimilis*) is listed as **Data Deficient** and is located at the exact location of the bridge crossing. This clearly requires the most robust protection. Mitigation proposed will not affect the loss of microclimate or accidental damage from construction procedures impossible to guarantee in terms of success.

It should be noted that Mr. Acton was not at any stage asked to assess the alternative bridge location site suggested by AKCC which would avoid most if not all the species mentioned as the area suggested has few trees on one side of the crossing proposed and none on the other. Neither has he been asked to consider the area further upstream.

River Avich – Bryophyte Survey.

3.3.2 notes that 'epiphytic flora on most of the trees is *'remarkable in its luxuriance and consistency.'*

3.3.4 Notes that *Radula Voluta* is rated rare in Europe by the European Committee for Conservation of Bryophytes.

AKCC therefore submit that there has been a failure by the Forestry Commission Scotland to take the opportunity presented to adopt best practice by allowing full consideration and examination of the alternatives presented to them. As Scottish Natural Heritage were also not given the opportunity to examine the alternative, their important consideration/assessment was prevented by this omission. For this reason we submit that the Consent breaches the Habitats Directive.

8. HABITATS DIRECTIVE ANNEX II SPECIES DIRECTLY AFFECTED

G°: **GROUP:** *M=Mammals, A=Amphibians, R=Reptiles, F= Fish, I=Invertebrates, P=Plants*

***:** **Tick if the species is a priority one according to Annex II of the Habitats Directive**

G°	*	SCIENTIFIC NAME (IN LATIN)	POPULATION SIZE FOR THE SITE(S)			
			RESIDENT	MIGRATORY		
				BREED	WINTER	STAGE
P		Radula Voluta				

Comments (conservation status if known, significant effects of the plan/project, bibliographic references used)

The River Avich study site (bryophyte reports sent under separate cover) has an EUOIEC score T 21(15+6) and is admitted to have high conservation importance (9.1 of report) hosting notable species regionally and nationally scarce/rare/threatened. Due to admissions that that it is unknown whether these species exist elsewhere along the river, further survey work is required for the River Avich as individual species and locations may have overlooked, the claim that ***no species listed on Annex II*** of the EU Habitats and Species Directives, is therefore clearly unsafe.

Destruction of Radula Voluta colonies and other known/unknown species could be entirely avoided by adoption of the alternative crossing suggested and available (see map 2 of TTA Routes map).

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9. BIRDS SPECIES DIRECTLY AFFECTED

*	SCIENTIFIC NAME (IN LATIN)	POPULATION SIZE FOR THE SITE(S)			
		RESIDENT	MIGRATORY		
			BREED	WINTER	STAGE
ANNEX I SPECIES OF THE BIRDS DIRECTIVE					
	Aquila Chrysaetos	Yes	Golden eagle		
	White tailed eagle	Seen in area	Fishing eagle		
OTHER MIGRATORY SPECIES					
	Osprey – becoming more widely dispersed throughout the Loch Awe area				
<p>COMMENTS (conservation status if known, significant effects of the plan/project, bibliographic references used)</p> <p>The golden eagle may be the only species directly affected by the section of the route in question, although others listed are seen in the area e.g. Capercaillie.</p> <p>The refusal to implement the alternative route suggested and available will cause a significant and negative effect on a successfully breeding pair due to proximity of construction and use of, the grade A road.</p>					

10)

10.1 The plan project has already been approved by the competent authorities :

Yes ☒ **No** ☐

10.2 If yes, by which act ? Unsure – but may be EIA Forestry Regulations.

10.3 and which authority ? The Forestry Commission Scotland

10.4 If the plan or project has not yet been approved, please indicate the administrative procedure being followed and the stage reached:

11)

11.1 Has any Environmental Impact Assessment (EIA) or environmental impact study been done or is one in progress? Yes ☒ **No** ☐

11.2. If yes, give a brief description of its results (max. 1/2 page)

The EIA was passed by the determining authority (Forestry Commission Scotland) as acceptable although this was entirely produced by the wind farm developer Green Power, the business partner of their subsidiary,(Forestry Enterprise) and committed major funder of the route. The EIA itself has not been attached due to its size but can be provided if required.

- 12) a) Describe any alternative solution(s) to the plan or project which have been considered by the authorities (indicate on the maps if relevant) (max. 1/2 page)**

The alternative solutions suggested have neither been considered nor discussed with Scottish Natural Heritage or Avich & Kilchrenan Community Council during the many attempts to engage the Forestry Commission in dialogue over the alternative routes suggested.

See maps 3 & 6.

- b) Describe any other alternative solution(s) to the plan or project which you believe are feasible and which have not been considered by the national authorities (indicate on the maps if relevant) (max.1/2 page)**

The map and letter from the Forestry which has been provided under separate cover, proves that the alternative routes suggested by our Community Council over a long period of time, exist as a viable solutions. One is the route presented by the Forestry when they applied for EU finding for the timber haul route previously. See map 5. This however, was before the wind farm developer applied for the wind farm or offered to pay for a major part of the route. The Forestry have indicated that no other route is acceptable to this developer.

- 13) a) Describe any mitigation measures which have been proposed or considered by the national authorities (indicate in the maps if relevant)
(max. 1/2 page)

The only mitigation offered is that a screen/belt of trees is to be left rather than felled, and construction work and use of the track when finished is to cease, but only within 1 km of the nearest nesting site, during the breeding season. Not the 3 km suggested as a safe minimum. A worrying clause in conditions attached to the consent, which is held by Mr. Wegerdt, is that this may continue if the eagle pair do not *appear to be using* the nearest nest site to the proposed road. See map 4. We believe that this will have the effect of 'inviting' disturbance to facilitate unhindered road construction continuing. No accusation is implied in respect of those either directly or indirectly involved with the project, but the *implications* provided should have been anticipated and should now be removed.

- b) Describe any mitigation measures which you consider feasible and which have not been considered or proposed by the national authorities (max.1/2 page)

The area in question has numerous tracks currently in existence, including that of the previously applied for EU finding proposal earlier described. See maps 3 & 6 sent under separate cover.

The only mitigation guaranteed to avoid disturbance to the nesting eagles is to adopt one of the routes available which have been consistently suggested and is well known to the determining authority for reasons given above.

14) a) Describe any compensatory measures for nature conservation damage caused by the plan or project which have been proposed or considered by the national authorities (indicate in the maps if relevant) (max 1/2 page)

Only the leaving of the belt of trees and nesting times recognition in respect of construction work and subsequent use, has been offered under the consented plan.

b) Describe any compensatory measures which you believe are feasible and which have not been considered or proposed by the national authorities (indicate on the maps if relevant) (max.1/2 page)

As in answer to question 13a.

15) Other information (max. 1/2 page). Copies of relevant studies and publications may be annexed.

We provide a submission under separate cover from our eagle expert Mr. Mike Gregory who has monitored the eagles of this area over a long period of time and is acknowledged in his field. Borrow pit 27 has been dropped but we have not been advised on how the large amount of stone due to be quarried from this site is now to be provided and from where.

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Place Taigh a Luana, Loch Avich, Taynuilt, Argyll.	Signature
Date 21.03.2010.	Mrs. V.C.K. Metcalfe.