

# **Modern Environmental Governance: Qualitative Research Data**

## **Case Study 4: Brancaster and Thornham Commons, Norfolk**

Margherita Pieraccini and Christopher Rodgers

This document combines the findings of primary qualitative research conducted in the Brancaster case study with a report of the principal legal mechanisms shaping the contemporary management of the commons. Semi-structured interviews were conducted with the principal stakeholders: Natural England, common rights holders on CL 65 and the National Trust (one of the principal landowners). This report on contemporary governance also includes a summary of the environmental designations in the case study and principal environmental governance instruments. The information is presented in four themes: property rights, environmental governance, governance institutions and contemporary perceptions of commons management.

### **1 PROPERTY RIGHTS**

#### **1.1 Registered common land units**

The case study area contains a multiplicity of common land units. The qualitative research concentrated on two that have special environmental significance, namely:

- BRANCASTER (CL65, CL161-intertidal area)
- BRANCASTER MARSHES (CL124)

Information on legal disputes related to the registration procedure for establishing CL 65 (Brancaster & Burnham) can be found online at:

<http://docs.cgrma.org.uk/Norfolk/CREEKS%20FORESHORE%20AND%20SALT%20MARSHES%20-%20BURNHAM%20OVERY%20-%20BURNHAM%20NORTON%20AND%20BRANCASTER%20NO.CL.65.pdf>

#### **1.2 Ownership**

The National Trust is the principal common land owner on Brancaster common. The ownership of CL 65 is divided between the National Trust and the Norfolk Naturalist Trust, and that of CL 124 between the National Trust and the local Royal West Norfolk Golf Club. The National Trust has sole ownership of CL 161.

The special nature of the common land in this case study, much of which is salt marsh bordering the sea and intertidal creeks, gives rise to a number of interesting property rights issues:

1) The boundaries of the commons are not fixed, but move from time to time. Private freehold ownership can extend to the mean-low water mark. The foreshore from the mean high water mark is owned by the National Trust. Because of the erosion of parts of the foreshore, land adjacent to the foreshore currently owned by the golf club may

become foreshore in the future and thereby accrete to the freehold ownership of the National Trust.

## 2) History of Acquisitions:

National Trust acquisition of land on CL 65, 124 and CL 161.

Two conveyances on (i) 9<sup>th</sup> of June 1923 from Earl of Leicester and (ii) from the Board of Trade in 1987 conveyed land below high water mark to the Trust. A further conveyance on 21 April 1967 from the Manor of Brancaster conveyed all manorial waste land and land below the high water mark to the Trust on behalf of the members of local community. The National Trust could become a conservation and access “approved body” under the Wildlife and Countryside Act 1981, and thereby exercise many of Natural England’s functions over land in their ownership, a large part of which is registered common land units.

The eastern end of Scolt Head Island (a small areas at the end of CL 65) is not owned by the National Trust but by the Norfolk Wildlife Trust. Natural England manages the island on a day to day basis: it took a 99 year lease of the island on the 1st of April 1953 and entered into a management agreement with the owners under sec. 15 of the National Park and Access to the countryside 1949.

3) The National Trust considers their principal challenge to be the sustainable long term management of the Brancaster commons and village greens. This is addressed through the work of their area manager and wardening staff. Management policy for the common is devised and executed through the *Brancaster Commons Committee*, which was established by the National Trust in 2000. The establishment of the local management committee was prompted by DEFRA guidance in 1990 on setting up local commons management committees. The commons committee is in practice an effective local forum for commons management, bringing together commoners, the National Trust and other interested bodies – including Natural England and other landowners. The committee fulfils many of the roles that statutory common councils envisaged by Part 2 of the Commons act 2006 would undertake, and the qualitative interviews with stakeholders indicated that there would be reluctance to upset the very effective local management that has been achieved by establishing a statutory body under the 2006 Act. Although there are some legal uncertainties, for example as to the terms of some of the commons registrations, the feeling among stakeholders is that in practice local management currently works very well to deliver the Trusts conservation objectives.

### **1.3 Common Rights Management**

The exercise of the common rights themselves is managed by the Scolt Head common rights holder association. It is a slow process to achieve changes in management because of the very large number of rights holders and the necessity to identify who is doing what. This was in itself regarded by stakeholders as good for precautionary reasons. The biggest challenge is the management of recreational aspects of commons use (sailing, power boating and the impact of access under CRWA 2000). Access to the common land owned by the National Trust is governed by National Trust Act 1907, and so falls outside the “right to roam” under the CRWA 2000 (section 15 exception to CRWA 2000). There is no single farm payment entitlements registered on the common – registration for SFP would be complex and exercise of grazing

rights would be problematic for the common too. No sheep or cattle are currently grazed by commoners. Recreational fishing is also a management problem.

Many unquantified rights of common have been, and continue to be, apportioned (rights to shellfish, wildfowl, etc.). This is permitted by Norfolk County Council as long as the number of owners of the unquantified right does not exceed four. The division and sale of wildfowling rights is a particular problem, especially as many of the rights have been apportioned and sold to people from outside the local area, and who have no local connection with the common and the local community. The apportionment of rights means that the number of rights holders is multiplying. Although purchasers acquire a proportion of an unquantified wildfowling right, this inevitably increases the pressure on the common resource. In practice local control of wildfowling is maintained through its control by the local gun club, in that shooting is only permitted over the common salt marshes if you are a member of the gun club. The legal basis for this practice has never been tested, but it provides evidence, nevertheless, of good neighbourliness being used to control external influences on commons management.

There are difficult issues surrounding the exercise of local management and the boundaries between the owner's and common rights holders' powers and responsibilities. When can a landowner manage the land, and when do their actions have to be agreed by the commons right holders? For example, filming (by TV and film companies) on the common would not normally require commoners consent, but if the film companies are digging the beach, then they are potentially interfering with the common rights and the commoners should be consulted. And people collect samphire even if they are not common rights holders. The National Trust will tackle these issues from a conservation point of view (if they are affecting the environment) but not from a common rights perspective. There is no need for the creation of new common rights e.g. under Commons Act 2006. This would not improve or be necessary for the proper environmental management of the common.

#### **1.4 Sustainability**

All interviewees considered that the common is currently managed very sustainably (as one put it - "I don't know what a more sustainable common could look like"). At the level of future sea level rise and coastal change, however, then it is harder to say whether the common will remain sustainable in the longer term. Because Scolt Head Island is a National Nature Reserve wildlife conservation is a higher priority and ecological sustainability is the key issue. Social sustainability remains important however, and the common sustains a fishing community, exercising shellfish rights.

## **2 ENVIRONMENTAL GOVERNANCE**

### **2.1 Environmental Designations**

#### **2.1.1 Summary**

The Brancaster commons are situated in an area of international nature conservation importance comprising an area of some 70,000 hectares. It is designated a Ramsar site

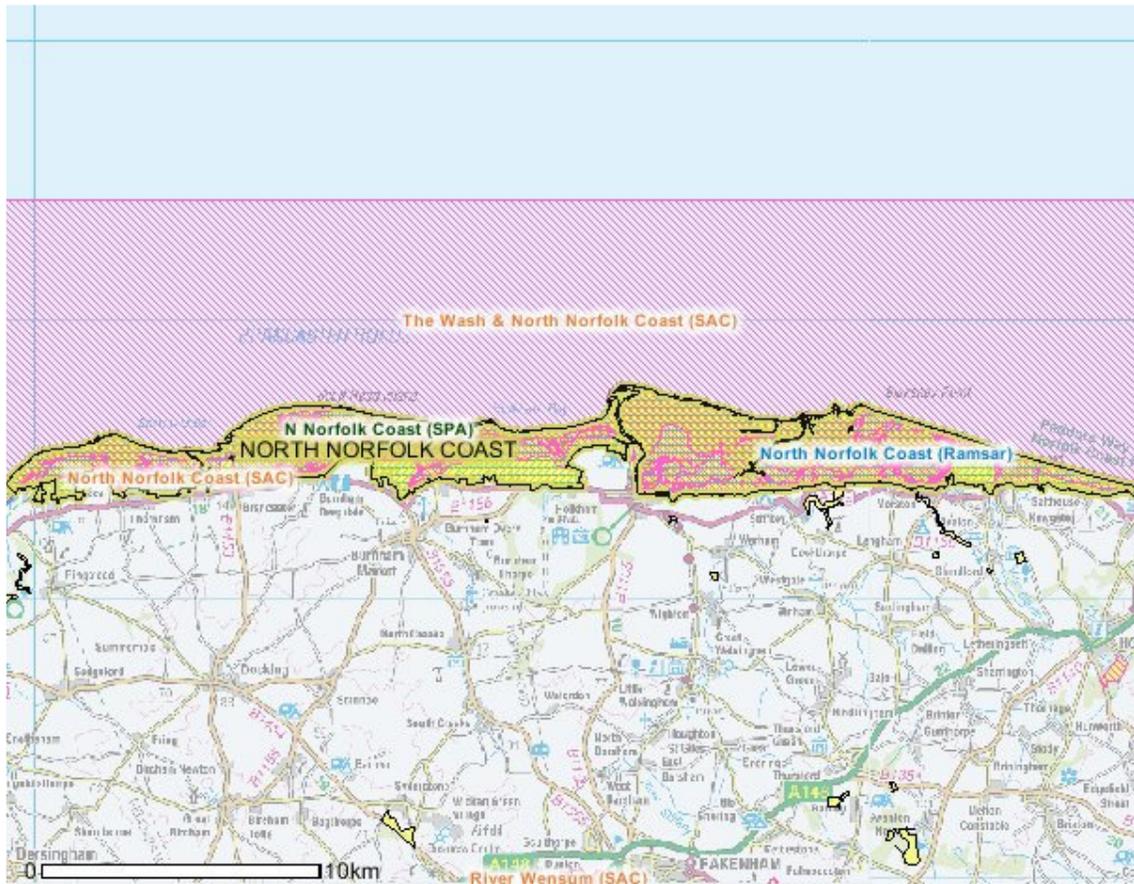
under the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention). It is also a Special Protection Area under the Council Directive on the Conservation of Wild Birds (79/449/EEC), and is a candidate Special Area of Conservation under the Council Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (92/43/EEC). Parts of the North Norfolk coast are also a Biosphere Reserve designated under the UNESCO Man and the Biosphere Programme (MAB). At the level of national designations, the case study area hosts the North Norfolk Site of Special Scientific Interest. The North Norfolk coast is also recognized for its landscape importance being designated as an Area of Outstanding Natural Beauty and as a Heritage Coast. It also has high archaeological potential, with recent evidence of surviving waterlogged timber from the Bronze Age. The Site is representative of one of the UK's most important and characteristic natural features, that is inter-tidal sands and muds, shingle, sand dunes, lagoons and salt marshes.

The Wash estuary with its sand, mud flats and salt marsh is a very complex and highly productive ecosystem. The North Norfolk coast is one of the finest coastlines in the British Isles and is one of the few examples of a barrier coast in Europe. At Blakeney the shingle spit is of considerable physiographic interest and forms the foundations for extensive ridges of sand dunes. Scolt Head is a barrier island with sand dunes, shingle and contains a succession of salt marshes. Holkham contains one of the largest salt marshes in England. Scolt Head and Blakeney Point were the locations for classical studies of coastal accretion and plant succession. They also have important education and research value including long term monitoring, and are the sites of nationally important populations of rare or local coastal plants. The Site is also of international importance for breeding bird populations of wildfowl and waders, particularly redshank and terns. The breeding colony of sandwich terns at Scolt Head and Blakeney Point is of international significance comprising 12% of the European breeding population. There are also important colonies of common terns with up to 1,000 pairs breeding on the Site. Among the many species of breeding birds are marsh harrier, bearded tits, bittern, avocet, little tern, oyster catcher, ringed plover, skylark and reed bunting.

The geographical position of the Site and its wide range of habitat, make it especially valuable for the support of migratory birds at vulnerable stages in their life cycle. Over 200,000 waders winter at the Site, including oyster catcher, grey plover, knot, sanderling, dunlin, bar-tailed godwit, curlew, redshank and turnstone; and over 200,000 wildfowl including internationally important number of dark-bellied Brent geese, pink footed geese, pintails, shelduck and widgeon, and nationally important populations of goldeneye, gadwall, garganey and white-fronted geese. The Site also hosts substantial populations of breeding common seal and is considered one of the best areas in the UK for the species. Boundaries The outer part of the proposed Site comprises Gibraltar Point National Nature Reserve (NNR) and, to the east, the North Norfolk coast, including Scolt Head NNR, Holkham NNR, Blakeney NNR and Holme Dunes NNR. The entire Site is notified as being a Site of Special Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981.

### **2.2.1 European Designations:**

Map representing the European environmental designations: SAC, SPA and Ramsar site (image retrieved at <http://www.natureonthemap.org.uk/map.aspx>)



### 2.2.2 North Norfolk Coast SAC

The site is characterized by coastal and sand dunes, tidal rivers, mud and sand flats, lagoons, including saltwork basins, machair, marshes and shingle.

Annex I habitats that are a primary reason for the selection of this site are: coastal lagoons (priority feature), perennial vegetation of stony banks, Mediterranean and thermo-Atlantic halophilous scrubs. In regards to dunes, North Norfolk coast in East Anglia is one of the two sites representing Embryonic shifting dunes in the east of England and shifting dunes along the shoreline with white dunes. Fixed dunes with herbaceous vegetation are a priority feature and the site also represents humid dune slacks on the dry east coast of England.

Annex II species presenting a qualifying feature but not primary for the selection of the site are the otter and the petalwort. For a complete description of the SAC's characteristics, please see:

<http://www.jncc.gov.uk/ProtectedSites/SACselection/sac.asp?EUCode=UK0019838>.

According to Natural England's assessment, the SAC water framework unit condition is favourable. (<http://www.natureonthemap.org.uk/identify.aspx>)

### 2.2.3 North Norfolk Coast SPA

The North Norfolk Coast SPA is a low-lying barrier coast that extends for 40 km from Holme to Weybourne and includes a great variety of coastal habitats. The site contains some of the best examples of saltmarsh in Europe. Because of the diversity of intertidal and marine habitats, the site hosts many water birds. Qualifying species during the breeding season are 4 different species of terns, waders, bittern and wetland raptors. Over winter, the coast is used by very large numbers of geese, sea-ducks, other ducks and waders. The coast is also of major importance for staging water birds in the spring and autumn migration periods. Breeding terns, particularly Sandwich Tern *Sterna sandvicensis*, and wintering sea-ducks regularly feed outside the SPA in adjacent coastal waters.

For specific information about the SPA, please see the Data form at: <http://www.jncc.gov.uk/default.aspx?page=2008>

#### **2.2.4 North Norfolk Coast Ramsar Wetlands**

The Ramsar Information Sheet was compiled by the JNNC on 05/01/76 (date of designation)

*Information sheet on Ramsar Wetland at*  
<http://www.jncc.gov.uk/pdf/RIS/UK11048.pdf>

A summary is offered below:

The North Norfolk coast Ramsar site covers a 40 km length of coast between Hunstanton and Weybourne, and lies c. 45 km north-west of Norwich. The total area is of 7862.39

##### *General overview of the site:*

This low-lying barrier coast site extends for 40 km from Holme to Weybourne and encompasses a variety of habitats including intertidal sands and muds, saltmarshes, shingle and sand dunes, together with areas of land-claimed freshwater grazing marsh and reedbed, which is developed in front of rising land. Both freshwater and marine habitats support internationally important numbers of wildfowl in winter and several nationally rare breeding birds. The sandflats, sand dune, saltmarsh, shingle and saline lagoons habitats are of international importance for their fauna, flora and geomorphology.

##### *Ramsar Criteria:*

###### **Ramsar criterion 1**

The site is one of the largest expanses of undeveloped coastal habitat of its type in Europe. It is a particularly good example of a marshland coast with intertidal sand and mud, saltmarshes, shingle banks and sand dunes. There are a series of brackish-water lagoons and extensive areas of freshwater grazing marsh and reed beds.

###### **Ramsar criterion 2**

Supports at least three British Red Data Book and nine nationally scarce vascular plants, one British Red Data Book lichen and 38 British Red Data Book invertebrates.

Ramsar criterion 5 (Assemblages of international importance):

Species with peak counts in winter:

98462 waterfowl (5 year peak mean 1998/99-2002/2003)

Ramsar criterion 6 (Species/populations occurring at levels of international importance)

*Qualifying Species/populations (as identified at designation):*

Species regularly supported during the breeding season:

3 Sandwich tern, *Sterna(Thalasseus) sandvicensis sandvicensis*, W Europe. 4275 apparently occupied nests, representing an average of 7.7% of the breeding population (Seabird 2000 Census)

4 Common tern, *Sterna hirundo hirundo*, N & E Europe 408 apparently occupied nests, representing an average of 4% of the GB population (Seabird 2000 Census)

5 Little tern, *Sterna albifrons albifrons*, W Europe 291 apparently occupied nests, representing an average of 2.5% of the breeding population (Seabird 2000 Census)

*Species with peak counts in spring/autumn:*

Red knot, *Calidris canutus islandica*, W & Southern Africa (wintering)

30781 individuals, representing an average of 6.8% of the population (5 year peak mean 1998/9-2002/3)

*Species with peak counts in winter:*

Pink-footed goose, *Anser brachyrhynchus*, Greenland, Iceland/UK

16787 individuals, representing an average of 6.9% of the population (5 year peak mean 1998/9-2002/3)

Dark-bellied Brent goose, *Branta bernicla bernicla*, 8690 individuals, representing an average of 4% of the population (5 year peak mean 1998/9-2002/3)

Eurasian wigeon, *Anas penelope*, NW Europe 17940 individuals, representing an average of

1.1% of the population (5 year peak mean 1998/9-2002/3)

Northern pintail, *Anas acuta*, NW Europe 1148 individuals, representing an average of

1.9% of the population (5 year peak mean 1998/9-2002/3)

*Species/populations identified subsequent to designation for possible future consideration under criterion 6.*

*Species with peak counts in spring/autumn:*

Ringed plover, *Charadrius hiaticula*, Europe/Northwest Africa 1740 individuals, representing an average of 2.3% of the population (5 year peak mean 1998/9-2002/3)

Sanderling, *Calidris alba*, Eastern Atlantic 1303 individuals, representing an average of 1%

of the population (5 year peak mean 1998/9-2002/3)

Bar-tailed godwit, *Limosa lapponica lapponica*, W Palearctic 3933 individuals, representing an average of 3.2% of the population (5 year peak mean 1998/9-2002/3)

Contemporary data and information on waterbird trends at this site and their regional

(sub-national) and national contexts can be found in the Wetland Bird Survey report, which is updated annually. See [www.bto.org/survey/webs/webs-alerts-index.htm](http://www.bto.org/survey/webs/webs-alerts-index.htm).

*Physical features of the site:*

Soil & geology: sedimentary, metamorphic, sandstone/mudstone, limestone/chalk, clay, mud, sand, shingle, boulder

Geomorphology and landscape: coastal, intertidal sediments (including sandflat/mudflat), open coast (including bay)

Nutrient status: mesotrophic pH circumneutral Salinity brackish / mixosaline, fresh, saline / euhaline

Soil: mainly mineral

Water permanence usually permanent

([www.metoffice.com/climate/uk/averages/19712000/sites/marham.html](http://www.metoffice.com/climate/uk/averages/19712000/sites/marham.html))

*General description of the Physical Features:*

The North Norfolk Coast is a low-lying barrier coast that extends for 40 km from Holme to Weybourne and includes a great variety of coastal habitats. The main habitats – found along the whole coastline – include extensive intertidal sand- and mud-flats, saltmarshes, shingle and sand dunes, together with areas of freshwater grazing marsh and reedbed.

To the west, the coastal habitats of North Norfolk Coast are continuous with The Wash, with the ecology of the two sites intimately linked.

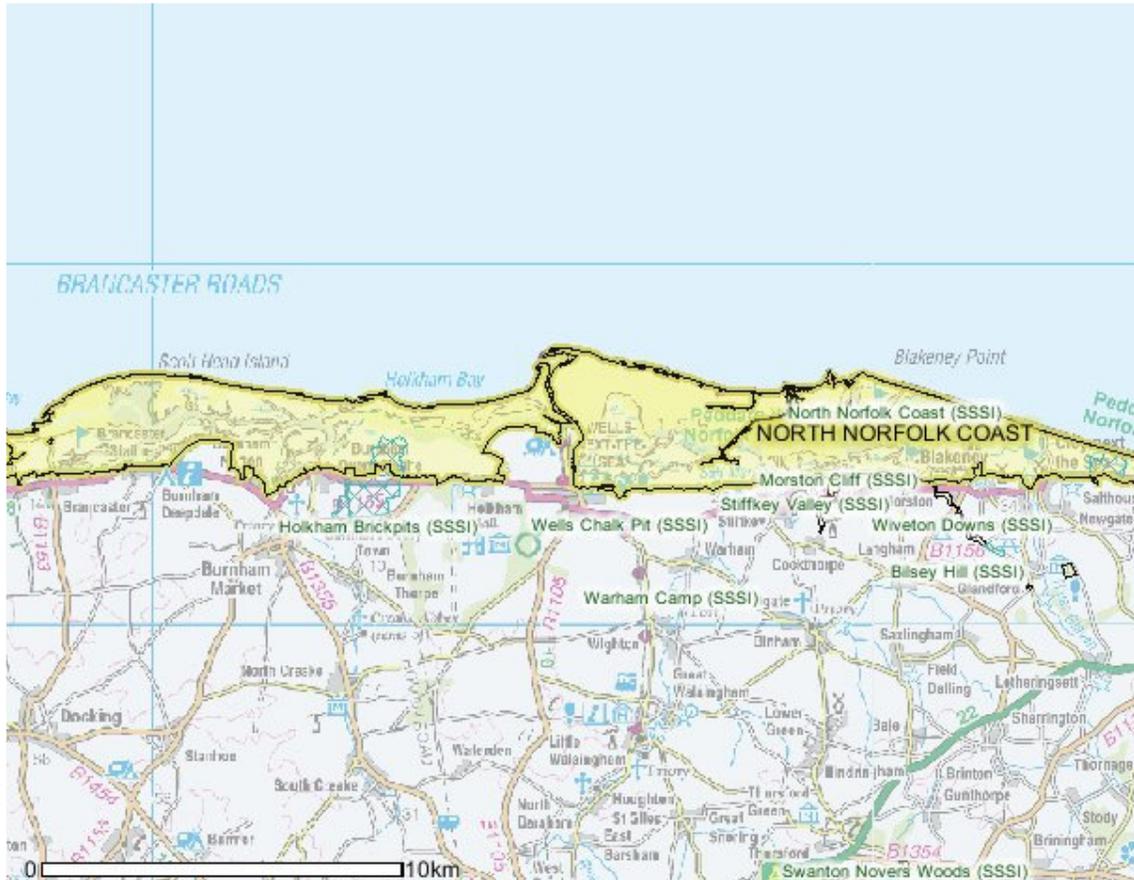
*General ecological features:*

The area consists primarily of intertidal sands and muds, saltmarshes, saline lagoons, shingle banks, and sand dunes. There are also extensive areas of freshwater grazing marsh and reedbed. The coast is of great physiographic interest and the shingle spit of Blakeney Point and the barrier island of Scolt Head Island are of special importance. The salt marshes are mostly developed behind barrier beaches or on sheltered parts of the coast and show zonation from scarcely vegetated sand and mud at the seaward edge to maritime grassland and tidal reedbed at the landward margin. The middle salt marsh is dominated in particular by *Limonium vulgare*, *Armeria maritima*, *Aster tripolium* and *Puccinellia* species. A nationally rare distinct community dominated by *Suaeda vera* occurs at the boundary between saltmarsh and sand dunes and includes a number of nationally rare plants. Dune systems occur in various places and range from moderately calcareous to moderately acid. There is a full development from fore dunes to grey mature dunes though slacks are relatively small. The dunes are covered with dune grassland, in places lichen heath whilst at Holkham, mature plantations of the introduced Corsican pine *Pinus nigra* var. *maritima* occur. The vegetation of the shingle ranges from disturbed almost unvegetated through to lichen heath. Natural brackish lagoons occur in places and are dominated mostly by *Ruppia*. The reclaimed grazing marshes are mostly semi-improved but have dyke floras which may be brackish or fresh. There are extensive freshwater reed beds in places.

The Ramsar management plan is currently in preparation.

## 2.2.5 North Norfolk Coast SSSI

Image of SSSI from: <http://www.natureonthemap.org.uk/map.aspx?m=sssi>



Different areas of the Site of Special Scientific Interest (SSSI) was designated at various times:

1954 – Blakeney Point, Holme Dunes, Cley & Salthouse Marshes

1968 – Morſton Saltmarshes, Brancaſter Manor

1969 – Stiffkey Saltmarshes

1972 – Thornham Marshes

1973 – Titchwell Marshes

The final notification date is of 1986 and there is not been a revision yet.

This is a composite site made up of two National Nature Reserves at Scolt Head and Holkham, and the former separate Sites of Special Scientific Interest at Holme Dunes, Thornham Marshes, Titchwell Marshes, Brancaſter Manor, Stiffkey Saltmarshes, Morſton Saltmarshes, Blakeney Point, Cley and Salthouse Marshes, plus several substantial additions. Scolt Head, Holkham, Blakeney Point, Cley and Salthouse Marshes are recognised as a RAMSAR wetland site and are included in the UNESCO list of Biosphere Reserves.

The reason for notification is the presence of intertidal sands and muds, saltmarshes, shingle banks and sand dunes. There are extensive areas of brackish lagoons, reedbeds

and grazing marshes. The coast is of great physiographic interest and the shingle spit at Blakeney Point and the offshore shingle bank at Scolt Head Island are of special importance. The whole coast has been intensively studied and is well documented. A wide range of coastal plant communities is represented and many rare or local species occur. The whole coast is of great ornithological interest with nationally and internationally important breeding colonies of several species. The geographical position of the North Norfolk Coast and its range of habitats make it especially valuable for migratory birds and wintering waterfowl, particularly Brent and pink-footed geese. The area, much of which remains in its natural state, now constitutes one of the largest expanses of undeveloped coastal habitat of its type in Europe.

The *Operations Likely to Damage the Special Interest* (“OLDs”) notified to landowners within the SSSI (section 28 Wildlife and Countryside Act 1981 , as amended) are as follows:

- 1 Cultivation, including ploughing, rotovating, harrowing, and re-seeding.
- 2 The introduction of grazing and changes in the grazing regime (including type of stock or intensity or seasonal pattern of grazing and cessation of grazing).
- 3 The introduction of stock feeding and changes in stock feeding practice, including changes in the number of animals stocked.
- 4 The introduction of mowing or other methods of cutting vegetation and changes in the mowing or cutting regime (including hay making to silage and cessation).
- 5 Application of manure, fertilisers and lime.
- 6 Application of pesticides, including herbicides (weedkillers).
- 7 Dumping, spreading or discharge of any materials.
- 8 Burning.
- 9 The release into the site of any wild, feral or domestic animal\*, plant or seed.
- 10 The killing or removal of any wild animal\*, excluding pest control.
- 11 The destruction, displacement, removal or cutting of any plant or plant remains, including shrub, herb, moss, lichen, fungus or turf.
- 12 The introduction of tree and/or woodland management+ and changes in tree and/or woodland management+.
- 13a Drainage (including the use of mole, tile, tunnel or other artificial drains).
- 13b Modification of the structure of watercourses (eg rivers, streams, springs, ditches, dykes, drains), including their banks and beds, as by re-alignment, re-grading and dredging.
- 13c Management of aquatic and bank vegetation for drainage purposes (see also 11).
- 14 The changing of water levels and tables and water utilisation (including irrigation, storage and abstraction from existing water bodies and through boreholes).
- 15 Infilling of ditches, dykes, drains, ponds, pools, marshes or pits.
- 16a The introduction of freshwater fishery production and/or management\*\* and changes in freshwater fishery production and/or management\*\*.
- 16b Changes in coastal fishing practice or fisheries management and seafood or marine life collection\*\*\*.
- 17 Reclamation of land from sea, estuary or marsh.
- 18 Bait digging in intertidal areas.
- 19 Erection of sea defences or coast protection works, including cliff or landslip drainage or stabilisation measures.
- 20 Extraction of minerals, including shingle, sand and gravel, topsoil, subsoil, shells and spoil.

- 21 Construction, removal or destruction of roads, tracks, walls, fences, hardstands, banks, ditches or other earthworks, or the laying, maintenance or removal of pipelines and cables, above or below ground.
  - 22 Storage of materials.
  - 23 Erection of permanent or temporary structures, or the undertaking of engineering works, including drilling.
  - 24 Modification of natural or manmade features including re-grading dune and shingle landforms.
  - 26 Use of vehicles or craft likely to damage or disturb features of interest, including the fauna, flora and dune or shingle landforms.
  - 27 Recreational or other activities within the control of the owner or occupier likely to damage features of interest, including the fauna, flora and dune or shingle landforms.
  - 28 Introduction of game or waterfowl management and changes in game and waterfowl management and hunting practice.
- \* 'animal' includes any mammal, reptile, amphibian, bird, fish or invertebrate.  
 + including afforestation, planting, clear and selective felling, thinning, coppicing, modification of the stand or underwood, changes in species composition, cessation of management.  
 \*\* including sporting, fishing and angling.  
 \*\*\* including the use of traps or fish cages.

At present, according to the Natural England condition summary 96.62% of the area is in favourable conditions, with only 2.80% in unfavourable recovering.  
 Description of the conditions of each of the 70 units to be retrieved at:  
[http://www.sssi.naturalengland.org.uk/special/ssi/unitlist.cfm?ssi\\_id=1001342](http://www.sssi.naturalengland.org.uk/special/ssi/unitlist.cfm?ssi_id=1001342)

### 2.2.6 Scott Head Island National Nature Reserve

Information from sheet retrieved at:  
<http://www.naturalengland.org.uk/ourwork/conservation/designatedareas/nnr/1006129.aspx>

#### Location

#### Map



**Location:** F802463, north west of Burnham Market. Landranger 132.  
**Habitats:** Sand dunes, mud flats, saltmarsh, shingle.  
**Species:** Wintering birds e.g. Brent and pink footed geese, breeding birds e.g. terns, ringed plover, oystercatcher, sand dune and saltmarsh flora

Scolt Head Island is an area some 727 ha. in size of continually changing sand dune, beach and saltmarsh, and is part of the North Norfolk Coast SSSI. It is owned jointly by The National Trust and Norfolk Wildlife Trust and has been a nature reserve since 1923. It is managed under lease by English Nature. The island is much used for ecological research and teaching by schools and universities. The “skeleton” of Scolt Head Island, which experts now believe formed only 1000 years ago (it was thought to be much older), is made of glacial shingle above which sand and silts were deposited.

Four major habitats, shingle, intertidal mud and sand flats, sand dunes and saltmarsh have been identified on Scolt Head Island: these also occur at Blakeney Point. The vegetation of Scolt Head Island is very similar to that at Blakeney Point. Many beautiful and interesting plants characteristic of these coastal habitats such as sea Campion, bird’s-foot trefoil, sea bindweed, sea holly and shrubby sea blite may be seen. During the summer breeding season, the nests of several shoreline birds, including ringed plover and oystercatcher occur in shingle scrapes near the landing point. Both eggs and chicks are well camouflaged. At the Ternery to the west of the island, which is closed to visitors during the breeding season (mid-April to mid-August), several species of tern raise broods in the shingle and sand dunes. The most numerous are the sandwich terns : the reserve can hold up to 25% of the UK total of nesting sandwich terns. Common terns, little terns and small numbers of arctic terns also nest here. During the spring and autumn bird migrations, additional species may be seen such as flycatchers, warblers and chats. In the early summer, swifts, swallows and house martins pass from east to west as they arrive from Africa.

Scolt is internationally important for its over-wintering populations of geese. Dark-bellied Brent geese arrive in late September from Siberia. Pink-footed geese from Iceland and Greenland roost at the west end of the island and may number 50,000 by mid-winter. Other wildfowl such as wigeon, mallard, shelduck and teal may also be seen.

Scolt Head is classified as a non-intervention reserve where natural coastal processes are allowed to occur. Control of predator species is required, however, to prevent nesting birds from losing chicks and eggs. Management is also subject to a variety of Common Rights which are registered across the whole area.

## **2.3 Environmental Management**

### **2.3.1 Natural England – Strategic Approach and Key Issues**

#### *Environmental Governance*

Natural England is responsible for North Norfolk Coast SSSI, which comprises all the Brancaster case study commons except for Barrow Common. The Natural England warden’s involvement is just with Scolt Head Island, which is entirely common, and with Holkham, which is only partially common land. The Brancaster Commons Committee gathers together all the people that have an interest in the management of the common and is a very effective forum for resolving environmental governance issues, and for raising management questions from time to time as

necessary when they arise. Wildfowling is not a major problem in conservation terms, and is not very much discussed. Discussion revolves mostly around the harbour and boats and mooring. The Natural England Warden usually gives an update on management issues at Scolt Head Island and introduces any new works that they are doing.

The SSSI units are all in favourable conservation condition. The intertidal sand dunes are of special interest, but none of these habitats require active management, save for some control of crab fishing. More specifically, Natural England's management statement shows a presumption against active management in relation to the conservation of coastal lagoons, littoral sediments and coastal saltmarshes because the habitats are able to maintain themselves. They also host grazing-sensitive species of plant, and it is important that grazing by livestock should not be introduced. The lack of grazing livestock also reduces the need for active management of the habitat. More active management is, however, required for the dunes system - such as selective scrub management, and grazing or mowing to avoid a mix of dune scrub and woodland establishing itself that may eventually replace the habitats on stable areas of the dune. Active management is also required for marshy grassland, for example to remove invasive vegetation - traditionally achieved by grazing, with cattle being the preferred stock. All the habitats on the SSSI are highly sensitive to inorganic fertilisers and pesticides, applications of which should be avoided both within the site itself and in adjacent surrounding areas. Herbicides may be useful in targeting certain invasive species, but should be used with extreme care. Access to this site, and any recreational activities within, may also need to be controlled.

### *Commons Registers and Identification of Commoners*

None of the commoners were notified when the SSSI was renotified in 1986. It is considered to be impossible to find and then notify 300 or more people with common rights, many of whom are not registered on the commons register, and who live all around the UK. Although this means that the statutory consultation requirements for OLDs are inapplicable to the exercise of common rights in the North Norfolk SSSI, this is not considered by Natural England to be problematic. The administrative difficulty of notification, and of exercising the statutory consultation requirements for OLDs in respect of the common rights to be found at Brancaster, would be too burdensome to be of practical utility. Natural England employs the concept of sufficiency of the common in informal discussions with the commoners so that they are aware that they can exercise their rights in so far as the environmental value of the common remains sufficient. The only major potential problem from a conservation standpoint would be the exercise of grazing rights. But a pragmatic view is that the reintroduction of grazing livestock on the common grazing marshes will never happen - and attempting to prevent the exercise of grazing rights by notify OLDs to those commoners with grazing rights registered on the common is therefore not worthwhile. Semi structured interviews with commoners who possess grazing rights on CL 65 confirmed that the difficulties of managing cattle and sheep on the common, given the nature of the land, were such that they had no intention of reintroducing stock to the common.

### *The Impact of Common Rights on Wildlife Conservation*

The most controversial common right is the wildfowling right. Several interviewees in the research sample claimed that there are non-common rights holders with membership in the local gun club, and that as a consequence it is clear that wildfowl are taken on occasions without the benefit of a common right. Shooting is generally not problematic in terms of its impact on the conservation status of the SSSI and its protected species of wild bird. There are issues of good practice, but Natural England do not consider the number of birds taken by wildfowling to be relevant in terms of bird mortality. There is some disturbance of the bird populations on the SSSI and SPA -especially of Icelandic pink footed geese- but this is not sufficient to endanger the coherence of the bird populations (the relevant point of measurement for the EC Wild Birds Directive).

Some of the research sample considered that problems arise from the fact that those coming from outside to shoot over the common have no interest in husbanding the common resource, and that it has no sense of “belonging” to them. Splitting rights was also a contentious issue for the research sample. Although the commons registration authority (Norfolk County Council) permit a right to be split into a maximum of 4 portions, the fact that the rights apportioned are unquantified creates problems. Division should in principle lead to the acquisition of one-quarter of the wildfowling right that has been apportioned, but there is no monitoring of the quantity of birds taken by wildfowlers. In practice this means that those with an apportioned right may take the same quantity of birds as those with a full (unapportioned) right. The legality of this practice has never been tested.

The principal right that is currently exercised, other than wildfowling, is samphire picking. Shingles occasionally are taken by the fishermen. Nobody picks the sea lavender, and very few now dig bait (although this used to be a big problem in the past) or take shellfish from the common. The community is close knit, and consequently most people know what other commoners do and what they take from the common resource. Very little antagonism currently exists between Natural England and the commoners. Some of the research sample referred, however, to problems that occurred in the 1950s when the former Nature Conservancy Council did attempt to take absolute control of the wildfowling on Scolt Head Island, prompting a strong reaction from the commoners. Natural England today usually acts informally if it needs to address management issues with the commoners, rather than relying on its legal powers to enforce changes in management e.g. those in the Wildlife and Countryside Act 1981.

### *Management Agreements*

Farming takes place on Thornham common, but not on the grazing marshes at Brancaster. There is only one WES agreement for the Thornham common because nearly all the stints are held by one commoner - officially the agreement is with Thornham cattle gate holders, and it also regulates reed cutting. Ideally, Natural England consider that they should perhaps have another WES agreement to control the reed cutting that takes place in Brancaster. This is not in practice problematic, however, as the National Trust (in their capacity as landowners) closely monitor reed cutting in Brancaster.

### *The Commons Register*

Natural England does not use the commons registers for management purposes because the registers are not updated, and therefore rarely represent the reality of land use on the ground. They consider that the only relevant use they have is for identifying the boundaries of the common. Overall, the commons registers were not considered to be very important for land management and decision making.

### *Potential issues of conflict*

One potential problem will be dredging the harbour at Burnham Overy. This will require consent under the WCA 1981. There is no common right to dredge the harbour, so the National Trust will (as landowner) have to take the lead in executing the work. The Trust has been served with the SSSI notification and the statutory consultation powers of the WCA 1981 will apply, requiring consent from Natural England before the work could be carried out. A second problem area is mooring fees. Lord Leicester leases the harbour land to a Burnham Overy Harbour Trust. The commoners maintain that they need a mooring and a boat to exercise their common rights i.e. that they are an ancillary right to their common rights.

### *Commons Act 2006*

Most commoners interviewed had no knowledge of the Commons Act 2006 but thought there may be some advantages from having a commons council. Wildfowling rights could be legally controlled more effectively, but it is unlikely that the commoners would want to do it.

### **2.3.2 Brancaster west marshes management realignment scheme**

A marine policy implemented in Brancaster has been the management realignment scheme. Because of past events of flooding in the area (most recent one of 1996) and potential future flooding due to sea level rises, the management realignment has been chosen as a coastal defence strategy, especially to protect the Special Protection Area.

Following images from (Jude, S. et al 2003 : 5-6), retrieved at [http://www.kolleg.loel.hs-anhalt.de/studiengaenge/mla/mla\\_fl/conf/pdf/conf2003/66jude.pdf](http://www.kolleg.loel.hs-anhalt.de/studiengaenge/mla/mla_fl/conf/pdf/conf2003/66jude.pdf) )

Visualisation of Brancaster site **before** the management realignment scheme



Visualisation of Brancaster site **after** the management realignment scheme



A WCS view of the Brancaster site **before** the management realignment scheme



A WCS view of the Brancaster site **after** the management realignment scheme

*Contrasting Stakeholder perceptions:*

The Environment Agency stresses the long term benefits of the scheme: the lowering of the risk of flooding from the present level of a 1 in 5 yr risk to 1 in 50 yr and the compliance of the scheme with the European Directives and the positive Environmental Impact Assessment. Also, economically speaking, the scheme is less costly (£389k), than if nothing had been done (£468k) or if the line had been held (£508k).

Common Rights holders negative because saw the scheme as “giving in” to the sea and the consequent intrusion of salt marshes that could hinder the recovery of habitat. Nevertheless, these are mainly short term concerned as there should not be major detriment to the ecological integrity of the site (L.B. Myatt-Bell et al. 2002: 51- paper in Marine Policy retrieved at:

[http://www.sciencedirect.com/science?\\_ob=ArticleURL&\\_udi=B6VCD-44B6TNJ-1&\\_user=10&\\_rdoc=1&\\_fmt=&\\_orig=search&\\_sort=d&\\_docanchor=&\\_view=c&\\_searchStrId=995720603&\\_rerunOrigin=scholar.google&\\_acct=C000050221&\\_version=1&\\_urlVersion=0&\\_userid=10&md5=5a45bc1a9d988f805e6f8075d5168f9a](http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6VCD-44B6TNJ-1&_user=10&_rdoc=1&_fmt=&_orig=search&_sort=d&_docanchor=&_view=c&_searchStrId=995720603&_rerunOrigin=scholar.google&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=5a45bc1a9d988f805e6f8075d5168f9a)

### **3 INSTITUTIONS**

#### **Brancaster Commoners Association**

Scolt Head & District Common Rights Holders’ Association, established in 1984  
<http://www.northcoastal.co.uk/scolthistory.htm>

#### **Brancaster Commons Committee**

Brancaster Commons Committee, founded in 2000. It is an executive committee bringing together various stakeholders, and to some extent embodies many features (in a non-statutory form) of a statutory commons council as envisaged by Part 2 of the Commons Act 2006.

The stakeholders are:

- 1) The National Trust's area manager
- 2) 5 members of the common right-holders association (1 to be the chairman)
- 3) The parish council
- 4) The district council
- 5) The county council
- 6) Brancaster fairways advisory committee
- 7) Golf club (as invited)
- 8) Natural England (as invited)
- 9) National Trust property manager (as observer only)

Its proceedings are governed by formal constitution - the Brancaster Commons Committee Rules for the Conduct of Business. The stakeholders' perceptions of these institutions are discussed above.

#### **4 PERCEPTIONS OF COMMONS MANAGEMENT**

This section reports the information on contemporary commons management gathered during the semi-structure interviews conducted with commoners holding rights on CL65, the most extensive land unit.

##### **4.1 Environmental Designations and role of Natural England**

The commoners were aware of the list of Operations likely to Damage the conservation interest under the SSSI notification on the common, but were also aware that this was not enforced.

##### **4.2 Rights of Common and Rights Holders Perceptions of them**

They were aware of the existence of rights to take samphire, driftwood, sand collection, grazing, and wildfowling. The nature of the common rights actually exercised has changed from the past, when commoners would take cockles, mussels, crabs, samphire for subsistence. Today the wildfowling right and right to take samphire are the principal common rights that are exercised, with wildfowling perceived as the most important in economic terms. This had brought about a change in the bird communities prevalent on the common in the view of commoners.

They were asked about their awareness of legal restrictions on the use of the common land and on the exercise of common rights. The commoners in general answered to the effect "we use all of the rights when we want and where we want on the common". There is therefore a very different situation in this case study to that in the other case studies - Eskdale, Elan Valley, Ingleton – all of which are upland farming commons. There is no local tradition of localised usage of the common resource, akin to livestock "hefting" (or localised use of sheepwalks on the common), and little understanding of the problems caused by the existence of unexercised common rights.

Farming at Brancaster is a marginal economic activity, given the nature of the common rights. There are no environmental land management agreements and only two commoners claim the single farm payment (on their inbye land, not on the common). Only one of the interviewees had grazing rights on CL 65, but he does not claim single farm payment on the common grazing. In his view there were insufficient common rights to make claiming the single payment on the common land economically beneficial for his own enterprise.

Apportionment of common rights is a problem, as noted above. The commoners expressed the view that unquantified wildfowling rights should not be apportioned. The only right that should be capable of apportionment in their view is common grazing. The stance of Norfolk County Council, which allows the splitting of the rights, was viewed as controversial. The Council will not accept more than 4 people as the registered owners of a right – the justification for this is the restriction on the vesting of legal title to land in more than four people by the Law of Property Act 1925 section 36. However, the council initially allowed, under the CRA 1965, the registration of up to 10 people under one entry in the commons register. The sale and splitting of rights of wildfowling is mainly attributable to people who do not live in the area and look merely at the monetary value of wildfowling. It is economically profitable to bring people to shoot for sporting purposes, and not because of the income generated by the birds which are shot, whose carcasses are often left on the common. Moreover, the commoners interviewed were aware that the rights of common are, by custom, limited to the satisfaction of the holder's needs, and commercial wildfowling (or harvesting of samphire for commercial purposes) should not therefore be allowed.

The Commons Registers disclose that all the rights in CL 65 are registered in gross. This was an informal decision made by the rights holders at the time of registration in the late 1960s and has benefitted the locality by keeping the rights within local families. If rights had been registered as attached to dominant tenements (i.e. as appurtenant rights) this would have been impossible, due to house price inflation in the area, especially over the last 10 years. The commoners strongly expressed the view that local people cannot afford to buy properties because prices are very high in the area. The registers are updated by the County Council so they did not consider there to be a particular need for the establishment of a live register under the Commons Act 2006. The Commoners Association has no monitoring functions. Statutory common councils could, they felt, be useful if able to issue byelaws on banning the splitting and multiplication of rights. However they felt it unlikely that they would become a reality in the area given that the commoners association functioned very well and the Brancaster commons committee (chaired by the National Trust) dealt with most matters in an efficient and pragmatic way.

Mooring Rights granted by the landowner at the harbour (Lord Leicester) was claimed to be interfering with the exercise of common rights to shellfish and other rights. Lord Leicester claims ownership of all moorings so it is difficult for common rights holders to claim their own mooring rights, which in their view should be ancillary rights to their rights of common. Those commoners that have their own mooring rights are still under the control of Lord Leicester given that he decides where people should put their boats.

Recreational use of the common was mentioned as an area of potential controversy. It was felt that recreational groups and the general public should only have a right to “air and exercise” under the CROWA 2000. Instead some groups film on the common and also do kite surfing.

#### **4.3 Management Institutions**

The Scolt Head and District commoners association was formed in 1984, so it did not deal with the registration of common rights under the CRA 1965. The Brancaster Commons Committee was formed in 2000. Common rights holders claim to have power to veto its decisions. The main issue of discussion at the meetings of the Brancaster Commons Committee is usually the harbour and mooring. The members of the association knew very little about the Commons Act 2006. Their view on Common Councils was that they might enable them to “tie things down” but were otherwise not needed as they were fully satisfied with existing informal management system. The question of compensation for imposing limits on the exercise of common rights through the use by a commons council of agricultural management powers was also raised as an issue.

#### **4.4 Sustainability**

In their view social sustainability has been under threat because of the apportionment of common rights. This also has the potential, in the commoners view, to impinge on the environmental sustainability of the common. The money is in bringing people down to shoot as a recreational activity, not in selling the wildfowl actually shot. Another problem in their view was the lack of monitoring: given the largeness of the area is not easy to “police” the common. In practice, however, common sense and a pragmatic approach has helped in avoiding overexploitation of the resource.