Response to Consultation on Nature Recovery Green Paper

Wildlife and Countryside Link, May 2022

Covering letter (emailed to naturegreenpaper@defra.gov.uk):

Thank you for the opportunity to respond to this consultation on the Nature Recovery Green Paper.

Wildlife and Countryside Link is a coalition of 65 environmental organisations in England, using their strong joint voice for the protection and enhancement of nature. This Link response is supported by the following Link members: A Rocha UK, Amphibian and Reptile Conservation, British Mountaineering Council, British Ecological Society, Buglife, Bumblebee Conservation Trust, Butterfly Conservation, Campaign for National Parks, Chartered Institute of Ecology and Environmental Management (CIEEM), ClientEarth, CPRE the countryside charity, Friends of the Earth, Greenpeace, Institute of Fisheries Management, League Against Cruel Sports, Keep Britain Tidy, Marine Conservation Society, ORCA, Open Spaces Society, Plantlife, People's Trust for Endangered Species, River Restoration Centre, RSPCA, the RSPB, Salmon & Trout Conservation, The Wildlife Trusts, Wildfowl and Wetlands Trust and Woodland Trust. This response is also supported by: Froglife.

The joint Link response consists of this covering letter, which highlights our key points and concerns on the Nature Recovery Green Paper, and our responses to the consultation questions below, which were also submitted via the online consultation form. For more information about this response, please contact Emma Clarke at Link (emma.clarke@wcl.org.uk).

The Green Paper should set out measures to halt and reverse nature's decline by 2030 and beyond. Stronger protection for sites and species is essential. Unfortunately, the proposals focus too much on simplifying process. They do not include vital changes nor additional measures for nature's recovery; on the contrary, there is a risk that over-simplification will lead to more legal challenges, greater costs, and weaker protection for nature. There is no time to waste with reform as 2030 quickly approaches. We must build on what we have and act swiftly to turn the tide of nature's decline given the size and urgency of the nature and climate crises.

There is no evidence to suggest that legal rules are standing in the way of making nature thrive in our protected sites. On the contrary, they are often the last line of defence. If the priority of the paper were to improve the condition of our most important wildlife sites, the conclusions would be wildly different: strengthen protection, designate more sites, and invest properly in their recovery.

To make a genuine difference for nature's recovery, we need a fundamental shift from a system designed to manage decline to one to enable nature's recovery and a joined-up plan for how that recovery is to be achieved. The system should embed international obligations and commitments and link with the devolved administrations, especially in the marine environment.

To achieve this, the Government needs to:

- **Confer greater protection from harm to all protected sites**. We know we need more, better, bigger and joined-up areas for nature and positive and effective restoration measures. We

need a levelling up of nature designations so that all protected sites are afforded greater protection from harm, including from off-site and cumulative impacts, ruling out damaging activities and development that will prevent the achievement of conservation objectives and the attainment of favourable condition. Sites should have effective management and be properly monitored in order to support and ensure good ecological condition.

- **Set out an expedited process for completing the protected site network and achieving 30x30 in a meaningful way**.
- **Establish a new planning designation Nature Recovery Areas**, in addition to existing protection. Sites should be identified through Local Nature Recovery Strategies (LNRSs), with a presumption against land use change that would hinder the recovery of nature.
- **Establish Favourable Conservation Status (FCS) as the guiding principle in species legislation**. The proposals in the Green Paper will fail to turn round the fortunes of declining species. Instead of rebranding and weakening protection, the Government should bring forward proposals for species recovery that work for plants, fungi and invertebrates as well as vertebrates. Current rules focus on preventing harm to our most endangered wildlife. Instead, the objective of achieving FCS should be established in law as a guiding principle for species and habitat conservation, including informing which species are protected, and all decisions with effects on species' populations and sustainability, including all planning, licensing and sustainable hunting and harvesting decisions that could affect those species, should be assessed against these FCS objectives. Redesigned species legislation should also include a separate requirement and listing on the welfare of wild animals to strengthen and more widely apply welfare protections.
- **Retain the essential aspects of the UK's most effective conservation laws, the Habitats Regulations.** Choices about development and land use that affect protected sites must follow rigorous process; relying on individual discretion would increase uncertainty for all (with an associated risk of increases in legal challenges) and the risk of environmental harm. Existing site protection rules, including case law and Habitats Regulations Assessment, should be retained and effectively applied to all protected sites and a wider range of plans, projects and activities. Choices about site designation should also be scientific, not political. Enabling Ministers to designate SSSIs could help protect more sites but must only be in addition to the legal duty to designate sites that meet scientific thresholds.
- **Set a specific nature and biodiversity recovery purpose for all Defra ALBs and remove the growth duty.** Whilst improvements in DEFRA's agencies are needed, particularly in regulation and enforcement, wider reform of the public bodies themselves could expend lots of time and effort, while holding back delivery of urgent environmental objectives. Institutional improvement could be made by setting nature's recovery—and in particular achievement of statutory nature and climate targets—as statutory purposes for all existing public bodies, including the Forestry Commission, RPA and MMO. The growth duty, which can be contrary to and/or distracting from nature recovery objectives and contribute to a lack of coordination between ALBs, should also be removed for all ALBs. We also know that lack of statutory funding is a large obstacle to the effective delivery of ALB functions – this must be considered in any review of effectiveness and addressed in any review or reform of ALBs.

The above measures will deliver nature's recovery; their absence from the Nature Recovery Green Paper will inhibit it. We hope that the Government will listen to this clear expression of concern from the nature sector and refocus the Green Paper away from administrative tinkering and towards meaningful efforts to deliver the commitment to recover nature by 2030 and beyond.

Response to consultation questions (submitted via online consultation form):

Protected sites: a new consolidated approach (page 8)

7. What degree or reform do we need to ensure a simpler and more ecologically coherent network of terrestrial protected sites? We would be particularly interested in your views of how we can have a coherent, effective and well-understood system of protections, as well as supporting the delivery of our legal binding species abundance target and other potential long-term targets.

*Please tick the option you prefer and explain your answer in the free text box. (Option 1: Reform including a tiered approach emulating the approach taken in the marine area for HPMAs and MPAs, consolidating existing protected site designations and the creation of highly protected sites/Option 2: Lighter touch reform including streamlining existing site designations (SACs, SPAs, and SSSIs)/Option 3: Amalgamation into a single type of designation with a scale of protections/**Other**/No reform/Do not know)*

We support a lighter touch reform that would streamline and level up existing site designations (SACs, SPAs and SSSIs). However, we do not support the proposals in the Green Paper as they would result in a 'levelling down' of protections for our most important nature sites. Instead, we suggest 'levelling up' site protections so that all sites enjoy a stronger level of protection than SACs and SPAs currently provide.

Nature in England is still in decline.[1] The Government has international obligations such as the Bern and Biodiversity Conventions and 30x30, as well as domestic legislative objectives, including the species abundance target and other Environment Act targets, and domestic ambitions, as set out in the 25 Year Environment Plan. To make a genuine difference for nature and contribute to meeting these environmental obligations and objectives, the Government must set out proposals for better, more, bigger and more joined up protected sites to help reverse the decline of wildlife and habitats.

The terrestrial protected site network (including freshwater habitats) in England affords long-term protection mechanisms, if used, would drive good management for many of England's important sites for nature. However, the majority of sites are not in good condition for nature.[2] Protection from harm is not always secured and can be inconsistent. Also, the protected site network does not sufficiently cover our most threatened species and some other taxa, including plant and invertebrates. The terrestrial protected site network only covers 8% of England, much lower than the minimum of 16% of land that scientific evidence suggests should be strictly protected and managed for nature to create a resilient ecological network in England and far below the 30% that Government has committed to achieve through protected sites and Other Effective Area-Based Conservation Measures (OECMs).[3]

Instead of improvements to the terrestrial protected sites system that could make a genuine difference for nature, the proposals in the Nature Recovery Green Paper risk levelling down protections for important nature sites and wasting time on process-focused legislative reform. In any reform package, no individual protected site should have its protections reduced. The Green Paper also fails to address the key issues of neglect and the lack of proactive management and monitoring that is resulting in the poor condition of many protected sites.

[1] State of Nature Report 2019
[2] 'Extent and condition of protected areas' Natural England 2021
[3] 'Defining and delivering resilient ecological networks: Nature conservation in England' Isaac et al. 2018

It is not appropriate to rhetorically link both marine and land highly protected sites in the Green Paper as they function very differently; HPMAs at sea flourish when fully left alone for example, which will be different to direct management intervention need to recover degraded sites on land.

The terrestrial protected site network must be: 1) strengthened or 'levelled up' by building on SACs and SPAs, 2) brought into good condition by investment and implementing management measures and 3) completed by quickly designating new sites:

1) Levelling up to stronger protections

All existing SSSIs, SACs, SPAs and Ramsar sites should be levelled up to a single, re-branded designation with a stronger level of protection than currently enjoyed by SACs, SPAs and Ramsar sites. We seek confirmation that Ramsar sites will get the appropriate legal footing they have been lacking for many years. The protection afforded to SACs and SPAs through the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) is stronger and more effective for nature than SSSI sites.[4] Currently SSSIs are afforded legal protection through the Wildlife and Countryside Act 1981, which does not clearly cover offsite or cumulative impacts nor afford adequate protection from development within the National Planning Policy Framework (NPPF), which still allows development which is likely to have an adverse effect on an SSSI to proceed if the development's benefits are considered to outweigh the adverse effects on the SSSI.

SACs and SPAs (and Ramsar sites as a matter of policy) are afforded a stronger level of protection through the Habitats Regulations and the NPPF which stipulate that plans or projects that could have adverse effects on those sites, including offsite and cumulative/combined effects, should not proceed. However, there are still cases where plans and projects that have adverse effects on SAC and SPA sites are allowed.

Time and resources for all involved in the system could be saved by making protections clearer and more certain to screen out more proposals in the first place, before they reach the assessment phase. For example, all heather burning on peat in protected areas should not be allowed and all conifer planting within a certain distance of bogs in protected areas should not be allowed.

Existing protections for SACs, SPAs and Ramsar sites should be tightened up and better applied. There should be better and more consistent application of the check for cumulative/combined effects (that is the proposed plan or project may have a significant effect when combined with any other proposal planned or underway that also on its own does not have a significant effect) and of the precautionary principle (where there is not enough evidence to rule out the risk of a proposal, an appropriate assessment must be carried out). After the appropriate assessment evaluates the likely significant effects of the proposal in more detail and identifies ways to avoid or minimise any effects, the number of plans and projects that may have adverse effects on an SAC or SPA that qualify for an exemption through the derogation process should be reduced. Currently plans and projects are allowed to proceed for 'imperative reasons of overriding public interest' (IROPI). This definition should be tightened through guidance specifying that 'imperative reasons of overriding public interest' do not include, for example, some housing and transportation. Providing more certain and consistent protection for important nature sites will result in better environmental outcomes and provide more certainty, consistency and resource efficiency for those involved in the system, e.g., developers, public authorities and statutory agencies as well as NGOs.

[4] https://community.rspb.org.uk/ourwork/b/martinharper/posts/what-has-the-eu-ever-done-for-wildlife; https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12196

Both the SSSI consenting mechanism, the list of operations that need consent to go ahead on an SSSI, as well as the Habitats Regulations Assessment, which is the formal process by which likely significant impacts of projects and plans are assessed, should be retained in this levelled up approach.

All current SACs, SPAs, Ramsar sites and all SSSIs not currently also an SAC, SPA or Ramsar site designation (a small proportion of SSSIs) should be levelled up to this stronger re-branded designation.

2) Implementing management measures and increased investment

Sites in the terrestrial protected site network must be brought into good condition by better applying existing management tools. The existing strong obligations for good management for habitats and species in the Habitats Regulations should be retained. The management tools in the Wildlife and Countryside Act 1981[5], such as powers for conservation agencies to refuse consent for damaging activities on SSSIs and the introduction of management notices to combat neglect on SSSIs, should be considered and applied to bring sites into good or recovering condition.

We support the Government's proposals to increase the role and strength of Site Improvement Plans (SIPs). These plans could be incorporated into Protected Site Strategies under the Environment Act 2021, which should also identify critical thresholds for adverse effects in order to help screen out more plans and projects, and set proactive management measures needed to get sites into good condition and aid effective mitigation of impacts. There should be a statutory obligation on public bodies to deliver, and report on progress against, the SIP actions as well as compliance with Protected Site Strategies.

Regular and appropriate monitoring of sites to assess their condition and ensure the implementation and effectiveness of management measures is essential for putting sites on a path to recovery. At present, 78% of SSSIs have not been monitored in the last six years.[6]

Resources and expertise are crucial for statutory bodies and landowners to deliver the management measures that are required to get protected sites into good condition for nature.

3) Completing the network by quickly designating new sites

The terrestrial protected site network must be expanded by quickly designating new sites. All sites identified as meeting the criteria for SSSI should be considered for designation, rather than just a representative sample. The law currently states that any area of land which is of special interest by reason of its flora, fauna, geological, geomorphological, or physiographical features should be designated and the JNCC guidelines identify the need to designate all that remains of rare and endangered habitats and species as well as a representative sample of widespread and common types. The partially-completed Natural England review of the SSSI network should be completed and implemented.

The completion of the protected site network should make sure that irreplaceable habitats, such as ancient woodland, pristine heathland, ancient grasslands and temperate rainforests, are better incorporated into the statutory designated sites network. This would go some way to addressing the current situation whereby just 16% of ancient woodland recorded on the ancient woodland

[5] Especially the additional protections and requirements brought in by the Countryside and Rights of Way Act 2000.
[6] https://www.theyworkforyou.com/wrans/?id=2021-02-09.151834.h&s=%27SSSI%27#g151834.r0

inventory is protected as an SSSI, for example.[7] Degraded irreplaceable habitats are still irreplaceable – tools should be levered to support their restoration and as much as possible they should be notified as SSSIs and other legal protections, e.g., in planning legislation, should be strengthened. that do not yet meet criteria for SSSI inclusion, other tools must be levered to support their restoration. All development that could have a negative effect on irreplaceable habitats must only be granted if there are no feasible alternative solutions, imperative reasons of overriding public interest and suitable compensation measures provided, as is the case for SACs, SPAs and Ramsar sites (and as would be the case if SSSIs were levelled up) and this should be laid out in legislation.

The evidence suggests that the current protected area portfolio does not sufficiently cover our most threatened species and that many protected areas are only managed for their designated features, rather than for all priority species found on site.[8] There are many other important sites for nature that have been identified but not designated, such as Important Invertebrate Areas and Important Plant Areas (IPAs).[9] The reviews of SPAs for birds should be implemented.[10] There should also be a targeted review of protected sites for taxa with inadequate coverage and representation, such as invertebrates, lichens and fungi.

Other important considerations in the expansion and creation of a resilient protected site network are connectivity, climate change and systematic conservation planning.

Part of the reason for the incompleteness of the protected site network is the time and cost involved in designations. The Government should invest in and streamline the process for designation of SSSIs to rapidly complete the network, safeguarding the remaining fragments of priority habitats and important places for wildlife around the country.

Local Wildlife Sites (LWS) that meet the SSSI criteria should be identified and designated under this levelled up statutory nature designation. LWS are important sites for nature, identified for their 'substantive nature conservation value using robust, scientifically determined criteria which consider the most important, distinctive and threatened species and habitats with the local, regional and national context.' Together with the statutory designated sites, they support much of the remaining high quality space for nature and are vital building blocks in the landscape-scale conservation needed to enable nature's recovery.[11] Currently Local Wildlife Sites are non-statutory sites, meaning they have no direct legal protection but they receive some measure of protection against harmful development under the NPPF. Taken together they represent a major national asset and along with SSSIs (which themselves are a representative sample of our best sites) they form the core foundation of a Nature Recovery Network and, if protected, would play an essential role in achieving the Government's 30x30 commitment. The importance of these sites for nature and their significant contribution to the protected site network must be recognised. LWS should be strengthened for

[7] https://researchbriefings.files.parliament.uk/documents/POST-PN-465/POST-PN-465.pdf
[8] https://www.sciencedirect.com/science/article/pii/S0006320721001981#bb0340
[9] In Europe, 85% of IPAs have some degree of formal protection, many have been integrated into national planning and monitoring schemes, have legal protection, or are included in an expansion of the Natura 2000 sites (https://rm.coe.int/european-progress-report-on-gspc-planta-europa/1680a0477a). Within England 95% of the 89 IPAs already fall within the SSSI network, and represent valuable hotspots for habitat connectivity and biodiversity.
[10] https://data.jncc.gov.uk/data/d1b21876-d5a4-42b9-9505-4c399fe47d7e/ukspa3-status-uk-spas-2000s-web.pdf
[11] The report, Making Space for Nature, sets out the steps needed to establish a coherent and resilient ecological network to rebuild nature. Available at: https://webarchive.nationalarchives.gov.uk/20130402170324/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf

nature through stronger and more specified protection against harm in the NPPF and resources for regular monitoring of these sites.

A levelling up of protections, more management action and investment, and more, bigger sites would lay the foundations of an effective protected site network. Nature cannot recover without an expanded, effectively protected network of sites for wildlife to thrive in.

8. What degree of reform for the marine protected area network do we need to meet our biodiversity objectives and commitments?

*Please tick the option you prefer and briefly explain your preference and what benefits or risks it may have in the free text box. (Option 1: Reform including a tiered approach consolidating existing protected site designations and the creation of highly protected sites/Option 2: Continuing to manage existing site designations (SACs, SPAs, and MCZs) similarly, streamlining our approach by to refer to them all as Marine Protected Areas (MPAs)/Option 3: Amalgamation into a single type of designation with a scale of protections/**Other**/No reform/Do not know)*

Other: level up all Marine Protected Areas to the same status, with HPMAs sitting on top as the gold standard of protection.

We would support a different option; we believe that existing marine site designations should firstly be levelled up to a higher level of protection affording them as a minimum the same level of protection as SACs and SPAs and all sites in the network be referred to as Marine Protected Areas (MPAs). We agree that referring to them in this manner would be useful from both a public communications and from developers' perspective. This should be accompanied by HPMAs as the gold standard, which could remain a distinct category of protected area, to highlight these are exceptional, resulting in a network of 'levelled up' MPAs, with HPMAs sitting on top as the gold standard of protection. This increased level of protection across all MPAs order to meet the commitment of at least 30% of UK waters highly or fully protected (according to IUCN definition) by 2030.

Our experience is that SACs, SPAs and MCZs are generally treated in a similar way and are underpinned by the same standard of conservation objectives and conservation advice. However, occasionally in development, MCZs are not treated equally to SACs/SPAs, especially at the plan level. In order to ensure the coherence of the MPA network, SACs, SPAs and MCZs must all be treated equally, which the levelling up of sites to the same level of protection would help tackle. This is supported in draft guidance by Defra on MPA compensation.[12]

The following points are also important to consider in reference to reform of the network:

- **Some caution is necessary in regards to HPMAs** as, although they are referenced in the document, they haven't yet been designated, meaning it is unclear exactly how they will be delivered; the ideal being in line with the Benyon Review recommendations.[13] So far there are only pilots and there is no form of success criteria identified. It is also not appropriate to rhetorically link both marine and land highly protected sites in the green paper as they function very differently; HPMAs at sea flourish when fully left alone for example, which will be different to direct management intervention of degraded sites on land.

[12] 'Best practice guidance for developing compensatory measures in relation to Marine Protected Areas' Defra 2021
[13] For Link's position on the criteria needed to make HPMAs a success, see https://www.wcl.org.uk/docs/assets/uploads/Link_HPMA_briefing_2022.pdf

- While this Green Paper proposes significant reforms to the network, **change can already be delivered through the existing framework** if there is the will to do so (Sussex IFCA trawling byelaws for example). The 2020 Fisheries Act gives the Government additional post-Brexit powers to impose limits on fishing vessel licences of all flags in UK seas. Without going through lengthy consultation processes, placing conditions on licences could be implemented by the end of 2022. Not only would this be possible legally, there is also a legal imperative on the Government to prevent it contravening marine and nature laws when it annually issues over 2,000 EU and UK fishing licences with freedom to fish in UK MPAs.
- Within the current framework there are examples of ministers ignoring advice of experts, de-designating parts of SACs for offshore wind and other environmental step-backs. With the current energy crisis, we are concerned that we could be designating for development within sites due to national energy security concerns, whilst environmental factors become secondary. With the continued failings under the UK Marine Strategy to meet Good Environmental Status (GES) for 11 out of 15 descriptors, environmental protection and recovery must remain the core function of protected areas at sea.
- The focus on these questions cannot distract from important questions around revising the **marine planning system**. Indeed, the management of our seas holistically will be crucial for nature recovery. The MPA network is a crucial tool to reach this goal, but cannot act independently of wider considerations.
- We would also advocate for the delivery of more effective management, which is currently lacking across the MPA network; indeed some sites still do not have management plans in place.[14]
- **It is vital that coastal sites are not overlooked.** The Green Paper does make a couple of references to Ramsar sites, but it is both in relation to marine protected areas and to the need for a consolidated terrestrial approach. On the other hand, though SSSIs are mentioned in their capacity to underpin 80% of SPA and SAC both on land and at sea, no mention is made of the coastal sites. In a context where European marine designated sites, Ramsar and SSSI may protect coastal features relevant for marine species and fully marine features under the same designation, there is a need to ensure consistency between the designation models to guarantee coherent management. By including coastal protected sites in both marine and land regime without guaranteeing consistency, there is a risk for these areas critical for both land and marine biodiversity to be omitted or overlooked.

Overall, while we support reform in this area, we believe that this must be used as an opportunity to improve both public understanding of the network and the strength of designations to support achievements under GES. Change cannot be allowed to result in deregulation and de-designation.

9. Do you agree that there should be a single process for terrestrial designation? We would be particularly interested in your views on how this might best be done for example, should decisions be vested in the appropriate authority [ministers] on the advice of its nature conservation bodies?

*Please tick the option you prefer and explain your answer in the free text box. (Yes/**No**/Unsure)*

No, there should not be a single process for terrestrial designation along the lines of the proposal in the Green Paper for the designation decision to rest with the appropriate authority (the Secretary of State).

[14] Developing an ecologically-coherent and well-managed Marine Protected Area network in the United Kingdom: 10 years of reflection from the Joint Nature Conservation Committee: Biodiversity: Vol 19, No 1-2

The Secretary of State could be given the power to designate sites, but this must be in addition to (not instead of) the current designation process where statutory agencies have a duty to identify sites that meet the criteria.

The current evidence-based approach to designation, where statutory agencies have a duty to identify sites that meet the clear objective criteria based on scientific evidence, which are not influenced by political drivers, and the consultation process where experts can input on site designation, must be retained.

An additional approach to designation where the Secretary of State could designate sites could be useful in speeding the designation process and quickly completing the protected site network and contributing to achieving 30x30. Any additional approach to designation must be science-based, robust, transparent and have sufficient checks and balances.

10. Should we reform the current feature-based approach to site selection and management to also allow for more dynamic ecological processes? We would be particularly interested in your views of how our sites can be made more resilient to climate and other natural changes and can encompass wider purposes such as carbon sequestration.

*Briefly explain your answer in the free text box. (**Yes, for both terrestrial and marine sites**/Yes, for terrestrial sites only/Yes, for marine sites only/No, neither for marine not terrestrial sites/Unsure)*

<u>For terrestrial sites:</u>

Yes, we support a whole-site approach to site selection and management for terrestrial sites, but only in addition to the existing features-based approach. Given that England is one of the most nature-depleted countries in the world, in many cases sites represent one of a few remaining strongholds of a particular habitat or species – we must therefore do everything to support the persistence and recovery of such key features.

The current features-based approach is valuable in directing management, evaluation and assessment of damaging activities, but whole-site approaches offer the potential to improve overall management and ecological function of a site and more flexible management to deliver benefits to many species and habitats. Expanding the number of features for different sites and applying a whole-site approach in addition to a features-based approach will enable better connectivity and resilience of protected nature sites, especially in the face of climate change. While we accept that some features may be lost to climate change impacts, this flexibility must only be used in those circumstances where it can be proven that climate change and/or extreme events have caused the loss of a feature from a particular site and that it is not used where a site has deteriorated or been lost due to lack of management or neglect. And where this is the case, other measures must be taken (for example elsewhere in the protected sites network) to ensure that the Favourable Conservation Status of the feature is not affected, and that no species is ‘left behind’ as a result of such action.

However there must be clarity for all, landowners/occupiers as well as potential developers, and consistency across both restoration and protection as well as consideration of the sites and its features within planning.

For marine sites:

We support a whole-site approach to site selection and management for marine sites, which also benefits non-feature habitats in MPAs. Current designations allow single features designation for sites, but we believe a whole site approach to management delivers more comprehensive recovery of both the feature(s) and the wider ecosystem processes that better support the biodiversity of the feature and its constituent species. This is particularly important if the Government intends to restore biodiversity rather than simply maintaining it and to simplify processes for regulators, allowing for more ecologically and cost-effective management.

The Whole-Site Approach (for management) needs applying for the following elements:

1. Fish and mobile species that are associated with features inside sites (particularly broadscale features), and
2. Elements of the site where features overlap, and or one feature doesn't clearly border another.

On the first of these points, this can be illustrated by aspects of ecological use by juvenile fish in more coastal MPAs. For example, seabass use estuaries. These sites host markedly different sub-habitats such as submerged mudflats, drying mudflats, seagrass beds and saltmarsh. By protecting the entirety of 'estuaries' rather than the sub-features (from set nets and longlines, and other damaging activities), we can protect the wider range of bass (research has suggested that the majority of smaller bass individuals remain faithful to their estuaries, moving in restricted areas,[15] but this will be between different habitats).[16] Similarly, 'landscape' (or otherwise 'whole site') scale research in the South Arran MPA in Scotland has shown overlap of different habitat use by cod, whiting and haddock juveniles between muds, sands, seagrass and reef. Therefore, protecting only individual habitats with associated management measures, will only allow protection of a small percentage of the cod population, without considering protection of other species or when cod are to move into deeper water habitats.

On the second of these points, this is a considerable factor in marine ecology. The spatial scales of use of habitat by different species is not 'black and white' due to poor resolution habitat maps. For example, the different species that colonise 'muds' to muddy sand' or from 'muddy sand' to 'gravel' can be contiguous.[17] A great example was between the reef of Lyme Bay vs sediment veneers. Similarly, high resolution photos taken around so-called gravel and sediment habitats in Eddystone MPA have revealed species more normally associated with pure reef habitat (pink seafans, sponges, bryozoans, corals and hydroids) growing in sand and sediments.[18] The mapping itself by NE, JNCC, IFCA and others can only show levels of accuracy at the *physical* broadscale habitat scale - often in terms of backscatter images related to perceived 'hardness' of the seabed. This does not allow for comprehensive spatial analysis of the *constituent species* within those different areas of

[15] https://pearl.plymouth.ac.uk/bitstream/handle/10026.1/16898/2021stamp10541011phd.pdf?sequence=1

[16] Estuaries and areas along the open coast are at least twice as productive as their subtidal counterparts. In part this explains why estuaries are so important as marine nursery grounds. However, the same logic can be applied to the coastal intertidal and immediate subtidal strip. In estuarine saltmarshes, it is the cryptic nature of the habitat which attracts young euryhaline fish e.g. bass to feed in warm shallow water while taking refuge from predators. On the coast we have removed much of the subtidal habitat, seagrass and kelp forest, that used to function as a nursery as the saltmarsh does elsewhere; in this case, for more stenohaline species such as gadoids and clupeids.

[17] 'Drawing lines at the sand: Evidence for functional vs. visual reef boundaries in temperate Marine Protected Areas' Sheehan et al. 2013 (Lines/boundaries between features cannot be functionally and ecologically clearly delineated, requiring more comprehensive management - this applies to all sorts of adjacent habitats, mudflats to sandflats, sand habitat to flat reefs, deeper sandbanks to surrounding troughs and muddier deeper waters).

[18] http://publicationslist.org/data/m.j.witt/ref-149/Pikesley_2021_MarPol.pdf (Sediments hosted reef associated species, even though these weren't officially 'protected')

reef/sand/gravel. The latter requires very distinct and high resolution imagery that is impossible to gather for every square metre of seabed in order to clearly delineate one habitat from another. To a certain degree, authorities have managed this 'uncertainty barrier' in terms of applying buffer zones in some sites (e.g., Lyme Bay, Eddystone, Essex Estuaries seagrass beds), but others have not (such as Eastern IFCA in protecting only small areas of sabellaria reef from shrimp trawls). Feature based management has been erroneously applied in some circumstances, with poor data, and furthering the interests of a small subset of seabed trawl users over the wider sea user stakeholder group, alongside being greatly complicated from the lack of consistent statutory agency advice. For example, the negotiations within Northeastern IFCA around 2013/2014 around closures for Flamborough Head SAC failed to take into account the precautionary principle when protecting the exposed chalk reef feature as a result of seasonal changes in the sedimentary veneer covering the feature. It was clear from photographic surveys undertaken by NEIFCA that at times of the year the chalk became exposed or covered lightly and remained subject to damaging or destructive bottom towed gear usage. Lack of consistent advice and strong stakeholder opposition resulted in this feature remaining outside of the closed area, leading to a large swathe of the SAC being left open to continuous damaging seabed trawling, even though the area concerned was only used to 'turn fishing gear around' rather than as a prime fishing ground for seabed trawlers. Such erroneous application of Article 6 and the conservation objectives for this site would not have happened had the regulator concerned better understood 'site integrity' requirements of the law, and the benefits that would accrue to wider ecosystems from a 'whole-site' approach to managing the ecosystem.

Management of sites on a feature basis is costly in terms of monitoring, requiring increased evidence to support presence of features within sites and fails to effectively protect ephemeral species such as biogenic reefs. Indeed, there is an assumption by some regulators that biogenic reef distribution at current times, or at times of designation are what we need to continue to manage. However, historical literature would suggest that for species such as sabellaria reef, oyster reef and mussel beds, these habitats were much more expansive in the past.[19] Sabellaria reef management in the Wash & Inner Dowsing and Race Bank SACs only protects areas where reefs currently exist. For the Wash byelaw, the regulator concerned (Eastern IFCA) only protected the reef feature in areas where the shrimp trawling fleet rarely has seen to be operating. Such management doesn't prove that, were the impact to be removed from the current trawling grounds, that the sabellaria wouldn't extend into more coastal waters that are the targeted shrimp trawling grounds. Furthermore, the beam trawling for shrimp in these sites has a very small mesh size. Despite installation of selection panels in the nets, there is huge estimated bycatch of plaice and cod at juvenile stage that is likely in breach of the habitats regulations because it is not proven if this is not adversely affecting the integrity of the site (and its constituent species).

Further offshore, the whole sites approach should also apply, in particular to protection and recovery of habitat for fish species. Sandeels require sandbank habitat to be healthy herring spawning locations need clean gravel, other higher trophic species that have been in precipitous decline since industrial fishing (North Atlantic halibut, angelshark, sturgeon), all would benefit from a whole-site approach to MPA management.[20]

This builds on our response to question 8 as it forms part of the 'levelling up' of sites.

[19] https://www.sciencedirect.com/science/article/pii/S0006320717308030

[20] https://www.bluemarinefoundation.com/2020/10/01/marine-experts-call-for-end-to-illegal-fishing-on-the-dogger-bank-in-new-report/

Climate considerations in the marine environment:

We also have concerns about the language over climate change. This cannot be used as a reason not to manage a site as it gets warmer; some features will remain important (such as sea mounts) no matter how much warming affects the sea.

We note the intention to apply for an exception under regulation 15, Marine Strategy Regulations 2010 for a number of descriptors, including Birds, for a series of reasons including: *action or inaction for which the United Kingdom is not responsible or natural conditions which do not allow timely improvement in the status of the marine waters concerned.* Despite this there are an alarming absence of concrete measures proposed and included to address threats from pressures that would build resilience across the relevant descriptors. It is essential that governments acknowledge and embrace their responsibility to recover the marine environment, including internationally important seabird populations and urgently introduce strong measures to address key threats to survival, especially measures that are possible and will build resilience.

The seas are dynamic and this is made more so by climate change. Climate change is likely to change species and habitats health, function and location over future years. Protected areas and effective spatial planning outside of those areas should take this into account. For example, there are likely to be warmer waters, leading some colder water species currently living at the edge of their geographical range retreating north (such as cod), while new warmer water species migrate further north (such as anchovy). It is important that those species living within their furthest extents (be it warm or cold) are not fished to a level where they are no longer able to demonstrate resilience to climate change, like cod in the Celtic Sea. It is necessary we account for these possibilities. To aid and support changes in species and habitats distribution, assessments from international bodies must include targeted climate adaptation strategies that specifically match issues such as Biotope Shift and reduce impacts on mitigation potential as part of adaptation, being part of a dynamic ecosystem-based approach. Going forward, the UK must request this additional information as standard.

Further, this links to the Joint Fisheries Statement (JFS) considerations to climate which set out a requirement for a climate change objective within the UK Fisheries Act to manage for climate change, yet provides no detailed policies regarding how this will be achieved. The JFS falls short on putting the ambition into action. We cannot continue acknowledging the need to manage for climate change while failing to put into action plans to deliver upon this.

To ensure greater resilience to climate and other natural change, the following is also required across sites and the activities that impact them:

- A halt of damaging activities in offshore MPAs
- Immediate introduction of bottom-towed gear-free zones across the most vulnerable habitats in nearshore waters
- Inclusion of climate change adaptation and mitigation considerations in scientific advice on fishing opportunities
- Better consideration of blue carbon would also help achieve the objectives set under UKMS. Indeed, while this is currently viewed as being outside the scope of the strategy, many descriptors could incorporate blue carbon elements. Measures for blue carbon habitat creation, restoration and protection would deliver climate mitigation and adaptation benefits that could help contribute to meeting GES across multiple descriptors.

We draw attention to the recent report developed by the Scottish Association of Marine Science on behalf of the RSPB, WWF, Blue Marine Foundation and North Sea Wildlife Trusts, demonstrating the

role effective MPA management can have in supporting climate resilience and note the full UK EEZ mapping will be complete by July 2023 following this same methodology.[21]

11. How do we promote nature recovery beyond designated protected sites?

On land:

A full network of protected nature sites, levelled up and well-managed, should form the heart of the nature recovery network.[22]

This core should be bolstered by reform of designated landscapes, which if reformed, portions of which could contribute towards the 30% target of land in England protected and well-managed for nature in order to create a resilient ecological network.[23] Combinations of other new and improved designations and OECMs should fill the remainder of the 30%, with a focus on connecting habitats across the landscape and making space for nature to recover.

The 30x30 target of protecting at least 30% of England's land by 2030 is not a ceiling but a minimum required to put England's habitats and wildlife into recovery.

We welcome the Government's acknowledgment that nature cannot be confined to 30% of the country and other areas must be hospitable to nature. Wildlife must be able to travel between protected areas along functionally connected blue and green habitat networks (such as B-Lines) through towns, cities, the countryside and the farmed environment. More space must be made for nature outside the protected area network and nature must be a consideration across planning and other decision-making.

Local Wildlife Sites have no statutory protection yet they hold much of the nature resource outside of statutory designated sites. They play a critical conservation role to a climate resilient landscape, improving ecological coherence, acting as stepping-stones, corridors and buffer zones to link and protect statutorily designated sites. To maximise their contribution to nature recovery they need better protection, management and monitoring.

None of this can be achieved without ensuring the environment is protected from harm through strong regulation and enforcement. At present, pollution continues to plague England's ecosystems, including from sewage, agriculture, industrial practices, and more. For example, 0% of rivers met good chemical status in 2021.[24] This is a clear indication of the scale of the pollution that we face. While we do not go into detail in this consultation response on how to prevent and clean-up pollution and environmental damage as it is not the focus, positive measures to promote nature's recovery will be futile unless we can prevent further damage.

To promote the recovery of nature across the country:

- Protected areas do not exist as islands but as part of a wider ecosystem of interactions outside of their boundaries. External threats such as atmospheric nitrogen deposition are one of the primary reasons that a large proportion of protected areas are in poor ecological condition. Selection pressures outside of their perimeters (mainly caused by agricultural

[21] https://www.rspb.org.uk/globalassets/downloads/policy-briefings/sams-03745-bcnsea-final-report---issue-03.pdf
[22] https://www.wcl.org.uk/docs/WCL_Achieving_30x30_Land_and_Sea_Report.pdf
[23] https://www.wcl.org.uk/docs/Link%20response%20to%20Glover%20Review%20FINAL%2008.04.2022.pdf
[24] https://www.wcl.org.uk/not-one-river-in-england-in-good-health.asp

intensification) need to be addressed in order to ensure protection and ecosystem function within them. Internal management and restoration can only go so far to driving nature's recovery within a matrix of anthropogenic pressures.

- A new duty on the Secretary of State should be introduced in connection with the land use planning system to provide a legal basis for protecting at least 30% of land in England by 2030 as well as driving nature's recovery elsewhere.
- Strategic spatial plans are needed to help integrate different land uses, including infrastructure and energy, nature, climate, farming and housing, and to identify environmentally important and sensitive areas in order to help avoid adverse environmental effects in the first place.
- Local Nature Recovery Strategies (LNRSs) must ensure that there are ambitious plans to restore nature, including habitats and species, everywhere to establish ecologically coherent and resilient ecological networks. LNRSs should be given weight in the planning system to ensure they are considered in Local Plans. Nature recovery areas should be identified through LNRSs and should receive planning protection through a 'presumption against land use change that would hinder the recovery of nature' in national planning policy.
- With effective management for nature and sufficient funding through the principle of public money for public goods, long-term ELM Local Nature Recovery and Landscape Recovery agreements could contribute to achieving nature's recovery both in protected areas and beyond, in building the wider NRN. These other areas may not meet the conditions to contribute to 30% but will still play an important role in nature's recovery.[25]
- Species Conservation Strategies should identify the range of measure needed to conserve species, which will include an area and extent of protected habitat, use of protected species legislation and regulation, incentivising land management through ELM and other financial incentives, advice and public engagement. These should be developed alongside clear conservation objectives, such as a definition of Favourable Conservation Status (FCS), and mapping and modelling that allows areas to be targeted for conservation action.
- Biodiversity Net Gain for all new developments must be secured in the long-term (we suggest longer than the current 30-year minimum period), supported by robust secondary legislation and guidance, and well-monitored, scrutinised, and enforced by a sufficiently resourced local planning authority in order to ensure genuine delivery for nature. BNG could be directed towards nature opportunity areas, for example as identified in LNRSs. Effective BNG is one in a suite of tools to secure resources for the enhancement of habitats to contribute to nature's recovery.[26]
- The planning system should make space for nature and integrate nature into all new development. All planning decisions should be required to contribute to the achievement of environmental goals (net zero by 2050 and halting the decline of species abundance by 2030).[27]
- Nature-based Solutions (NbS) can contribute to nature recovery and link nature's recovery, tackling climate change and building natural capital. NbS can assist in unlocking new funding sources, including private finance.

[25] https://www.wcl.org.uk/docs/Link_ELM_and_30x30_Briefing_Oct2021.pdf
[26] https://www.wcl.org.uk/docs/Link%20BNG%20consultation%20response%20-%20FINAL%2005.04.2022.pdf
[27] https://www.wcl.org.uk/docs/assets/uploads/Planning_for_Nature_What_now_28.10.21_1.pdf

At sea:

Whilst achieving a well-managed, ecologically coherent network of protected sites is vital to securing protection and recovery of both habitats and species, we must consider that over 60% of our seas falls outside of these sites. As such it is important we note the wider needs to achieve GES and ensure the delivery of effective marine spatial planning at sea for activity and wildlife.

As a top priority, the government must ensure that fishing catch limits are not set above scientifically recommended sustainable levels and that a precautionary approach is applied across the board in all fisheries management.

Offshore development in the UK has largely expanded in the absence of marine planning, including the growing roll out of renewables. This has led to:

- A disjointed approach whereby the demand for space is increasing but a holistic strategic framework to conserve and protect nature alongside sustainable development and fishing is missing; and
- A decision-making process which is struggling to deliver the much-needed energy transition due to the lack of marine planning and the scale and rate of applications being made alongside a failure to fully and robustly consider potential in-combination and cumulative effects.

While marine planning has been introduced in England, these systems have yet to deliver on these commitments and the lack of spatial plans to guide the sustainable use of our seas and tie into UK Marine Strategy commitments and requirements significantly jeopardises the UK's ability to achieve and maintain GES and healthy systems.

It is also worth noting that the current approach to planning offshore and coastal development threatens the achievement of net zero by not being strategic enough and not giving appropriate significance to climate and nature considerations. For example, The Crown Estate needs to work in closer collaboration with governments and industry to allow for holistic planning and management of our seas which is vital if we are to find space for nature, fisheries and development including through co-location of marine activities. The unsuitability of current systems to deliver the UK's ambition is evident in both the transmission network – established when the industry was a nascent sector and currently undergoing review – and the challenges facing developers in relation to the consideration and assessment of ecological impacts which should be addressed in the preliminary stages through a frontloaded, strategic plan led process.

Another example is in the area of seabed trawling affecting 'seafloor integrity' 'trophic food webs' 'commercial fish' and 'biodiversity'. A recent ICES report showed that reducing fishing pressure in Europe's seas by 10% in low-intensity fishing areas could free up as much as 40% of the seafloor.[28] This would enhance the integrity of the seafloor, but have other positive result on aspects of commercial species population enhancement (through habitat protection, increased food resources in the trawl-free zones), enable recovery of the entirety of the marine ecosystem (from habitats and species guilds on and in the upper sediment layers), to increasing biodiversity at the species (more benthic invertebrates) and functional group (more filter feeders on the seabed such as sponges and bivalves) levels.

The UK administrations must commit to and deliver effective marine planning required by the UK Marine Strategy. To aid this process, we strongly recommend the establishment of an overarching

[28] https://www.ices.dk/news-and-events/news-archive/news/Pages/seaflooradvice.aspx

vision for our seas and development of a roadmap which clearly identifies the steps needed to achieve GES and reach net zero and halt the decline of species abundance. This should be used to inform marine plans which:

1. Adopt an ecosystem-based approach
2. Establish a clear hierarchy which prioritises sea space and action for nature and climate
3. Facilitates holistic marine management

These marine plans should do the above by being:

1. Strategic: Following an ecosystem-based approach[29], ensuring that the collective pressures of human activities are compatible with achieving Good Environmental Status (GES), it must establish a clear hierarchy between policies and activities, with climate and nature as the top priorities.
2. Holistic: Cross-departmental action from Government is needed, so all marine activities and uses are included, and nature protection, recovery and enhancement must be considered as part of each of them.
3. Spatial: Using the best available evidence, the plans need to identify which areas are suitable for each activity.

This would support the delivery of both GES and sustainable development. Crucially, the UK urgently needs marine plans which provide a spatial vision for our seas based on a robust and iterative evidence base.

Arguably marine spatial planning in the UK requires a complete and urgent transformation - a need recognised by both NGOs and the renewables industry - however, it is possible to take more rapid steps in the short-term for example by establishing plans for sectors or development. We welcome the adoption of the Sectoral Marine Plan for Offshore Wind Energy in Scotland, as a positive step in the right direction and urge the other administrations to consider similar measures to ensure offshore developments benefit from appropriate spatial consideration in relation to their potential impacts on marine ecosystems, optimising colocation and prioritising space for climate and nature. With the ambitious and welcomed marine spatial prioritisation program not due to deliver for a new generation of better informed plan until at least 6 years, such plans focussing on addressing the needs of particularly demanding sectors could be a first step towards better management of activities at sea.

We strongly recommend the inclusion of targets for sectoral plans and/or development plans (according to need/country requirement) for renewables and other significant industries, and that these be recognised as measures needed to achieve GES. We note that this must be a short-term goal as a step towards the longer term need for strategic and spatial holistic marine planning.

On the proposal to test if the concept of nature recovery sites on land could inform the approach at sea, we are sceptical as this approach was not designed for the marine environment and shouldn't just be transposed across into the marine environment. MPAs are different to land based designated sites as they were identified in order to achieve an ecologically coherent network across UK waters. In order to boost recovery, these sites should be properly managed and damaging activities should either stop or be prevented from happening.

[29] https://www.legislation.gov.uk/uksi/2010/1627/pdfs/uksi_20101627_en.pdf

12. Do you see a potential role for additional designations?

*Please provide detail in the free text box. (**Yes**/No/Unsure)*

Nature is in rapid and continuing decline. Not only are species under threat of extinction and entire ecosystems at risk of irreparable erosion, but the loss of nature compromises the ability to both mitigate and adapt to climate change. We need to both protect existing nature and restore nature. However, there is no existing designation that protects land which is being managed to create new habitats and to enable nature to recover. It will be years or even decades before nature on these sites has recovered sufficiently for them to meet the strict criteria for current designated sites protections. We need a way of protecting these sites while they are still in recovery – through a new designation to safeguard land for nature's recovery.

We propose a nature recovery designation (which the Wildlife Trusts have proposed be called 'Wildbelt') to safeguard land for nature's recovery. This fills a current gap in environmental designations. It would enable land which has been identified as being of future importance for biodiversity and where there is the intention to manage this land to enable nature to recover, to be protected while it is currently of low but improving biodiversity value. This designation would protect the investment of significant public, charitable and private investment in nature restoration and help to secure progress towards the creation of the Nature Recovery Network in England.

Potential nature recovery sites should be identified through the Local Nature Recovery Strategy process, which is an evidence-based process, involving local community and landowner consultation, that will identify nature recovery opportunities in a local area. The nature recovery designation can be applied to any of the local nature recovery opportunity areas identified in an LNRS where: a) the landowner decides to opt into nature recovery site, or b) the Responsible Authority and local planning authority decides to designate the land as a nature recovery site on the basis evidence of its importance for contributing to the local ecological network.

The nature recovery designation would confer long-term protection from damaging land use change through a presumption in the NPPF 'against land use change that would hinder the recovery of nature') and these areas would be recognised in Local Plans. The designation would apply in addition to any other relevant designations, for example National Parks or AONBs.

When nature recovery sites improve and reach the appropriate criteria for inclusion, they may be designated as SSSIs or the levelled up nature designation.

The aim of a nature recovery designation is to put sites into recovery on a journey towards 30x30. Not all nature recovery sites would be able to contribute towards the 30% target, as some will not have management requirements and mechanisms. For those nature recovery sites that meet the 30x30 criteria of both protected and managed for nature in the long-term, only those later in their journey, which are in good or recovering condition for nature, could contribute towards 30x30.

In addition to a nature recovery designation, legal protection for ancient and veteran trees should be improved. They are not currently adequately protected by other tools, including the Tree Preservation Order (TPO) system. These are important habitats, with many protected species dependent on ancient trees, as well as forming part of our cultural and environmental heritage. Ancient and veteran trees can also provide connectivity across the landscape, for example as stepping-stones or within hedgerows as part of corridors.

Improved protection should mix a strategic approach that provides legal protection for the very oldest trees, alongside wider improvements to tree protection to more proactively protect other

important trees. Legal protection could start by designating the most ancient trees and we would be keen to explore whether this could be done through extending existing frameworks, for example on species protection, or through a new designation specifically for ancient trees.

Protected sites: site management and protection (page 13)

13. Do you agree we should pursue the potential areas for reforms on assessments and consents? *(Yes/No – keep as it is/**No – reform but not these areas or additional areas (please state why)**)*

The Nature Recovery Green Paper is proposing to "fundamentally change" the UK's most effective conservation laws, the Habitats Regulations, giving more discretion to individual decision-makers. Choices about development and land use that affect protected sites must follow rigorous process that takes into account national objectives, the National Sites Network management objectives and species conservation status; relying on individual discretion would increase uncertainty and the risk of environmental harm.

Defra's own review in 2012 found the Habitats Regulations fit-for-purpose.[30] We must retain the essential aspects of the Habitats Regulations, including the precautionary principle, existing site protection rules, case law, a robust legal assessment framework like the Habitats Regulations Assessment, and obligations for site management.

There are opportunities to strengthen aspects of the existing Habitats Regulations. There should be better and more consistent application of the check for combined effects (that is the proposed plan or project may have a significant effect when combined with any other proposal planned or underway that also on its own does not have a significant effect) and of the precautionary principle (that if there is not enough evidence to rule out the risk of a proposal, an appropriate assessment must be carried out). After the appropriate assessment evaluates the likely significant effects of the proposal in more detail and identifies ways to avoid or minimise any effects, the number of plans and projects that will have an adverse effect on a Natura site that qualify for an exemption through the derogation process should be reduced. The mitigation hierarchy should be enshrined in law to support early consideration and the highest standard of implementation to ensure nature's recovery. There should be continued test of significance on sites based on adverse effect on integrity. A broad sustainability test as mentioned in the Green Paper would not meet S.112(7) of the Environment Act, as it would reduce levels of protection. Currently plans and projects are allowed to proceed for 'imperative reasons of overriding public interest' (IROPI). This definition should be tightened through guidance specifying that 'imperative reasons of overriding public interest' do not include, for example, some housing and transportation, but could include, for example, flood defences. Providing more certain and consistent protection for important nature sites will result in better environmental outcomes and provide more certainty, consistency and resource efficiency for those involved in the system, e.g., developers, public authorities and statutory agencies.

These essential aspects of the Habitats Regulations should be retained, strengthened, and applied to all protected sites and a wider range of plans, projects and activities, for example, pesticide use, light pollution and electromagnetic radiation (EMR).

[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf

In particular, the Green Paper calls for 'individual evidence-based judgment by an individual case officer on an individual case.' While the knowledge and experience of an individual case officer is very important, a robust legal framework is essential to supporting individuals in decision-making and creating consistency and certainty. Firstly, the knowledge and experience with respect to individual sites is not always available. We support further resources for statutory agencies to ensure they have and retain the right people with the right expertise to develop that crucial knowledge and experience. Even with an experienced and competent individual case officer, a framework is needed to guide good decision-making and justify and defend their judgments, potentially in the face of opposition from landowners or legal challenges. A framework also supports consistent decisions across individuals, sites and regions, providing certainty to those in the system and reducing the legal challenges.

What is needed is a more strategic approach, with clarity from Defra on what is not acceptable – namely plans or projects proceeding to the application stage that are not complete in terms of baseline data and information for the appropriate assessment. Proper pre-application consultation will help gaps to be identified and ensure that applications are truly complete.

14. Should action be taken to address legacy consents?

*If 'Yes', we would particularly welcome your views on how this might be done in a cost-effective and fair way explaining your answers in the free text box. (**Yes**/No/Unsure)*

Yes, we support action to address legacy consents. Consents granted before a certain date (perhaps 2000) should expire, similar to planning permission being time limited. Any landowners wishing to extend consents that were granted before 2002 should apply to Natural England (NE) for consent. NE should take into consideration newly identified potential environmental effects, such as electromagnetic radiation (EMR) from mobile phone telephone networks.

15. Should we move to this more outcomes-focused approach to site management?

*Please tick the option you prefer and briefly explain your preference and what benefits it may have in the free text box. (**Yes, using Site Improvement Plans**/Yes, but building on Site Improvement Plans to offer a holistic site outcome plan/No/Other/Unsure)*

Yes, we support in principle the move to protected sites that can support the management of the site and nature recovery.

Site Improvement Plans (SIPs) could play an important role, but, as the Green Paper identifies, their uptake has been limited. We support the suggestion in the Green Paper to make SIPs statutory. There should be a statutory obligation on public bodies to deliver the SIP actions.

However, even without legislation change, the role of SIPs could be strengthened by drawing their requirements into Protected Site Strategies and ensuring more Supplementary Conservation Objectives Advice is provided (both of which have a legislative footing), identifying critical thresholds for effects on sites to help screen out more plans and projects, and set out proactive management measures.

To ensure delivery of SIPs and their objective to bring sites into good or recovering condition for nature, site-specific management and monitoring approaches will be required. A significant increase in the resources for monitoring will be vital, as currently there are limited environmental data. This monitoring should be standardised in line with national species monitoring scheme methodologies to add to a growing national database on population dynamics, distribution range changes and overall ecosystem health.

16. Do you have suggestions for how regulation 9 requirements should be reformed to support delivery of England's 2030 species target or other long-term biodiversity targets and to improve our natural environment?

*Please set out your answer briefly explaining what benefits it may have in the free text box. (**Yes**/No/Unsure)*

There should be a clear purpose in legislation that retains the current requirement for public authorities to exercise their nature conservation functions in compliance with the aim and objectives of Habitats Regulations[31] or any reformed legislation. The purpose should be to further the protection, enhancement and restoration of habitats, species, and nature. This should be consistent with the enhanced Biodiversity Duty in the Environment Act 2021 for public bodies to conserve and recovery nature, although we do think more could be done to include within all general duties more positive requirements, akin to the Section 28G duty for SSSIs.

17. Do you have suggestions for how processes under Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 and sections 125 to 127 of the Marine and Coastal Access Act 2009 together could better deliver outcomes for the MPA network?

*Please explain your answer, these regulations are shared with devolved administrations, and therefore careful consideration will be given to any potential effects on these duties, with full evaluation following this consultation. (**Yes**/No/Other/Unsure)*

Authorities must, in the Conservation of Offshore Marine Habitats and Species Regulations, take steps to secure compliance with the objective of *"preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the Wild Birds Directive."*

These could be strengthened, particularly provisions of MACAA which advise competent authorities witnessing non-compliance with MCZ provisions to *"notify the appropriate statutory conservation body"* and wait 28 days. Delegating appropriate resources to allow relevant authorities to act appropriately and swiftly would be more beneficial here.

Overall, these measures are beneficial, but would greatly benefit from being more direct. Public authorities are asked to go through lengthy processes to report failures to comply with MPAs to the MMO or Scottish or Welsh ministers (depending on location), before being allowed to take actions. This is particularly explicit in MACAA provisions. Committing resources to allow for public authorities

[31] As currently set out in the Birds and Habitats Directives preamble/recitals – sadly all are still very relevant due to the nature crisis we are in.

to better monitor and enforce MPA provisions directly would greatly improve protected areas implementation.

With regards to section 126 of the Marine and Coastal Access Act, the assessment approach is very similar to the HRA approach based on the fact that SACs and MCZs are underpinned by the same conservation objectives and advice. Draft Defra guidance[32] has made it clear that MPAs should be treated the same, no matter the legislation underpinning the designation. This is to ensure the coherence of the MPA network. This could be strengthened in legislation, especially in relation to ensuring Measures of Equivalent Environmental Benefit (MEEB) are to the same standard as compensation for SACs. Finally, section 126 is not being applied at the plan level to the same standard as HRA. This should be strengthened in legislation to ensure assessment and measures are put in place at the plan level to ensure the coherence of the MPA network. Strategic environmental measures at the plan level are supported by the UK Energy Security Strategy.[33]

The general duties within Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 and Section 125-127 of the Marine and Coastal Access Act are not fully enacted by competent authorities with functions relevant to SACs, SPAs and MCZs. Resource allocation for MPA monitoring and management tends to focus on sites where large-scale infrastructure is planned or expected in the future. This often results in less resource being applied to sites not subject to such development, despite a need for management to improve condition. The general duty could be strengthened in several ways:

- By requiring competent authorities review their functions in relation to MPAs and set out how they can enact those functions in a way which furthers the conservation objectives of MPAs.
- Strengthen the duty to ensure that where an MPA is in unfavourable condition, competent authority function will not hinder the recovery of an individual MPA and will in fact further the conservation objectives for the site.
- Include the mitigation hierarchy within the duty.
- The duty is very focused on individual MPAs and there is little consideration of how competent authority duties can impact on the coherence of the MPA network. This could be resolved by marine prioritisation, marine spatial planning and strategic planning at a plan level. Please note that MCZs are often excluded from plan level assessments.
- Increase resources for evidence gathering and more regular condition assessments to identify management measures required for competent authorities to meet their duties.

18. Do you have suggestions for improving the EIA scope and process for the Defra EIA regimes? We would particularly welcome your views on how they can more effectively help to reduce the environmental pressures outlined in chapters 3 and 4, deliver the objectives in the Environment Act, and facilitate sustainable development.

*Please tick all regimes that apply and explain your answer in the free text box. (**Yes – Marine Works EIA regime/Yes – Forestry EIA regime/Yes – Agriculture EIA regime**/Yes – Land Drainage EIA regime/Yes – Water Resources EIA regime/No/Unsure)*

[32] Defra MPA compensation guidance consultation
[33] BEIS UK Energy Security Strategy

Marine Works EIA regime:

Due to a lack of collated evidence and analysis, it is very difficult to determine how successful the regulations have been in securing the objective of helping the Government to achieve its goal of living within environmental limits whilst achieving social and or economic sustainability. The only guide is the current status of the environment. For marine, the UK has failed to reach Good Environmental Status (GES) as part of the UK Marine Strategy, and many Marine Protected Areas are in decline. Therefore, we suggest that the goal of living within environmental limits has not been achieved. We recommend:

- **A review of the assessment matrices used in EIA and new guidance** - Our experience is that assessment matrices are not appropriate nor at the scale required to determine impacts to ensure that nature can recover at sea. In addition, the approach to matrices is inconsistent between projects, which makes cumulative assessment difficult. We recommend a review of the matrices and new guidance on appropriate use.
- **A review of exemptions** - We disagree with some exemptions to EIA, such as electricity cables. The scale of cabling projects at sea will increase significantly over the coming years and environmental impacts could be significant. Thorough EIAs are required for electricity cables.
- **Streamlining the SEA/EIA process** - We think improvements could be made to reduce the time and amount of paperwork produced at the project level stage by aligning the Strategic Environmental Assessment (SEA) and EIA processes. The SEA is not always adequately implemented but improvements in this process at a plan level could identify environmental impacts at an early stage, including the identification of environmental strategic measures, which would reduce environmental and consenting risk. This now seems to be the agreed direction required, as identified in the draft Offshore Energy SEA and the UK Energy Strategy for offshore wind.
- **Integrating the Environment Act ambitions and targets/Good Environmental Status into the EIA process** - The EIA process currently fails to determine how projects alone and cumulatively might enable to nature's recovery at sea. Recovery is also a requirement of the Environment Act. We question if there is a way to operationalise Good Environmental Status and include it in EIA as a way to determine limitations or contributions towards recovery.
- **Monitoring and reporting requirements post-delivery** - To provide data to determine the effectiveness of the EIA Regulations, we suggest the inclusion of a requirement for monitoring and reporting by the competent authority undertaking the assessment to Defra. The monitoring and reporting requirement would need to be passed onto applicants as a marine licence condition.

Finally, although we welcome consultation on the Defra EIA regimes, there are numerous other EIA Regulations which we understand are under review by other government departments. To avoid divergence from the original aims of the Regulations to live within environmental limits whilst achieving social and or economic sustainability, we suggest the review of all EIA regulations should be coordinated by one department to ensure consistency and best practice across all EIA regimes.

Forestry EIA regime:

The EIA forestry regime exists for a reason - to provide site specific assessments to ensure that existing open habitats are not compromised by tree planting, and to ensure that opportunities to restore and expand them are not lost. Site surveys and expert habitat protection and enhancement

advice remains essential to determine whether woodland creation or expansion is appropriate in a given area.

We are concerned that the Nature Recovery Green Paper's proposal for a top-down Afforestation Strategic Assessment will be 'landscape scale' and may therefore not be detailed enough to pick on site-specific nuances, including the potential for an open habitat to be restored to a high condition in the future. Threats of afforestation on open habitats include tree planting on or near species-rich grasslands and peatlands. This potential could be lost forever by inappropriate planting green-lit by the Strategic Assessment, opening up the possibility of open habitats that could have delivered much for nature's recovery being lost to commercial forestry. The Afforestation Strategic Assessment will be no substitute for such in-depth site-specific consideration and should be additional to the EIA forestry regime, rather than effectively replacing it in some areas.

However, the extremely slow speed and process to get an opinion on whether an EIA is required or not is becoming a major block to woodland creation, in particular in Northern England. We believe the issue is not with the regulations and thresholds themselves, but the way the regulations are being implemented and the speed at which decisions are able to be given.

We would welcome a stakeholder process that looks to review the EIA regulation implementation to enable the range of stakeholders with an interest and expertise to develop win-win solutions that both help speed up the process of securing a decision, whilst ensuring the regulations work to protect and enhance existing habitats.

Some suggestions to be explored include:

1. We are keen to see an assessment of the required agency regulation capacity needed to deliver Government's woodland creation targets, compared to the current situation. Our experience is that capacity within FCE on the regulations is a significant factor. Solutions that do not address this capacity area are unlikely to work.
2. The cost of the additional survey requirements associated with species surveys has made smaller schemes in Northern England unviable. We would like to see the threshold for the woodland creation planning grant reduced to support smaller schemes, which is where the cost per hectare is particularly prohibitive. This would help enable Government to meet its woodland creation targets without compromising on important checks to ensure afforestation does not damage important open habitats.
3. In our experience, delays in the EIA determination process are often in part due to the time taken for local archaeology and ecology departments to respond. Requiring consultees to respond within a minimum timeframe would help to speed this up.

It is important that mechanisms are put in place to protect and indeed expand public access rights when woodland cover is expanded. Without this inclusion, there is a risk that private commercial forestry plantations could be planted on land over which the public has a right of open access, leading to the loss of that access and the significant health benefits associated with it.[34]

[34] WCL 'Nature for Everyone' briefing 2022

Agriculture EIA regime:

Thresholds

We believe that the thresholds for uncultivated grassland conversion are too high and the opportunity should be taken to remove them to halt wildlife destruction and to achieve the purpose of the Directives. A significant proportion of remaining semi-natural grasslands occur in patches smaller than the 2ha regulatory threshold. Small sites are very important for biodiversity conservation, heritage, and health and landscape quality. They also contribute significantly to landscape-scale conservation and help improve the connectivity of the natural landscape. There is strong anecdotal evidence of continued loss of important grassland sites and better assessment and protection of the remaining resource should be ensured. The threshold also creates a loophole by which larger wildlife areas can be destroyed piecemeal over several years. To enable the protection of valuable grassland sites, we recommend that the thresholds on uncultivated land are removed.

Site Inventories

The Agriculture EIA regulations are undermined by the lack of a comprehensive inventory of the quality and extent of semi-natural grassland sites in England. Uncatalogued losses have been recognised by Natural England. Semi-natural grassland sites need to be identified and assessed in order to fill the knowledge void and create a comprehensive inventory. There should be a programme of regularly updating the inventory.

Enforcement

We are concerned that our member organisations are aware of several cases where it would appear that the EIA regulations are not being enforced by Natural England.

We believe that enforcement is poor for the following reasons:

- The balance of proof currently rests on the regulator (Natural England) rather than with the defendant.
- Financial penalties are not sufficiently high enough to act as a disincentive compared to the potential economic benefit of violating the Agricultural EIA Regulations.
- The lack of an inventory mapping the location of semi-natural grassland hampers the ability of the Regulations to act retrospectively.

Definitions

The current definition of 'uncultivated land' is insufficient. The current definition is as follows:

"Uncultivated land is land that has not been cultivated in the last 15 years by:

- physical means, such as ploughing or an activity that breaks the soil surface or disrupts the subsoil
- chemical means, such as adding fertiliser or soil improvers"

We are concerned that this allows for relatively superficial or sparse soil surface breaking activities to remove the appropriate EIA protection from a grassland.

Furthermore, in the past there have been instances where high quality grassland has been ploughed, but people have manually turned the soil back over again to save the wildlife. Clearly, noncultivation per se is not a sufficient safety net.

It is also recommended that a grassland that was illegally cultivated in contravention of the EIA regulations should still benefit from the same protection as it would have received before it was cultivated.

An ideal definition would not exclude sites from the 'uncultivated' arm of the EIA process where a single or partial 'cultivation' had not removed the semi-natural and species-rich nature of the grassland.

Such a definition would have to in part be based on the biological impact of the cultivation and the site's continuing biodiversity significance. Alternatively, the current definition could be kept: it explicitly refers to ploughing and harrowing, which in most instances are the activities that trigger an EIA screening decision and importantly there is scope for the regulator to interpret cultivation in another way.

Loopholes

It is unclear how the EIA (Agriculture) Regulations are related to the EIA (Forestry) and the Town and Country Planning (EIA) Regulations. We have been informed of cases where semi-natural grasslands have been damaged but the project has been classified as change of use, rather than agricultural intensification, so has fallen outside the scope of the EIA (Agriculture) Regulations.
This is particularly evident where land used for equine grazing is concerned. The Regulation criteria and guidance should assess whether important habitats are being damaged by an activity, rather than the nature of the activity itself.

The guidance should clarify how the Regulations will be applied in relation to overgrazing. Where semi-natural habitats have been damaged by inappropriate stocking rates, the resulting poor condition should not be used as evidence that the environmental impact of further intensification would be insignificant.

19. What are your views on our proposal to establish priority areas for afforestation?

We are concerned by the proposal to establish priority areas for afforestation, where Environmental Impact Assessments (EIA) would not be required for woodland creation projects.

The EIA forestry regime exists for a reason - to provide site specific assessments to ensure that existing open habitats are not compromised by tree planting, and to ensure that opportunities to restore and expand them are not lost. Site specific assessments are essential because often there is not adequate or up to date habitats maps and species maps to identify habitats and species that may be at risk from tree planting, such as species assemblage associated with open habitats. The top-down Afforestation Strategic Assessment proposed by the consultation will be 'landscape scale' and may therefore not be detailed enough to pick on site-specific nuances, including the potential for an open habitat to be restored to a high condition in the future. This potential could be lost forever by inappropriate planting green-lit by the Strategic Assessment, opening up the possibility of open habitats that could have delivered much for nature's recovery being lost to commercial forestry.

The open habitats vulnerable to such planting are priority sites for nature, which have been subject to heavy losses since the industrial revolution, frequently as a result of inappropriate coniferous

woodland planting.[35] The planting of even small pockets of woodland on open habitat such as heathland and downland could have adverse effects on threatened species, including reptiles, amphibians, plants and invertebrates. Riverine habitats, and the plants they rely on them, are also liable to significant damage from tree planting. For this reason, site surveys and expert habitat protection and enhancement advice remains essential to determine whether woodland creation or expansion is appropriate in a given area in order to create integrated, robust, climate resilient landscapes through a mixture of woodland, open and mosaic habitats.

The Afforestation Strategic Assessment will be no substitute for such in-depth site-specific consideration and should be additional to the EIA forestry regime, rather than effectively replacing it in some areas. As stated in our response to Q18, it is our view that it is the time taken to determine whether or not an EIA is needed for a woodland creation projects that causes delays and Defra should look to address this, for example by increasing the capacity of Forestry Commission England.

In the past, areas developed Indicative Forestry Strategies to identify potential areas for woodland creation. These did not replace the need for EIA determinations but did allow for a strategic assessment of where would be most suitable for woodland creation. Something like this could be considered again, perhaps as part of the process for developing Local Nature Recovery Strategies (LNRSs). As well as identifying potentially low risk areas for afforestation, this would allow diverse stakeholders to come together and identify where would be more beneficial for woodland creation, for nature recovery and also for climate, flood mitigation and for people. Such an approach could also be used to identify sites that would be most suitable for natural colonisation. This should not replace the need for an EIA but involving multiple stakeholders from the start would give land managers the confidence that an EIA would be less likely to identify any problems.

When it comes to woodland, nature recovery is best delivered by diverse native woodlands that have a mixture of open spaces and good structural diversity with deadwood left in situ. Simply identifying areas considered low-risk for afforestation and allowing woodland creation with no EIA would risk seeing the planting of large, monocultures for commercial forestry, that deliver little for biodiversity.

It is not clear whether access rights will be considered within the Afforestation Strategic Assessment. Without this inclusion, there is a risk that private commercial forestry plantations and other woodlands could be planted on land over which the public has a right of open access, potentially leading to the loss of that access and the significant health benefits associated with it.[36] It is important that mechanisms are put in place to protect and indeed expand public access rights when woodland cover is expanded.

[35] https://www.wildlifetrusts.org/habitats/heathland-and-moorland

[36] https://www.wcl.org.uk/assets/uploads/img/files/Briefing_Nature_for_Everyone_campaign_Spring_2022_002.pdf

30x30 (page 17)

20. What are your views on our proposed criteria to achieving our 30 by 30 commitment? We are keen to hear views on the proposed approach for assessing Protected Areas set out under 4.1 and suggestions for areas of land we should consider as OECMs in England under section 4.1.0.

On land:

We welcome the Government's commitment to protect at least 30% of land by 2030 and acknowledgment that only portions of reformed National Parks and Areas of Outstanding Natural Beauty (AONBs) can contribute to the 30% target.

However, the Government's criteria for areas to count towards 30% suggests that sites could be included that are just protected for nature (with no management measures in place) or managed for nature, with no long-term protection in place. We assert that areas must be both protected for nature in the long-term and well-managed for nature in order to contribute to the 30% target.[37]

We support the Government's other two criteria for areas to count towards 30x30, including a clear purpose of conserving biodiversity and regular monitoring demonstrating appropriate biodiversity outcomes. Ensuring protected areas are in good condition will require regular monitoring, tackling neglect and implementing good management for nature within protected areas, as well as tackling pressures outside of protected sites, including atmospheric nitrogen deposition.

Levelled up and well-managed designated protected nature sites should form the heart of the protected area network, expanding from 8% now to at least 10% and towards 16% of England's land.[38]

This core should be bolstered by reform of designated landscapes, which if reformed, portions of which could contribute towards the 30% target of land in England protected and well-managed for nature in order to create a resilient ecological network. [39] Our National Parks and AONBs provide many benefits for nature, climate and people, but large areas of our designated landscapes are not in as good condition for nature as they could be. These areas face growing pressures from infrastructure, housing, intensive land management, and commercial forestry. Statutory change, stronger duties and more resources are needed for designated landscapes to help deliver Government promises such as 30x30.

Combinations of other new and improved designations, including Local Wildlife Sites, should fill the remainder of the 30%, with a focus on connecting up habitats across the landscape and making space for nature to recover. More ancient woodland, species-rich grassland, temperate rainforests and peatland should be legally protected. Planning protections in the NPPF for irreplaceable habitats and other important habitats should be strengthened. All too often protection is traded for short-term economic gains.

Other effective area-based conservation measures (OECMs) should be further explored and any approaches should be further consulted on with stakeholders. To contribute towards the 30% target and make a meaningful contribution to nature's recovery, OECMs must be both protected in the long-term and managed for nature. Incentives to ensure protection and good management for nature of OECMs must be considered if land is to meet the criteria for inclusion.

[37] https://www.wcl.org.uk/docs/Link_30x30_paper_18%20November.pdf
[38] https://www.wcl.org.uk/docs/WCL_Achieving_30x30_Land_and_Sea_Report.pdf
[39] https://www.wcl.org.uk/docs/Link%20response%20to%20Glover%20Review%20FINAL%2008.04.2022.pdf

The 30x30 target of protecting at least 30% of England's land by 2030 is not a ceiling but a minimum required to put England's habitats and wildlife into recovery.

At sea:

Despite covering >30% of the sea area, we question whether, given continued licensing of activity in protected sites, existing sites are adequate and protected to meet requirements of an effectively managed, ecologically coherent network of protected areas. A number of large-scale damaging developments have subsequently been consented within protected areas, and effective management of the UK's MPAs is severely lacking, especially in offshore waters. At present only 13% of sites have full monitoring in place.[40] Action is now urgently required to ensure that the network is effectively managed for nature in line with international best practice. They cannot simply be a line on a map as huge development takes place at sea.

Link believe that in order to contribute towards a 30% target, areas must meet the following conditions:

- **30% of English waters are fully or highly protected and managed for nature's recovery by 2030:** by 2030, at least 30% of England's seas are either within fully protected MPAs or licensed to allow only extremely limited activity, within the context of wider ecologically coherent networks. As an absolute minimum, at least a third of this area should be in marine sanctuaries where all human pressures and impacts are removed. This status would provide permanent protection for nature and permanent prohibitions against all extractive or destructive activities. Across the wider MPA network, expectations should be reversed. Rather than permitting activities until they are prohibited, all environmentally harmful activities should be restricted by default unless they are licensed. Utilising scientific assessments based on enhanced monitoring, licensing decisions should be made on a case by case and site by site basis by relevant authorities, with only light extractive activities considered for consent, restricting all heavy extractive activities. Activities should only be permitted if it can be proven that they neither prevent ecosystem recovery nor inhibit progress towards conservation objectives. All other impacts should be minimised.
- **Active, effective management delivering towards good or recovering condition:** marine protected areas that count towards the 30% should be well-managed for nature, and must be regularly monitored at appropriate intervals as part of an ongoing programme of active management. MPAs must have demonstrable and ongoing enforceable rules, monitoring, evaluation, adaptive management and conservation outcomes. Programmes of management should be delivered by appropriately resourced agencies with the primary purpose of achieving conservation objectives. Monitoring should show clear evidence of both good management for nature and that the site is either in good condition or showing demonstrable signs of ecological recovery. Recognising that delivering 30x30 will require significant funding, the Government must deliver the resources required for effective management and properly fund enforcement agencies to deliver conservation goals. The

[40] Developing an ecologically-coherent and well-managed Marine Protected Area network in the United Kingdom: 10 years of reflection from the Joint Nature Conservation Committee: Biodiversity: Vol 19, No 1-2 (tandfonline.com). Since this assessment by the Joint Nature Conservation Committee (JNCC) was made in 2018, some improvements could have been made and the Government has since gained powers to improve management in offshore sites following withdrawal from the European Union, the first of which are due to be enacted in 4 offshore English MPAs in 2022.

2020 Fisheries Act gives the Government additional post-Brexit powers to impose limits on fishing vessel licences of all flags in UK seas. Without going through lengthy consultation processes, placing conditions on licences could be implemented by the end of 2022. Not only would this be possible legally, there is also a legal imperative on the Government to prevent it contravening marine and nature laws when it annually issues over 2,000 EU and UK fishing licences with freedom to fish in UK MPAs.

- **A connected network across English seas:** the connectivity of areas of habitat has been identified as a key criterion in nature's recovery. While these areas may not always themselves contribute towards the 30%, the Government must set targets and introduce policies that will increase the connectivity of areas of habitat and following its own guidance ensure, where possible, sites of similar features are not separated by more than 40 - 80Km. Key gaps in the network remain, such as the lack of protection of any of the feeding grounds of cliff-nesting seabirds. The last UK SPA Review published by JNCC highlights that "review of SPA provision in the marine environment is needed for at least 49 species."

Regarding HPMAs, these have not yet been delivered, although we hope that pilot sites will be in place by the end of this year. In the designation process for HPMAs, we still see socio-economic factors determining locations of sites - not simply nature considerations. These sites will never be the 'gold standard' biodiversity jewels they should be whilst social and economic factors continue to influence their location.

Delivery of an ecologically coherent network will never be achieved without appropriate resourcing. Resources must be made available to ensure appropriate monitoring and management plans are in place for all MPAs to support delivery upon clear conservation objectives in order to meet favourable conservation status. Where required adaptive management must be applied to ensure those objectives are met.

Integrating MPAs into well thought out wider fisheries management plans is likely to be the ideal scenario for sustaining and/or increasing the populations of target fish species (including forage fish such as sandeels) rather than MPAs being an effective solution on their own. Even where MPAs do prove to be effective, it remains the case that some pressures are more effectively managed at a wider spatial level and/or through non-spatial mechanisms, as is also the case on land.

21. What are your views on our proposal to reform forestry governance and strengthen protections for the Nation's Forests? We are keen to hear views on any additional powers and statutory duties we should consider that would help to deliver on the benefits of woodland beyond timber production.

We welcome the proposal to introduce a new duty upon the Forestry Commission to protect nature and promote biodiversity, alongside expanded powers to deliver these duties.

This should be expanded to apply to both Forestry Commission England (including Forest Services) and Forestry England, given the Government's nature objectives apply to both public and privately owned woods and trees.

This specific biodiversity duty will help the Forestry Commission, as the manager of over 250,000 hectares of woodland habitats, to contribute to the Environment Act apex target of halting the decline in species abundance by 2030, as well as wider biodiversity targets and ensure biodiversity is

truly taken into account within all its functions. We suggest that the new duty is amended slightly to a nature recovery duty, to align it fully with those targets.

The advantage of this new legal duty are:

- Create a stronger and more aligned legal purpose and duty between Natural England, Forestry Commission England and DEFRA. This will reduce inefficiencies and delivery blockages created by agencies trying to drive different outcomes and instead speed up the delivery of identified synergies. This could help enhance the implementation of important cross agency regulations such as Forestry EIA consent covered elsewhere in the consultation.
- Applying a nature recovery remit to the whole of Forestry Commission England could support delivery of a significant proportion of Government's 30x30 and nature recovery goals. For example, the public forest estate has an unparalleled level of potential habitat for restoration, with the largest area of both ancient woodland and other Government priority open habitats such as lowland heathland under plantation forestry. The estate provides an extremely cost-effective tool to deliver Government's nature recovery objectives at scale. The estate could also be used more strategically to help support nature recovery delivery in neighbouring land due to its economies of scale.
- The public forest estate already does a number of positive activities for nature conservation, but this is arguably despite of, not because of its primary legal duty dating back to World War II. The public policy objectives for the estate often misalign with its legal purpose, which could be resolved with this change.

A range of public bodies now have a form of nature recovery duty incumbent upon them. The track record of such bodies demonstrate that a biodiversity duty is viable alongside other duties and can complement economic and public recreation workstreams, for example, the Broads Authority's biodiversity work.[41]

We do not see any disadvantages of modernising the legal remit. In reference to public forests, this will not prevent the estate from producing timber. Instead this remit would place timber and income generation as an important means to public benefit end, rather than a standalone (and sometimes conflicting) end in itself.

We value dedicated forestry, woodland and tree expertise that is currently provided by Forestry Commission England. Broadening their legal duty to nature recovery would set the agency up to be leaders beyond the more traditional forestry focal areas, to enable a broader range of Defra objectives to be delivered, in particular around areas such as trees outside woods which tend to fall in-between agriculture and forestry policy.

As part of any legal refresh, we believe this should include looking at felling licensing which has largely been developed from a purely forestry perspective, meaning that it doesn't currently provide sufficient protection for inappropriate felling and restocking on more sensitive undesignated sites such as ancient woodlands. FCE could use existing powers under felling licensing to place more environmentally focussed conditions on restocking to enforce UKFS and other devolved policy objectives.

[41] https://www.broads-authority.gov.uk/looking-after/managing-land-and-water/biodiversity#:~:text=The%20Broads%20is%20one%20of,shallow%20water%20%2D%20the%20broads%20themselves

22. What are your views on our proposal to adjust forestry permanency requirements for certain project types?

We are concerned by the proposal to allow trees and woodlands to be planted on an impermanent basis in a wider variety of circumstances.

The climate and nature benefits of trees increase with the time they spend in the ground, both in terms of carbon stored and complex ecosystems developed.[42] The contribution of new woodland to climate and nature goals will be lesser if tree lifetimes are shorter.

In addition, it is our view that evidence to suggest that permanency is a barrier to planting is currently mainly anecdotal and it would therefore be a mistake to make a wholesale change to policy without testing this more first. There is an ongoing ELM Test and Trial looking at agroforestry and what the barriers to uptake are, so we would strongly recommend that Defra look to the findings of this before making policy changes to encourage more uptake of such schemes. Our own experience suggests that lack of resources, lack of knowledge and confusion about different agroforestry systems are bigger barriers, as well as concerns among farmers about a possible land grab and the impact of land use change on things like inheritance tax.

We do know that lack of knowledge is a barrier to farmers for planting for trees, as many have little experience of trees or forestry. The intention to deliver agroforestry options in the SFI without any advice, combined with the proposal to relax permanency requirements, therefore represents a significant risk both to the delivery of environmental benefits and to the effective use of public money. This could see farmers with little experience plant trees that aren't necessarily in the right place, or right for their farm, and deliver few benefits for the farm or the environment. If a farmer then decides that the trees are not delivering, there would be nothing to stop the removal of those trees which at worst could have a net negative impact on the environment. Providing advice to farmers early on based on what they want to get out of agroforestry and what approach/species would be best suited to their farm will lead to better schemes that deliver more for the farmer and the environment and are more likely to remain in place long term; this would also be a more effective use of public money.

It is not clear that a rule change is necessary, as existing forestry regulations already allow for unconditional felling licences, and felling licences are not required for fruit and nut trees, which would likely be the main species used in silvoarable schemes. Land manager reluctance to engage in tree planting could be significantly addressed by issuing clear guidance on existing requirements and when a felling licence is needed.

If Defra decide to go ahead with a change to permanency requirements for certain tree planting projects, we would strongly recommend that certain safeguards are put in place.

- Any change to permanency requirements should only apply to new planting, and not to existing planting schemes.
- Given that existing forestry regulations already allow for unconditional felling licences, rather than a wholesale change to policy, individual agreements could stipulate permanency requirements depending on the type of planting.
- Permanency requirements should not be relaxed for all the types of planting proposed. Relaxation for certain silvoarable schemes or orchards could be helpful, especially for tenant

[42] https://researchbriefings.files.parliament.uk/documents/POST-PN-465/POST-PN-465.pdf

farmers, and would carry less risk that for silvopastoral schemes where the benefits to biodiversity are greater and would be lost if the trees were felled.
- In all cases where permanency rules are relaxed, agreements should stipulate a minimum period of time for the trees to remain, as well as requiring a diverse, native species mix.

We do not see an argument for relaxing permanency requirements for short rotation coppice and short rotation forestry, which often use non-native species that would not be optimum for biodiversity. Planting for biomass (which SRC and SRF usually are) will also not count towards the Government's woodland cover target.

Relaxing permanency requirements for certain tree planting projects could potentially undermine other schemes that have longer requirements. For example, under Biodiversity Net Gain, habitat must be maintained for 30 years, 80 years is required in certain locations for nutrient neutrality and the WCC has an expectation of permanency. This could also further complicate the question of how to allow farmers to stack or bundle payments.

Finally, we would like to comment on the placing of this proposal in the chapter on 30x30. It is unlikely that these types of planting schemes would count toward 30x30 in any instance, but if the trees are not permanent, they would certainly not be able to count.

30x30: UK Marine Strategy (page 21)

23. Do you agree with the proposed changes to the UK Marine Strategy (UKMS) delivery programme, and if not, what other changes would you make to streamline the reporting of UKMS?

*Please explain whether you agree with these changes and provide reasoning. If required, please outline any additional proposed changes that will help us achieve the stated goals. When you respond please highlight your experience and make us aware of any evidence you can share that supports your view. (**Yes**/No/Unsure)*

Progress to date towards achieving Good Environmental Status (GES) across all descriptors continues to be slow, resourcing for delivery yet to be committed and we continue to see 11/15 descriptors failing to meet GES. Birds were not only found to have failed to achieve GES but have also moved away from target. This stark assessment should empower UK governments to increase ambition and urgently implement actions to recover our marine biodiversity, including our internationally important marine bird populations. We therefore view this suggestion as a positive change, the main concern is the time it will take to deliver these reforms. Further delays whilst we continue to fail to meet GES for 11/15 descriptors and yet continue to accelerate activity at pace, including in the form of offshore wind in the marine environment is unacceptable.

Whilst regulatory mechanisms are vital to the conservation of marine habitats and species and the achievement of GES, we note that there has been interest in tangible "quick-wins" (non-legislative) that could also be introduced to benefit species that could be undertaken whilst reform is underway. As example, for marine birds this could include:

- Investment in long-term Biosecurity and island restoration Programmes (across all countries);

- Inclusion of forage fish species (including sandeel, sprat and herring) in priority species lists where not currently included;
- Closing UK waters to industrial sandeel fishing alongside a revision in the methodology for setting catch limits (to account for predator needs and area closures);
- Commence Fisheries Management Plans for forage fish species across all countries; and
- Development of a new grant for research on marine birds, designed to facilitate progress on GES (across all countries).

Or for protected areas:

- A halt of damaging activities in offshore MPAs - this includes ending fishing with bottom-towed gear on protected seabed MPAs;
- Introduction of bottom-towed gear-free zones across the most vulnerable and important habitats in nearshore waters (such as in essential fish habitat, and carbon sink habitat areas);
- Protecting and promoting low-impact, low-carbon fisheries and engaging with coastal communities to deliver benefits for all;
- Inclusion of climate change adaptation and mitigation considerations in scientific advice on fishing opportunities; and
- Provision of incentives for carbon savings from engine upgrades, gear choices and green technology and ending tax relief for fossil fuel use across the fishing industry through a just transition to low carbon fishing.

On monitoring, the UKMS overview is inadequate. There is not enough monitoring by regulators or coordination and this needs to be improved; citizen science could assist this work for example. While some agencies such as Cefas promote modelling, the real need is for good quality real-world data. In the past citizen data has in cases of MPA designation been disregarded as inadequate but should be recognised as being undertaken in the most part by highly trained volunteers, including leading specialists in the field. Transitioning the monitoring framework to a 'live online repository' can only be considered a positive change if accompanied by further measures and safeguards to improve coordination, maintenance and areas of data deficiency such as:

- Greater integration of data derived from NGO, citizen science and academic data collection efforts;
- Ensuring the collection and open-access sharing of environmental data relevant to GES indicators is a mandatory condition of new licences granted to marine renewable energy developments; and
- Renewed efforts to establish baseline values for descriptors where these are currently lacking.

We also note that suggestions to update and refine monitoring programmes in the manner proposed would result in an end to the 6-yearly publication of the UKMS Pt2. This removes an opportunity for regular scrutiny of the UK's marine monitoring programmes 'in the round'. If this is accompanied by a move to split the high-level GES target into individual descriptor level targets with their own bespoke timelines and monitoring efforts, it is unclear how civil society will be able to hold to account the monitoring and evaluation of GES for UK waters.

We appreciate the merits of a six year cycle, which matches up with other reporting cycles and working with the environmental goals set for 2042. We welcome the intent to strengthen accountability which is vital and we hope that, with parts one and three being published together every six years, that this will not remove accountability in between these cycles.

Overall, we support the following additional reforms of the UKMS process:

- Review and strengthen the current strategy process, given continued failures to achieve GES and the context of both the UK's departure from the EU and the EU's own intention to review the MSFD by 2023.
- The strategy should also be revised as a new 'Ocean Recovery Strategy' running up to 2030 (with ambitious interim targets and policy programmes to move the policy regime to a state of recovery). Such a revision should lay out a clear path to delivering the 2030 State of Nature target, and ensure that at least 30% of UK oceans are fully or highly protected by 2030 (30x30).
- The strategy process should include a comprehensive impact assessment of the measures, quantifying the expected contribution of measures towards achieving GES over the cycle. At present, it is not possible to adequately determine which measures are driving the greatest improvements in our seas, whether the benefits of certain measures have been over/underestimated, or whether the combined measures are delivering a trajectory towards achieving GES for a descriptor.

Funding commitments, particularly in the long term, are not evident for existing measures. Delivery programmes need to reflect the imperative to achieve GES and not funding constraints, with additional funding clarity required on measures failing to meet GES (11/15 indicators) by 2024. By 2024 governments need to ensure significant progress has been made and mechanisms put in place to review and adjust delivery programmes accordingly to achieve targets along the way.

The strategy process should include a comprehensive impact assessment of the measures, quantifying the expected contribution of measures towards achieving GES over the cycle. At present, it is not possible to adequately determine which measures are driving the greatest improvements in our seas, whether the benefits of certain measures have been over/underestimated, or whether the combined measures are delivering a trajectory towards achieving GES for a descriptor.

24. Do you support the approach set out to split the high-level Good Environmental Status (GES) target into individual descriptor level GES targets?

*(Yes/**No**/Unsure)*

We are concerned about the proposal to split the high-level Good Environmental Status (GES) target into individual descriptor level GES targets.

The Marine Strategy Framework Directive as transposed into the Marine Strategy Regulations (2010) define environmental status as "the overall state of the environment in marine waters, taking into account the structure, function and processes of the constituent marine ecosystems together with natural physiographic, geographic, biological, geological and climatic factors, as well as physical, acoustic and chemical conditions, including those resulting from human activities inside or outside the area concerned".[43] We must keep the overall ambition of the UKMS to achieve the high-level GES target, and simply splitting the high-level GES target into individual descriptor level targets would equate to the removal of any holistic measure of overall environmental status as defined above.

[43] https://www.legislation.gov.uk/uksi/2010/1627/schedule/1/part/2/made

Also, the approach proposed in the Green Paper would make it likely to lead to policies being adopted and put in place which do not take a genuine ecosystem-based approach – making it less likely that true GES is achieved.

The Marine Strategy Framework Directive (MSFD) was set up to standardise approaches to achieve clean, healthy and productive seas in Europe and safeguard against a siloed approach to marine management. Whilst we accept that changes to aspects to the UK's implementation of MSFD are both necessary and inevitable to GES and constituent descriptors, this proposal fails to build on GES. It is our concern that the replacement of a high-level GES target with descriptor level targets may result in attempts to mask failures to achieve overall GES by assigning targets of lower ambition or elongated timelines for problematic descriptors. Achieving the high-level GES target must remain the north star for marine management in UK waters.

Furthermore, the European Commission is currently engaged in a process of review of the MSFD. Whilst this is a requirement under a directive that the UK is no longer adherent to, it is important for the health of shared resources that the UK and EU remain aligned in their approaches to marine management. These proposals make no reference to alignment or collaboration with these EC led processes of review. The Government should, however, acknowledge that for some descriptors, existing measures are not sufficient to achieve GES and additional measures are needed by UK and devolved Governments if we are to achieve our statutory requirements.

Protecting species (page 22)

25. Do you agree we should pursue the potential areas for reforms for species (protections, licensing, enforcement, penalties for wildlife crime and poaching offences)?

*(Yes/No – keep as it is/**No – reform but not these areas or additional areas (please state, why)**)*

Species of all taxa are still declining across England, many at increasing rates and large numbers due to increasing pressures, in some cases despite long-term, concerted conservation efforts. To turn round the long-term decline of species, we need more widespread and better protection for species and greater emphasis on recovery of species, especially given the increasing urgency and scale of climate change.

The Nature Recovery Green Paper lacks detail, but it appears that there are no proposals that will make a genuine difference for species or improve current levels of species protection. The Green Paper focuses on process and simplification of animal species legislation, without any suggested wording or ideas to improve the effectiveness of species legislation, including for plants and fungi. This approach risks simply being a rebranding of, and possibly a significant weakening of, species protection and does not offer new ideas on how the Government should bring forward a legislative framework that underpins species recovery and specific proposals for species recovery.

Current species legislation focuses on preventing harm and protections; these can play a significant role in preventing declines but are often less effective for achieving recovery for thriving wildlife populations. Requiring legislation to create positive action to improve the status of numerous species is unprecedented and complex but vital. It requires clarity and detail to set out targets (such as the Government has begun to do with the species abundance target in the Environment Act) and actions, identify who is responsible for overarching aims and individual actions, and allocate real and

sustainable sources of funding. Further consideration should be given to incorporating other measures that can achieve positive outcomes in addition to site designation, biodiversity duties on public bodies and biodiversity net gain in planning, for example consideration of mechanisms for allowing active intervention to conserve declining populations away from designated sites. There are various aspects of species legislation that could be improved, including bolstering the monitoring and evidence required to underpin the legislation and the listing of species to ensure the list of protected species is robust and as complete as possible, welfare considerations (which are currently not well addressed in the Wildlife and Countryside Act 1981) and the recognition of the importance of species habitat (also not well addressed in the Wildlife and Countryside Act 1981). We also believe there is scope for some careful consolidation of current species legislation.

The objective of achieving species recovery, defined by Favourable Conservation Status (FCS), which is described as the situation in which a habitat or species is thriving throughout its natural range and is expected to continue to thrive in the future, should be established in law as a guiding principle for species and habitat conservation, alongside current measures to protect species from different measures of harm. All decisions relating to effects on species' populations and sustainability, including which species are protected the level to which they are protected, and all planning, licensing, pesticide and chemical decisions, and ensuring harvesting and recreational hunting is sustainable that could affect those species, should be assessed against these FCS objectives on local, regional and national scales. Decisions that may have a negative effect on species conservation status on any scale deemed important or appropriate should be refused. Whatever approach is adopted, the concept of FCS should be retained in the regulations.[44]

Regular and up to date species data, including data from outside the UK for the population status of migratory species, is needed to underpin any species protection and conservation system but is currently lacking due to underfunding. There should be a statutory requirement for monitoring and reporting on species, supported by the necessary increase in investment in environmental data and data infrastructure, including for local environmental record centres (LERCs). Species data and monitoring is necessary to assess FCS and evaluate the effects of decisions on FCS for species of concern, those that are data deficient, and species regularly targeted for control purposes but about whose national status nothing is known (e.g., mustelids such as stoats and weasels which are killed on game estates but whose population trends are not monitored). The achievement of FCS will require an opportunity-led partnership action at both a national and local level to restore natural functioning of ecosystems, and the species that rely on them. It will be essential to secure strong partnership support for FCS outcomes from the start. FCS should be used to improve our understanding of how local areas or populations can appropriately contribute to the national and international obligations and should be used alongside robust scientific sources of advice and evidence.

If redesigned, species legislation should include requirements on species protections and conservation and a separate requirement and listing on the welfare of wild animals. The welfare protections could include provisions along the lines of the proposals in the Green Paper for 'minimum management', but we would need to see more detail as to what these measures could be. We would advocate that any management measures should be framed as part of an ethical decision making process such as described by Dubois et al (2017).[45] Furthermore, any review needs

[44] https://data.jncc.gov.uk/data/b9c7f55f-ed9d-4d3c-b484-c21758cec4fe/FCS18-InterAgency-Statement.pdf
[45] https://spca.bc.ca/wp-content/uploads/Dubois_et_al-2017-Conservation_Biology.pdf

to consider impacts of various trapping regimes and whether the current standards, such as those defined in the Agreement on International Humane Trapping Standards (AIHTS) are fit for purpose.

For species protection and conservation, we support an approach that builds on the current approach but is strengthened, retaining and building on the best aspects of the Habitats Regulations and the best aspects of the Wildlife and Countryside Act and other species-specific legislation, and with additional provisions to facilitate, require and overall drive the recovery of species, with a strong emphasis on protection and conservation of habitats as well as individuals and populations.

Species should be able to be listed for protection and/or conservation on the basis of a range of different criteria that consider the biological status and the range of threats and pressures that affect the species and their conservation status. We agree that consideration should be given to protecting species that are threatened, species whose current status is reliant on continued protection (i.e. those that are conservation dependent), species that need protection to support their recovery or to prevent declines in the first place, and also to recognise international obligations. These objectives should be reflected in the stated purpose of the legislation. These objectives should be reflected in the stated purpose of the legislation. Either IUCN Threatened status (for species categorised as threatened with global extinction) or unfavourable or declining conservation status (FCS), with provisions made for species where an FCS assessment has not been carried out, should be used as one of several different criteria (some of these criteria will be based around an evaluation of risk, underpinned by scientific understanding and data where available). When data is lacking to determine the conservation status of a species, the precautionary principle should be applied and species should be listed. Some full species groups should remain listed or be listed, including birds, bats, cetaceans, reptiles and amphibians, as well as individual species currently afforded protection, for example red squirrel, water vole, pine marten, hazel dormouse, mountain hare, fen orchid, floating water-plantain, white-clawed crayfish, freshwater pearl mussel and medicinal leech. There should be a duty to review species listing with a transparent process that involves and takes into account the advice of independent experts on a regular (every 5 years) and on an as-needs basis, using scientific data on species trends. Monitoring and reporting should be required on a statutory basis, in line with the Bern Convention, Convention on Biological Diversity, other multi-lateral environmental agreements, as well as the Environment Act and 25 Year Environment Plan monitoring and reporting requirements.

Plant and fungal diversity are the fundamental building blocks of food chains across all ecosystems. Following discussions at the Geneva meeting of the CBD subsidiary bodies in March 2022, a global biodiversity framework is emerging which recognises the importance of plants and aims to protect and restore them. In line with this, there is an urgent need to develop plant-specific species protections and recovery actions at a national level.

We do not agree with a tier system as proposed in the Green Paper. While we agree that different levels of protection are appropriate, we do not agree with the rigid three tier system proposed. While lacking detail of how this might look, we do not believe that it will address the range of different levels of protection need to cover the different taxa and different conservation and welfare needs of species. Instead, we prefer an approach similar to the current system in the Wildlife and Countryside Act where different levels and measures of protection can be provided or applied based on what is appropriate for any given species. Species that are listed can be subject to a variety of measures, including protections, e.g., from killing and injuring (within the Wildlife and Countryside Act), from damage to habitats including breeding and resting places (from the Habitats Regulations), and requirements for monitoring (to feed back into assessments of FCS). The wording of the legislation should be strengthened in many areas, for example to prohibit any ‘deliberate’ or

'reckless' killing, as well as reckless damage or destruction to irreplaceable habitats, as well as to provide greater clarity around the extent and interpretation of protection for species habitats and features such as places used for shelter, protection and breeding. There should be an additional measure to control releases of plants and animals not ordinarily resident to the UK or which constitutes a known threat to native species into the wild.

It would seem most appropriate that different sections and corresponding schedules should be maintained for species protection for conservation and for welfare; however, there are overlapping aims for example, the application of closed seasons, prohibitions of certain trapping methods, etc. It is unclear the extent to which these proposals would include other legislation, including for example Deer Act 1991, Badgers Act 1992, Wild Mammals (Protection) Act 1996, etc., and hence the range of species or protection measures that this may include.

What is crucial to fostering recovery is options to require proactive conservation measures for species or groups of species where FCS is declining. Funding for research and conservation should be provided before species become endangered. We welcome the introduction of Species Conservation Strategies, but there must be clear and effective measures to halt declines and drive recovery. There should be a requirement to put in place a Species Conservation Strategy for species or groups of species where FCS is declining.

Supported by additional and sufficient resources and in collaboration with relevant eNGOs, Natural England should be obliged to draft the required Species Conservation Strategies and create costed plans with specific actions to put species on a journey to recovery and achieving FCS. All public authorities, landowners and managers of protected sites should have a duty to implement the relevant actions in Species Conservation Strategies. This proposal would help integrate species conservation both within the protected site network and the wider landscape through other decisions and policies, such as land use planning, Environmental Land Management (ELM) and Local Nature Recovery Strategies (LNRSs).

We have several other proposals to improve species legislation to better protect and conserve species, including:

- Vicarious liability for all wildlife crime should be included in species legislation
- Powers to require restoration following harm or damage
- International commitments, including within Bern and Bonn Conventions, e.g., transboundary working mechanisms to deal with migrating bird and marine species, should be more clearly put into domestic legislation
- A renewed focus on nationally endangered species, additional to IUCN listing, such as hedgehog, harvest mouse and brown hare, that currently under the UK legislative system do not have adequate protection to promote the recovery of these species and that may need protection at a regional or local scale.
- New regulation around gamebirds and grouse, as the amount of gamebird biomass being released is bad for native species and driven grouse shooting is associated with multiple impacts on biodiversity including illegal raptor persecution
- Banning chemicals and pollutants harmful to species, e.g., lead, PFAS, or other highly persistent chemicals, EDCs.
- Regulations on excessive use of nitrogen-based fertilizers which lead to diffuse pollution of our air, soils and water, causing direct damage and loss of biodiversity.
- New definition of livestock, so clarity is provided that action can only be taken against certain species of wild bird that threaten captive-reared gamebirds (pheasants and red-legged partridges) whilst they are still dependent on their keepers.

- Flexible management of huntable and harvestable species to ensure take is sustainable, underpinned by mandatory bag estimates and the regular assessment of the sustainability of take.

Beyond legislation, there are several improvements that should be implemented without delay to improve species protection and conservation:

- Sustainable, statutory funding and resources for targeted species recovery, beyond just funding from licensing
- Clear guidance around licensing with licensing loss of habitats as a last resort rather than business as usual (see our response to Q27 for further detail).
- Better monitoring and reporting. Natural England should be required and better resourced to do this work in partnership with (and providing resources to) relevant expert eNGOs.
- Improved enforcement, through sentencing guidelines, clarifying the interpretation of 'significance of impacts/harm', and making offences notifiable (see our response to Q28 for further detail) and sentencing must truly be deterring.

26. Based on your knowledge and experience please can you tick the criteria below that you think we should use to determine what level of protection a species should be given?

*You can tick more than one box. (**Threat of local or national extinction/Welfare of wild animals/Controls in trade/Importance to the ecosystem (a species that has a disproportionate beneficial effect on an ecosystem and if they are not present the ecosystem will be in danger of collapse)/Promoting recovery (a species with a low or declining population, which may not yet have a threatened conservation status, but could be protected to support recovery and increased distribution)/Importance to genetic biodiversity (endemic species or sub-species within England that are important for the wider genetic diversity of the species)/**Management requirements (a species where management is required for public health, to protect agriculture, commercial interests and to protect habitats)/Socio-economic importance (a species that could be protected to benefit people and communities, for example, to promote tourism)/**To support efforts to reintroduce species or rewild habitats**/Unsure/**Other – please state, why**))*

The objective of species protection should be to maintain or help achieve favourable conservation status. The criteria need to be established to allow the assessment for any species where protection is needed to maintain or help achieve FCS – this will include the criteria we have selected above.

We suggest separating animal welfare as a different section with a separate schedule – as detailed in our response to Q25.

Management and recreational shooting requirements should be considered separately, e.g., via licensing, from species protection and recovery.

27. What proposals should we look at to improve our current licensing regime?

When you respond please state what you think is not working under the current licensing regime, which principles you think should be brought out in any new regime. Please highlight your experience, as well as making us aware of any evidence you can share that supports your view.

The current licensing regime needs substantial improvement to ensure consistency and effectiveness for species conservation.

Licences should be granted on the basis of prioritising action for nature and climate. When protected species are in conflict with development, the impacts on wildlife should be dealt with using the following methods sequentially: avoid, mitigate and compensate. The licensing system should ensure that, locally and nationally, the cumulative impact of development does not undermine the current conservation status of a species and should help move it to a favourable conservation status.

The current system lacks any means to assess whether this is the case with no one party being held responsible for oversight on any scale, little to no research on whether mitigation measures work, and no requirement for ongoing monitoring to assess long-term effects. Licences are not always based on evidence and appropriate environmental information, and where there is a lack of evidence, the precautionary principle is not always applied. Licences, specifically general licences, are rarely, if ever, monitored for compliance and for their effects on species and their conservation status. There is little to no enforcement of the licensing regime.

An effective licensing regime should be based on a strong demonstration of need for the licence and an evaluation of the impact of licensing on the conservation status of the species. Licences should not be granted where they contribute to the decline or continuing decline of the Favourable Conservation Status of a species. In MPAs, licensing decisions should be made on a case by case and site by site basis by relevant authorities using scientific assessments based on enhanced monitoring, with only light extractive activities considered for consent, restricting all heavy extractive activities. Activities should only be permitted if it can be proven that they neither prevent ecosystem recovery nor inhibit progress towards conservation objectives.

Licensing must be improved to take into account the needs of a species in terms of habitat requirements. Current licensing and proposed amendments to the Wildlife and Countryside Act 1981 as part of the Quinquennial Review (QQR 7) focus on individuals. However, as nature recovery is dependent on fully functioning ecosystems, protecting species' habitats must be protected alongside the plants and animals themselves. Licensing for damage to species or habitats within or adjacent to protected areas, in particular SSSIs or any levelled up nature designation, should be avoided and only granted in extreme circumstances. Regard needs to be given in particular to irreplaceable habitats such as hedgerows and ancient woodland that cannot be compensated for. Protection also needs to be given to such habitats where the species of concern is not currently present but which is within the range of a species and which would then be occupied by it when it reaches FCS.

Better guidance and environmental data can help improve the consistency and effectiveness of the licensing regime. For example, the lack of consistency in assessing the impacts of land management on species needs to be addressed through improved guidance. Robust and appropriate environmental data and regular monitoring is necessary to assess a species' conservation status and the effects of licensing. Where there is not appropriate environmental information, the precautionary principle should be applied.

Regular monitoring and reporting are also required to assess and report on compliance with licensing decisions and operations. Enforcement action should be taken when necessary.

Natural England should be required to conduct monitoring, reporting and enforcement of the licensing regime and should be better resourced to do this work, and there is also scope for other accredited organisations, such as eNGOs, to assist and provide expertise.

Any body that is responsible for the licensing system should be able to:

- Assess the impact of proposed work both locally, regionally and nationally on a specific species (this would include knowing what works had been carried out in a preceding period and knowledge of any planned works in future in order to be able to assess cumulative impact);
- Know whether the proposed mitigation or compensation measures benefit the species in question, have no impact or are detrimental (for example the effects of current mitigation measures for hazel dormice have not been studied to assess their efficacy);
- Have the power to refuse a licence or prosecute works that will detrimentally impact the FCS of a species or are counter to evidence showing what is beneficial for a species;
- Annually assess the scale of all licenced works on a species both locally, regionally and nationally to understand cumulative impacts;
- Have the authority to reject applications for licence where a cumulative impact on a species of concern will impact their conservation status; and
- Have the authority to prosecute and withhold future licences from individuals, businesses or groups that do not adhere to licensed obligations or fulfil future obligations (including monitoring and evidence gathering) of a licence requirement.

When it comes to restricting destructive fishing from MPAs, an alternative and complementary approach to introducing byelaw restrictions would be to use vessel licensing powers and the ability to place conditions on them. The 2020 Fisheries Act gives the Government additional post-Brexit powers to impose limits on fishing vessel licences of all flags in UK seas. Without going through lengthy consultation processes, placing conditions on licences could be implemented by the end of 2022. Not only would this be possible legally, there is also a legal imperative on the Government to prevent it contravening marine and nature laws when it annually issues over 2,000 EU and UK fishing licences with freedom to fish in UK MPAs.

28. What proposals do you think would make our enforcement toolkit more effective at combatting wildlife offences?

When you respond please highlight your experience, as well as making us aware of any evidence you can share that supports your view.

The UK Government is in the fortunate position of having been provided with a series of expert recommendations to improve the enforcement of legislation prohibiting wildlife crime, in the form of the UNODC's 'Wildlife and Forest Crime Analytic Toolkit Report: United Kingdom of Great Britain and Northern Ireland'.[46]

The report, provided to the Government in August 2021, sets out how more wildlife can be protected from the suffering and species losses inflicted by wildlife criminals. UNODC is the crime

[46] UNODC's 'Wildlife and Forest Crime Analytic Toolkit Report: United Kingdom of Great Britain and Northern Ireland'.

prevention office for the United Nations, drawing on the resources and experience of all members nations to be better equip governments to tackle crime. In 2018 the UK Government invited UNODC to consider UK wildlife crime, the 2021 report is the result of that exercise. The detailed nature of the report reflects the level of access the ICCWC team were granted, months of engagement with civil servants, police officers and civil society (including many Link Wildlife Crime Group members) led to the published recommendations.

This in-depth research resulted in a number of recommendations to make the Government's enforcement toolkit more effective. Link supports these recommendations and urges the Government to implement the following without delay:

- Move the funding for the National Wildlife Crime Unit (NWCU) to the Home Office and establish the Unit on a permanent basis (UNODC recommendation 6). This long-term footing for NWCU funding should include a significant uplift to the unit's budget to enable the hiring or seconding of additional staff and the purchase of vehicles and equipment. As the UNODC report makes clear, the ''centralised intelligence hub, strategic planning, priority delivery groups and a close, fruitful partnership with civil society'' the NWCU provides represents ''international best practice'' in wildlife crime enforcement. Despite this ''the NWCU leadership has to continuously fight for the Units' very existence.'' Long term, sufficient funding is required to realise the full potential of the UK's most significant wildlife crime policing asset.
- Increase investment into wildlife crime detection and prevention across police forces, both to increase the number of qualified investigators undertaking wildlife crime investigations and to provide specialist training to Wildlife Crime Officers (UNODC recommendation 8) to enable them to develop expertise that could be utilised to address wildlife crime and other crime types. As the UNODC reports, ''some officers interviewed spoke of having to work wildlife crime cases in their own time, of lacking the necessary resources to do their job properly and having to justify why they are investigating wildlife crime cases at all.'' A significant uplift in the support given to wildlife crime operations is required across police forces to improve enforcement, these crimes must be viewed in a different and more serious light.

The UNODC report also highlights how the low penalties incurred by wildlife criminals, a fine in the vast majority of cases, inhibits enforcement. These low penalties prevent the police from using advanced investigation techniques (including surveillance, undercover operations and the interception of telecommunications) for most wildlife crime offences as the penalty threshold to permit this policy activity, as set down in the under the Regulation of Investigatory Powers Act 2000, is a custodial sentence of six months or over.[47]

The proposal in the Green Paper consultation document to align wildlife crime penalties with animal welfare penalties could address this, given the greater use of custodial sentences of up to five years in animal welfare cases following the passage of the Animal Welfare (Sentencing Act) 2021. Link supports this alignment proposal, which could unlock advanced investigation techniques as a new wildlife crime enforcement tool. Greater use of custodial sentences for wildlife criminals could also help increase the seriousness with which police forces treat wildlife crime, enhancing enforcement across the board, as well provide a greater deterrence effect on wildlife criminals. Similarly, a penalty uplift for wildlife crimes could address the significant prosecution issue identified by UNODC:

''Given the vast majority of wildlife offences across the UK are summary only, this leaves a six-month window for proceedings to commence after the sufficiency of evidence threshold has been met.

[47] Regulation of Investigatory Powers Act 2000

Many cases, such as those relating to bats and badgers, rely upon expert testimony, which can take considerable time and resources to obtain (even allowing for a decision to charge on the threshold test). Often the penalties available do not always reflect the costs involved in bringing the case to trial.''

Finally, the Government should take urgent action to implement recommendation 23 of the report to ''make all wildlife crimes recordable and notifiable offences.''

This is a bar to effective enforcement that Link has highlighted for some years; most wildlife crimes are not recorded by the Home Office, as they lack what it known as 'notifiable status'. The resulting major data gaps makes it difficult for police forces to gauge the true extent and characteristics of wildlife crime and to plan strategically to address it. Having a clear and up-to-date data base of different types of criminal activity is a pre-requisite for successfully addressing it, allowing repeat offenders to be tracked and offending patterns to be observed. This pre-requisite is missing for wildlife crimes, inhibiting enforcement. In the words of the UNODC report:

''Wildlife crime data exists in some format at each point of the criminal justice system in administrative statistics; however, it is scattered, varied, and often provides an incomplete picture of the scale, variability, and impact of these offences… That wildlife crimes are not recordable and notifiable across the UK means that wildlife crime statistics lack even the basic elements of the aforementioned crime recording 'best practices' to adequately measure the scale and nature.''

Aligning wildlife crime penalties with animal welfare penalties would provide an opportunity to extend notifiable status to wildlife crimes, as offences under the Animal Welfare Act are notifiable.

The UNODC report provides a blueprint for the more effective enforcement of wildlife crime legislation. The welcome proposal in the Nature Green Paper for wildlife crime penalties to be aligned with animal welfare penalties should be progressed along with three UNODC recommendations – more support for NWCU, more support for wildlife crime officers across police forces and notifiable status for wildlife crimes. The more effective enforcement secured by these measures would bolster the fight against wildlife crime and help species threatened by wildlife crime recover, contributing to the 2030 species abundance target.

Delivering for nature through public bodies (page 24)

29. What are the most important functions and duties delivered by Defra group ALBs to support our long-term environmental goals?

The Government is proposing reform of arms' length bodies (ALBs), arguing that the regulatory landscape has become fragmented and complex. Improvements in DEFRA's agencies are needed, particularly in regulation and enforcement. However, wider reform of the public bodies themselves could expend lots of time and effort, while holding back delivery of environmental objectives and improvements.

Across the Defra ALBs

Setting a consistent nature recovery purpose for all Defra ALBs

Institutional improvement could be made by setting nature's recovery—and in particular the achievement of statutory nature and climate targets—as statutory purposes for all Defra's ALBs,

including the Forestry Commission, RPA and MMO. Clear and consistent duties to enhance biodiversity and meet environmental targets across ALBs will minimize conflicting drivers such as economic development and enable better join-up across the ALBs, for example in the freshwater environment. This will also help join up policies across Defra ALBs, including the Nature Recovery Network, ELM, LNRSs and Species Conservation Strategies.

A shared strategy and strengthened legal duty to collaborate, at least between the Environment Agency, Natural England and Forestry Commission, could also secure better join up and better delivery of shared environmental objectives between Defra ALBs.

Removing the growth duty for Defra ALBs

The work of many ALBs represents an important contribution to prosperity of the most fundamental kind: a thriving natural world upon which the economy and our wellbeing ultimately depends. The growth duty undermines the regulatory integrity of non-economic regulators and their independence and their ability to fulfill their primary statutory duties and functions.[48]

The available evidence suggests that environmental regulation is not a brake on economic growth, a burden on British business or a barrier to international competitiveness. In fact, environmental regulation can drive innovation, reduce risks, create jobs and growth, create new business opportunities and boost the UK's international competitiveness.[49]

There is limited evidence to suggest that non-economic regulators are failing to promote growth, or that requiring such regulators to promote growth would be desirable or effective. Moreover, given the importance of natural capital to future economic prosperity, a more appropriate goal for a 'growth' duty would be to focus on 'sustainable' or 'green growth' that is consistent with the protection and enhancement of the natural environment or 'natural capital'. We do not believe that regulators should be required to promote economic growth over and above the other two pillars (social and environmental) of sustainable development.

We recommend that the growth duty introduced under the Deregulation Act 2015 and all reference to duties on ALBs to make decisions guided by considerations of economic growth should be removed.

Providing sufficient resources

ALBs must be sufficiently funded to carry out their purpose and functions. As detailed further below, resourcing for ALBs has declined over the last years, resulting in reduced ability of ALBs to fulfill their functions.

Ensuring independence and scrutiny of Government

In order to fulfil the core mission of nature's recovery, it is imperative that Defra's ALBs maintain their independence and the ability to make decisions free from political interference. ALBs provide a long-term perspective, outside of short-term politics, that will be crucial in addressing both the

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[48] https://www.wcl.org.uk/docs/Link_response_to_the_Joint_Committee_on_the_Draft_Deregulation_Bill_Call_for_Evidence_Sept13.pdf

[49] For examples, see HM Government Low Carbon Construction: Innovation & Growth Team (2010) HM Government Review on Low Carbon Construction; Cole, M. A. and R. J. R. Elliott (2007) "Do Environmental Regulations Cost Jobs? An Industry-Level Analysis of the UK." The B.E. Journal of Economic Analysis & Policy 7(1); Rayment, M., E. Pirgmaier, et al. (2009) The economic benefits of environmental policy - Final Report, Institute for Environmental Studies.

climate and nature crises. ALBs currently provide strong scrutiny of the Government's environmental policies, this cannot be an attempt to mute criticism.

Environment Agency:

The monitoring and enforcement function carried out by the Environment Agency is crucial - it underpins the protection and enhancement of the water environment. For example, we rely on robust evidence on the state of the water environment from monitoring in order to guide actions to protect and enhance freshwater systems - and if evidence is lacking, polluting sectors use this as justification to challenge and resist regulation. Enforcement is vital, given that regulations can only deliver protection to the water environment if they are upheld - enforcement is key to ensuring this.

However, the Environment Agency does not currently have the resources, capacity and funding it requires to deliver a robust, comprehensive and transparent monitoring and enforcement regime. Over the years, the Environment Agency's role as a regulator has been weakened by successive tweaks and reforms to its powers. Since its inception in 1995, the EA has had to "take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question."

Without adequate funding for water quality monitoring, regular inspections of farm businesses and water companies, and to respond to pollution incidents to hold polluters to account, the ability of regulators to protect the water environment is compromised - as recent stories show.[50] The Environment Agency's severely limited ability to monitor and enforce regulations due to lack of funding poses major risks to the environment, as well as risks to the Government's statutory obligations. The recent finding of 0% of rivers meeting Good Chemicals Status is a case in point, alongside widespread public concern about the Agency's ability to uphold water quality rules. Furthermore, Environment Agency staff have been instructed to ignore 'low-impact' pollution incidents, due to capacity issues. This presents a fundamental undermining of the Agency's statutory mandate to enforce particular environmental regulations.

Between 2009-2019, Environment Agency funding fell 63%, total staff fell 25%, and prosecutions of businesses fell 88%. 2012-2019 saw the number of Environment Agency enforcement notices fall 69.5%. In England, spending on protected area monitoring on land, including freshwaters, fell from around £2 million in 2010 to £700,000 in 2019.[51]

The Government should increase the Environment Agency's regulation and enforcement capacity, for example to enable all water bodies to be effectively monitored and reconfigure enforcement of environmental regulations to a more proportionate, advice-led approach. An additional £60m p.a. for the Environment Agency is needed to carry out its basic duties of advice and enforcement.

Any review of ALBs should aim to address the funding and capacity issue with the Environment Agency in order to strengthen its monitoring, regulation and enforcement regime.

There are also issues with disconnect between the different bodies, preventing them from effectively working together. For example, Natural England may identify a water quality issue on a

[50] https://www.endsreport.com/article/1736788/appalling-scandal-fury-environment-agency-slashes-pollution-incident-response-action

[51] https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf; https://www.rspb.org.uk/globalassets/downloads/our-work/troubled-waters-report

protected site, but this doesn't always get effectively passed onto the Environment Agency to then respond and rectify the problem. This is further problematised in cases such as the River Wye, where cross-border disconnect between EA and Natural Resources Wales is a further complication. The agencies need to be able to identify pollution incidents and follow through with enforcement and mitigation more effectively. This RSPB case study of the River Wye exemplifies how despite many agencies coming together, water quality is still declining.[52] Similarly, the RSPB case study of Leighton Moss shows how despite pollution issues being well-documented (and their impact on a protected site), and despite it being clear what the source of the pollution is, partnership work across agencies to date has not delivered the changes needed.[53]

Any review of ALBs should consider ways to enable delivery with a more holistic approach, and the opportunity to better join up these disparate bodies and processes. However, any gains in efficiency should not be at a loss of efficacy - the purpose of any reforms should ultimately be to deliver greater environmental outcomes, not to streamline processes and cut costs.

Natural England:

Natural England is unable to properly fulfil statutory duties such as monitoring of SSSIs (78% of SSSIs have not been visited in the last 6 years)[54] and exercising its regulatory tools to secure the good management of SSSIs (Natural England has only used these tools on 9 occasions in the last 20 years, covering 0.2% of SSSIs).

Natural England will need significantly increased resources for establishing FCS, developing and implementing Species Conservation Strategies and funding species conservation projects and programmes.

The expansion of Natural England's advisory capacity to deliver a large-scale expansion in advisory services in readiness for ELM and for compliance is needed. This will also increase its ability to: a) fulfil their statutory duties with regard to protected sites and protected landscapes (including any additional duties to protected landscapes after the Government's implementation of the Glover Review) and b) drive nature's recovery according to the 25 Year Environment Plan, not just prevent further decline.

When agricultural payments are de-linked in 2024, cross-compliance will no longer act as an extra enforcement mechanism. This matters for ALBs- particularly Natural England and the Environment Agency- as breaches of regulations may become even more difficult to detect on the ground, unless more resource and manpower is given to inspections and monitoring for those ALBs.

Furthermore, while local authorities are not arms-length bodies, they oversee the enforcement of some regulations which are important for the environment such as Hedgerow Regulations, tree preservation orders and rules relating to public rights of way. Often, Local Authorities struggle with a lack of resources to enforce such regulations, and have often relied on the RPA to step in to deal with breaches to those regulations.

As part of any review of ALBs, government must consider the wider implications of the loss of cross-compliance, to assess enforcement of environmental rules across the board.

[52] https://www.rspb.org.uk/globalassets/downloads/our-work/the-wye-river.pdf
[53] https://www.rspb.org.uk/globalassets/downloads/our-work/leighton-moss.pdf
[54] https://www.theyworkforyou.com/wrans/?id=2021-02-09.151834.h&s=%27SSSI%27#g151834.r0

Forestry Commission:

We welcome the proposal to introduce a new duty upon the Forestry Commission to protect nature and promote biodiversity, alongside expanded powers to deliver these duties.

This should be expanded to apply to both Forestry Commission England (including Forest Services) and Forestry England, given the Government's nature objectives apply to both public and privately owned woods and trees.

This specific biodiversity duty will help the Forestry Commission, as the manager of over 250,000 hectares of woodland habitats, to contribute to the Environment Act apex target of halting the decline in species abundance by 2030, as well as wider biodiversity targets and ensure biodiversity is truly taken into account within all its functions. We suggest that the new duty is amended slightly to a nature recovery duty, to align it fully with those targets.

Inshore Fisheries and Conservation Authorities (IFCAs):

IFCAs have been able to achieve positive outcomes by being more focussed. IFCAs have generally been a benefit to inshore seas protection. There have been progressive IFCAs, which have adopted a 'triage' system of marine fisheries management since the revised approach in 2012. An effective IFCA has been Devon and Severn (despite funding difficulties from having its range extended to North Devon waters). It has had an excellent system of protecting habitats (and thereby species and ecosystem functions) from nearshore bottom trawling from smaller vessels since 2013.

Less pro-active IFCAs include Eastern and Northumberland where limited protection measures are undertaken; this is despite the evidence of wider seas and whole-site approach measures better affecting wider ecosystem processes for the majority of stakeholders. Sussex IFCA has been exemplary for initiating and getting the Sussex inshore trawling byelaw through its committee despite forceful opposition from some fisheries stakeholders. This important initiative has moved the debate on 'trawling in MPAs' to one of 'nearshore trawling being bad for ecosystem processes for the majority of stakeholders and biodiversity'. It has shown that socio-economically there are ways to manage the seas that are of benefit to a wide selection of society and a healthy planet that should take into account the views of persons beyond the local area being linked to healthy productive ecosystems. Such forward thinking is laudable, and fully in line with the current constitution of what IFCAs are, who they represent, and legislation such as The Fisheries Act, MACA Act, and Habitats Regulations.

30. Where are there overlaps, duplication or boundary issues between ALBs, or between ALBs and government? How could these be addressed?

There are issues with joined up working in the freshwater environment, with data sharing and with coordinated use of incentives, advice and enforcement.

Improved working between ALBs (particularly Natural England and the Environment Agency) should cover the following:

- **Improved data-sharing and joint annual reporting, including a land keepers' register.** The FIRR highlighted that: "There is no one base dataset for farms that all regulators can access. Each organisation's information needs are different and therefore the requests for information to farmers differ leading to farmers being asked for the same information in different formats by different organisations. From the organisations' perspective there are challenges trying to find the person responsible on the farm with whom to engage. Despite improvements over the past few years in coordinating farm inspections, the degree to which efficiencies have been possible have been frustrated largely by 'immovable system constraints."

  We recommend that data-sharing between existing and/or future agencies must be improved by creating a centralised database containing information on farm visits, designated site condition, voluntary schemes and compliance issues.

  At the moment, Government does not know how many farms there are, or who is responsible for any given land parcel. This makes it extremely difficult to gain an overview of performance in the sector, to tackle bad practice or promote improvements. The creation of a single land keepers' register to be held by the regulator would place "the onus of responsibility at any point in time with one individual", regardless of the business model used on the landholding. This could aide easier coordination between ALBs and Government.

- **Coordinated use of incentives, advice and enforcement.** A well-funded, coordinated and streamlined advice service that adheres to a set of clearly defined objectives set at a local level should be a priority, integrating effectively with regional/national goals. This is critical to help farmers and land managers manage the change ahead, and to create a culture where they understand what is required, and why, for the successful implementation of basic rules and environmental and animal welfare incentives. We agree with the FIRR that it would be effective for the regulator to oversee the accreditation of all advice providers.

- **Using a stepwise approach to enforcement.** Regulators should start using the full range of enforcement options to deal with non-compliance and poor practice and the use of tools such as consent orders to establish responsibility for action, ideally ensuring that advice is provided in parallel. This is in line with the Scottish Environmental Protection Agency (SEPA) model, has been applied in some instances by the Environment Agency and was advocated by the Independent Farming Regulation Task Force in 2011 and the FIRR. The FIRR report makes clear that the entry point on its 'spectrum of regulation' can be anywhere on the scale.

Improved working can be achieved by implementing the proposals outlined in our response to Q29 (including shared statutory objectives across the public bodies for nature recovery) and by addressing the issues outlined in this response with respect to data sharing, coordinated use of advice and enforcement, and a stepwise approach to enforcement.

31. What are the benefits and risks of bringing all environmental regulation into a single body?

Please see our response to Q32 below about the risks of forming one single environmental body.

32. What are the opportunities for consolidating environmental delivery functions into a single body? Which programmes and activities would this include?

The existing ALBs are far from perfect, and there are several recommendations we make to improve their functions, both internally and in their ways of working together. However, we do not believe that a comprehensive reform that overhauls the current system entirely is desirable at this point in time. This is for the following reasons:

1. Large-scale reform could be time-consuming and costly, at a time when we need delivery for nature and climate. We are already behind on the target to halt the decline of nature by 2030. A merger of public bodies will divert vital resources and time from the agencies and restrict their ability to perform essential functions in the short and medium term, placing the achievement of the biodiversity target at risk. While in some areas- such as replacing the CAP with public money for public goods- is desperately needed in some areas of Government policy, the delivery bodies such as Natural England and the Environment Agency are absolutely crucial for driving nature's recovery at-pace. For instance, the 2030 species recovery target requires frontloaded action in the next 2-3 years in order to have a hope of meeting it.

2. ALBs need modification, rather than reform. As new Government targets such as those under the Environment Act are made, it is timely and appropriate to assess the roles of ALBs, so that they can be modified to be able to support nature's recovery and mitigate climate change in the most effective way.

3. Customers need certainty. Land managers in particular are undergoing one of the biggest reforms to agricultural policy in recent decades. While we recommend some changes and small reforms below, these would not cause large-scale disruptions to the system which could risk failure. Land managers need certainty about who is 'coming down the farm track'. Although improvements need to be made in current ALBs to make distinctions between 'enforcer' and 'advisor', there is a risk that under a single body, the distinction between the friendly advisor and the regulator may become even more blurred. This would be undesirable, as land managers need to build up a trusted relationship with advisors, without wishing to conceal activity from them for fear of a penalty.

4. There is a risk of creating a bloated, larger body which is unable to respond in a specialised and timely way on the ground.[55] A single body could become overly bureaucratic and inefficient, as is often the risk when any organisations expand in size and scope. Furthermore, separate ALBs as they exist now are more nimble and able to respond to emergencies within their own area of competence. There is a risk that within a single body, the overall strategic objectives of Government for the environment could become waylaid by responding to specific crises such as livestock health. Finally, specialist environmental expertise is the strength of the current ALBs. In a single body, there is a risk that staff requirements might become more 'generalist'. This would potentially undermine enforcement and delivery.

There is scope for better coordination of advice and enforcement so that they work together cohesively and address problems in a holistic manner. This could also be done through effective coordination and joint corporate planning between existing ALBs and does not necessitate bringing all environmental regulation and deliver under one body. This could include placing a requirement on agencies to integrate and align some of their key activities at a local level. This would improve the

[55] https://www.walesonline.co.uk/news/politics/vast-sums-squandered-wales-created-15817892

delivery of services and inter-agency effectiveness, without the high costs and disruption in functionality.

Cost recovery (page 25)

33. Please provide your views on how more effective cost recovery for regulation would affect: a) environmental protections, b) businesses.

No reply

34. What is the most efficient way of ensuring businesses and regulated persons pay an appropriate share of the cost of regulation?

No reply

Financing nature recovery (page 26)

35. What mechanisms should government explore to incentivise the private sector to shift towards nature-positive operations and investment?

Increased and sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites and protected landscapes, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. Research into sustainable development and climate funding has indicated that state funding is often the most effective solution, both in terms of outcomes and cost-effectiveness.[56] The market will not pay for some public goods (hence the 'public money for public goods' principle). We argue that public money will always need to have a major role in supporting nature protection and restoration, and that this needs to be increased.

There is a role for private finance to increase investment in nature. If in addition to sufficient public finance for statutory obligations and well-regulated and delivered, private finance represents an important opportunity for nature restoration and enhancement, for example through high quality Nature-based solutions such as restored saltmarsh.

Corporate funding for biodiversity conservation must go above and beyond the sector-specific and very limited offsetting for the hardest to abate residual emissions. Clarity must be provided in relation to any corporate funding for biodiversity conservation that companies cannot make claims to investors or consumers that additional nature payments are part of companies' net zero plans.

Robust monitoring and accounting will be crucial. There should be transparent and separate accounting processes for statutory funding and private funding to track government conservation funding separately from funding derived from private finance, to ensure that private finance is not

[56] Clark, R., Reed, J. and Sunderland, T. (2018). Bridging funding gaps for climate and sustainable development: Pitfalls, progress and potential of private finance. Land Use Policy, 71, pp.335-346

used to meet statutory obligations and ambitions and does not lead to reductions in statutory funding.

Government is currently inconsistent in its approaches to climate and nature. It is difficult to attract meaningful investment when there is also major spending on new strategic roads, new licences for oil and gas and cuts to domestic air passenger duty, etc. This sends a message to potential investors that 'brown assets' will remain a safe and profitable bet and the Government is not fully committed to a greener future.

36. What level of regulation is needed to incentivise private investment in nature while ensuring additionality and environmental integrity? What else should government be doing to facilitate the development of a market framework that provides investors, farmers and land managers, regulators and the public with confidence in the quality of privately financed nature projects?

Regulation to require robust monitoring, accounting and reporting will be crucial to ensure additionality and environmental integrity.

There are concerns about a lack of robust and transparent accounting. If the registers or systems of different environmental services are not joined up and transparent, there risks double payments to one piece of land for the same measures.[57] In any decision about combining payments from biodiversity units with other payments from environmental services on the same piece of land, a comprehensive and transparent registry system, map and accounting system, that can account for multiple types of credits is fundamental.

We are also concerned that there is a risk of using private finance to meet statutory obligations and goals and reducing or not increasing crucial statutory funding. Sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as Biodiversity Net Gain (BNG) to bring our statutory sites up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding, to track government conservation funding separately from funding derived from private finance, to ensure that private finance does not lead to reductions in statutory funding.

With respect to carbon markets specifically, there is a long and well-documented history of problems with the validity of offsetting projects in delivering genuine, additional and permanent benefit to the climate while upholding high standards to negate harmful social impacts and biodiversity loss. Rather than abating climate change, there is a risk that poor-quality offsetting schemes (and nature-based solutions) are a way to let industrial emitters off the hook, both reputationally and in terms of their emissions reduction commitments. There are also concerns about the permanence of carbon stored in the biosphere and the potential for carbon sinks to switch to a source of emissions in the future. More broadly, by including a "net" emissions figure in carbon accounts without separate accounting of genuine emissions reductions and removals through offsetting, the widespread use of offsets by companies and public authorities can give a false impression of progress.[58]

While carbon offsetting is an opportunity to drive investment in nature, carbon markets can only play a small role in delivering nature-based solutions. Corporate funding for biodiversity

[57] https://www.wcl.org.uk/docs/Link%20BNG%20consultation%20response%20-%20FINAL%2005.04.2022.pdf
[58] https://www.wcl.org.uk/docs/Wildlife_and_Countryside_Link_Offsetting_Briefing_23042021.pdf

conservation must go above and beyond the sector-specific and very limited offsetting for hardest to abate residual emissions. In the first instance, private sector actors seeking to make payments for nature restoration and protection should do so without them being used to claim “carbon neutrality” or “compensation” for carbon emissions (whether scope 1, 2 or 3). Clarity must be provided in relation to any corporate funding for biodiversity conservation that companies cannot make claims to investors or consumers that additional nature payments are part of companies’ net zero plans.

Importantly, limiting the use of offsets for specific cases should not deflect from the necessary investments in nature here in the UK or internationally. Nature conservation, protection and restoration needs to happen in its own right irrespective of measures required to address climate change. Governments must set a clear trajectory in law for restoring nature, increasing investment in nature conservation, protection and restoration, including what have become known as nature-based solutions to climate change and other challenges.

Concerns about the integrity of offsetting approaches remain widespread among the environment sector for important and well-evidenced reasons. Including Greenpeace, who are opposed to the establishment of voluntary carbon markets as a way to leverage funds for nature restoration.

37. What financial impact do you think the proposals set out in this green paper would have either on business (For example, landowners) or government?

Please let us know if you feel these proposals would have a significant impact on your business area, or if you think they would have an impact on public funds. For example, this could be about costs or if you think certain proposals would have a positive financial impact or create opportunities. Please tell us in what way you think these impacts would come about, which proposals would drive that change, and try to evidence any financial estimations of costs or benefits.

No reply