



BirdWatchIreland
protecting birds and biodiversity

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March 2nd 2016

Re: Failure to protect Common Tern breeding habitat at ESB dolphin within South Dublin Bay and River Tolka Special Protection Area

Dear Sirs:

BirdWatch Ireland is writing to alert you to the deteriorating condition of the ESB dolphin in Dublin Port which provides breeding habitat for Common Terns (*Sterna hirundo*) and your obligations under the Birds Directive to maintain this habitat. In addition, we *request immediate and urgent action to repair and secure the breeding habitat on the dolphin for the 2016 breeding season.*

BirdWatch Ireland is extremely concerned that the ESB dolphin which supports breeding Common Terns within Dublin Port is in a very poor and compromised state which could impact future breeding success of the Terns. In 2014, we were alerted to its condition by the Dublin Port Company in discussions about our annual programme of survey work with them on the Dublin Bay Birds Project. At that time, we were informed that some exploratory dive surveys were going to be undertaken to examine the severity of damage to the structure during winter storms. In 2015, field visits to census the terns and monitor their productivity were curtailed to the portion of the structure that was undamaged. It is our understanding now (2016) from the Dublin Port Company that these dive surveys were never undertaken and recent photographs (attached) show that **the nesting platform that is used by the terns has deteriorated further.** A large proportion of the surface of the dolphin has become unsuitable for nesting and the potential for rat predation has heightened significantly, which would potentially decimate the breeding colony.

Common Tern (*Sterna hirundo*) is a species listed in Annex 1 of the Birds Directive meaning that they are the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. The Dublin Port Tern colony is internationally important for Common Terns and part of it, specifically the ESB dolphin, has been designated as part of the South Dublin Bay and River Tolka Special Protection Area (Code: 004024ⁱ) under the European Union Birds Directive (2009/147/EEC) for which Common Terns are a Qualifying Interest. The ESB dolphin supports by far the largest majority of the nesting terns (>80%) each season (see Newton et al., 2014), thus the ongoing deterioration and loss of available nesting space on this structure will impact on the colony as a whole.

National and European Union laws explicitly prohibit the deterioration of habitats and therefore the deterioration of this structure which is part of the SPA may be a breach of these laws. The main laws are listed below but other national and EU laws may also be breached:

The national law which prohibits the deterioration of habitats is:

- **Article 27 (2) (3) (4) (5) (6)** of European Communities (Birds and Natural Habitats) Regulations 2011



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The EU laws which prohibit the deterioration of habitats are:

- **Article 6 (2) of Council Directive 92/43/EC on the conservation of natural habitats and wild flora and fauna (Habitats Directive)** “Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive”.
- **Article 4 (4) of European Directive 2009/147/EEC (the Birds Directive)** on the conservation of wild birds : “In respect of the protection areas referred to in paragraphs 1 (*Annex 1 species*) and 2 (*migratory species*), Member States shall **take appropriate steps to avoid pollution or deterioration of habitats** or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats”.

It is the responsibility of the ESB and the NPWS to maintain the ESB dolphin as breeding habitat for Common Tern and to adhere to the laws protecting the breeding colony. Since these birds will be returning from their wintering grounds to begin breeding here in late April/early May it is imperative that urgent action is taking to secure the structure in advance of this period. Failure to maintain this structure and ensure its availability into the future for nesting terns is a breach of the Birds Directive and national regulations.

In addition, the State is obliged to monitor the status of this colony on an ongoing basis. Thorough censuses (conducted by BirdWatch Ireland) were inhibited in 2015 and could potentially be further inhibited in 2016 due to the deteriorated condition of the dolphin. We expect that the breeding season will be underway by end of April and we will be looking to access the colony to census it from around mid-May. Due to the deterioration of the wooden part of the ESB dolphin, it is likely that the number of terns will increase on each of the other available nesting platforms, including the concrete part of the ESB dolphin. So, in order to accurately assess tern breeding success throughout the Dublin Port colony, it is vital that we have access to each of the tern nesting platforms, including the concrete part of the ESB dolphin in the 2016 breeding season.

We wish to discuss this issue with you as a matter of urgency and request a meeting please.

Yours sincerely,

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ⁱ Conservation Objectives for this site can be found here: http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf