

Response to the Nature Recovery Green Paper: Protected Sites and Species

The Department of Environmental, Food and Rural Affairs (DEFRA) is seeking views on its proposals set out in its Green Paper that support its ambitions to restore nature and halt the decline in species abundance by 2030.

The Green Paper includes options to bring clarity and coherence to the current framework for protected sites; to reform species protections; and to modernise funding arrangements. It also looks at what institutional and delivery arrangements would best support its nature recovery objectives.

DEFRA have set out proposals in order to create a system which better reflects the latest science and the impending impacts of climate change, which better reflects the UK domestic species and habitats, and which will help DEFRA achieve its significant goals to recover nature.

The response to this consultation is provided by the Planning and Environment team of Irwin Mitchell LLP. The Environmental division of the team advises business and individuals on contentious and non-contentious environmental law matters and has experience in prosecuting a wide range of environmental offences including wildlife crime.

The Team has answered the specific questions raised by the consultation document.

This response is not intended to represent the views and opinions of all Irwin Mitchell and its clients, but we are well placed to produce an informed response based on our collective expertise in environmental and wildlife law.

PRELIMINARY POINTS

The Green Paper on Nature Recovery presents an ideal opportunity for the UK government to coordinate and integrate across the whole of government decisions that affects nature and habitats. There is a desperate need to have joined up approach by decision makers in relation to housebuilding, infrastructure projects, expansion of our transport networks, management of rivers in order to ensure that we halt the decline in species abundance by 2030 and are resilient to the impacts of climate change. A concerted effort to ensure coordination across government is in our submission realistic and achievable and is the major contributing factor in ensuring that the UK government can realise the aims and proposals contained within the Green Paper on Nature Recovery.

Whilst it is agreed that there needs to be an overhaul and modernisation of the current protections in place for nature, the Consultation document appears to have emphasis on the changing institutions, names and structures as a way forward in halting species decline with little information to provide assurance that an overhaul of the current system will in fact halt the decline of nature and truly assist in its recovery.

In addition it appears that there is potential overlap between this consultation and the Biodiversity Net Gain consultation of earlier this year. The government needs to be mindful of the importance of ensuring that one regime does not undermine another particularly in relation to any proposed developments on 'protected' sites and highlights the need of a joined up approach as referred to above.

Q1 What is your correspondence address?

Please provide an email address or telephone number unless unable to.

One St Peters Square
Manchester M2 3AF

Q2 Would you like your response to be confidential?

No

Q3 Please tell us in what capacity you are responding to the consultation by selecting from the following:

- Individual
- Research Organisation
- Sector trade body or membership organisation
- Ecologist
- Academic
- Planning Consultant
- Developer/Builder
- Local Authority
- Public body
- Non-governmental organisation
- Farmer
- Landowner
- Other (please state) Law firm

Q4 If responding on behalf of an organisation, please provide the name of the organisation you are responding for.

Irwin Mitchell LLP

Q5 Please indicate your specific areas of interest in responding to this consultation:

- 30 by 30
- Protected Sites
- Habitats Regulations Assessment
- Trees and Forests
- Species
- Green Finance
- Marine: Protected Sites
- Marine: 30 by 30
- Arm's-Length Bodies
- Cost Recovery
- Environmental Impact Assessment
- Other (please specify)

Q6 Please indicate which location your response relates to, selecting from the following:

- United Kingdom
- England
- Northern Ireland
- Scotland
- Wales
- Other (please state where)

PROTECTED SITES

Q7 What degree of 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.

- a) Option 1: Reform including a tiered approach emulating the approach taken in the marine area for HPMA's and MPAs, consolidating existing protected site designations and the creation of highly protected sites.**
- b) Option 2: Lighter touch reform including streamlining existing site designations (SACs, SPAs, and SSSIs).**
- c) Option 3: Amalgamation into a single type of designation with a scale of protections.**
- d) Other**
- e) No reform**
- f) Don't know**

Generally - In response to Q7 whilst there is scientific evidence that the current SAC's and SPAs are effective in protecting nature only 38% of SSSI's are in a favourable condition and wildlife continues to decline. It is agreed therefore that a reform of the current system to one that is more simplistic but that is regulated in a more effective manner and works in terms of protecting nature and stemming the loss should be considered. The government's proposal for 'Highly Protected' sites that are focused on the protection and recovery of terrestrial ecosystems is very much welcomed. However it is disappointing that the government is proposing only a 'few' sites would be designated a 'highly protected' status. With the state of the UK's biodiversity being so poor and many species in significant decline due to habitat loss, pollution and climate change the government needs to be more ambitious. Greater protection of the natural environment is critical as we depend upon it to provide us with the essentials that we need to live, such as clean air and water and to help us mitigate the effects of climate change.

We agree the proposal for 'Protected' as opposed to SPA's SAC's and SSSI's sites to be managed for their national and international biodiversity or geodiversity providing that 'protected' sites have sufficient funding in place to ensure effective conservation management.

The tiered approach to species protection that includes both fauna and flora is very much welcomed. A significant amount of our wild flower plants and our native trees are in decline and it is crucial that they are included in the proposed new tiered approach to designating protected sites. It is scientifically proven that native plants support significantly more wildlife than non-native species. As the Woodland Trust has stated native flora are "adapted to the local climate, soil type and wildlife and without them native wildlife would not be sustained. Having a diverse and rich variety of plants is not only socially and environmentally

important – they also have great economic benefits through farming and tourism. Plants are vital for life.”

In relation to the proposed tiers for protected sites we respond as follows:-

Tier 1 – Minimum management standards. The proposal of the UK government is welcomed. There exist cruel and archaic methods for trapping and killing wild animals that should be designated to the history books. These methods need to be updated and can be enacted through changes to the Wildlife and Countryside Act. Increasing the number of wild animals to which prohibitions apply including prohibiting killing and trapping during the close season would be a big step for the UK government and could be a way forward in terms of changing long held historic and misconceived views that certain wild animals are vermin and have no value while other species should be afforded protection as they are deemed worthy of protection¹. An unacceptable array of wildlife including bats, birds, badgers, plants, hares, deer, fish, seals, dolphins, amphibians and reptiles, and more, are harmed at the hands of hunters, poachers, criminals.

Tier 2 – Protected – It is welcomed that the UK government is considering including invertebrates within Tier 2 for protection. There is a clear need for invertebrates to be included in the list of species identified for promotion of species recovery or of welfare concern. It is surprising bearing in mind the number of scientific studies undertaken not only within the UK but globally which suggest that we are facing a significant decline in our insects.² that the UK government is not doing more to ensure that UK invertebrates are protected. They play a vital role in the food chain particularly for our native birds and migratory species and the decline of insects and invertebrates is one of the reasons that our swallows³, house martins, swifts and warblers are in significant decline due to uncontrolled use of insecticides and pesticide that kills invertebrates.

A review of the Wildlife and Countryside Act in order to strengthen protection of nature is again very much welcomed and is also long overdue. Due to the significant pressures of climate change and loss of species abundance an increase in the level of protection is critical.

It is submitted that the Green Paper presents an ideal opportunity to increase existing penalties for committing offences for wildlife crime under the Wildlife and Countryside Act. Wildlife crime is an extremely serious offence that has far reaching and devastating consequences for society, public health and global economics. It is more than often overlooked, rarely prosecuted and the current penalties that the court can impose act as little deterrent. Wildlife crime often involves organised

1 1902 Convention for the Protection of Birds Useful to Agriculture

2Global Decline of Insects Dr Hamadthu El-Shaife

3[Decline in swallow populations \(europa.eu\)](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1)

crime gangs. It is disappointing that in the UK the number of prosecutions taken for offences committed under the CITES regulations has fallen dramatically with less than 5 prosecutions since 2019⁴. There is also a substantial illegal trade in invertebrates, as well as plants. The trade in bush meat appears to be growing, with bush meat products being in high demand in some UK communities. There is also evidence of the UK being used as a hub for the trade of bush meat products into the EU, posing a risk in terms of the spread of zoonotic disease.⁵

A largely unregulated market online and social media allows wildlife trafficking to significantly increase.

It is noted that the UK government have recently been working with UNODOC to tackle wildlife crime. In August 2021 UNODOC completed its Report for the UK government “Wildlife & Forest Crime Analytical Toolkit Report”. The Report was published on the DEFRA website and contains 72 separate recommendations, covering legislation, enforcement, prosecution, sentencing and monitoring.⁶ However it is extremely disappointing that the government has been mainly silent regarding the recommendations contained within the Report and this is a real missed opportunity by the government to tackle wildlife crime.

The UK government could be a leader of the Western world by being one of the first western countries to significantly increase the penalties for wildlife crime and in particular in the illegal trade in endangered species. The police have a National Wildlife Crime Unit but according to a recent study by LINK⁷ there is evidence that it has been significantly underfunded for years and more funding needs to be provided so that officers are trained in dealing with wildlife crime and the current number of wildlife crime officers is significantly increased.

In order for Tier 2 to be effective it should also provide protection to the habitat of the flora and fauna it is seeking to protect. Without a suitable habitat to survive the protection of species would be meaningless.

Tier 3 – Highly Protected

The government propose that designated Tier 3 sites would be afforded protection of both the flora and fauna and protection to prevent the loss of habitat and dwelling places in order to secure effective conservation. Whilst such a high level of protection is to be welcomed it raises the point made in response to Tier 2 protected sites in relation to the protection of habitats. Should the

⁴ [The Government has been given a comprehensive plan to tackle wildlife crime – will it implement it? \(wcl.org.uk\)](https://www.wcl.org.uk)

⁵ <https://www.ecojust.eu/bushmeat-trafficking-in-europe-a-ticking-time-bomb/>

⁶ UNODOC Wildlife & Forest Crime Analytical Toolkit August 2021

⁷ [The Government has been given a comprehensive plan to tackle wildlife crime – will it implement it? \(wcl.org.uk\)](https://www.wcl.org.uk)

government not be protecting the habitat in order to secure effective conservation for Tier 2 protections.

The government is alluding to a 'hands off' approach in relation to highly protected and protected sites. However a hands off approach needs to be defined as it is open to misinterpretation. Whilst the government likens the hands off approach to the Knepp rewilding project, Knepp it could be argued is not a 'hands off' approach. It is part of a large estate and has involved a large number of people, a large amount of work as well as financial funding to enable it to be what it is today. Therefore in this context a 'hands off' approach could be construed as the government being unwilling to ensure sufficient funding is in place to ensure effective conservation.

New reforms should also contain clear and effective protection against unsuitable and/or unsustainable building development on 'protected sites' in order to provide certainty to developers that designated protective sites cannot be developed.

However reforming the current system should not be lengthy in nature and cumbersome and not to the detriment of legal protection of species. It is essential that there regulatory protections are embedded in to any reforms.

Q8 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.

- a) **Option 1: Reform including a tiered approach consolidating existing protected site designations and the creation of highly protected sites.**
- b) **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).**
- c) **Option 3: Amalgamation into a single type of designation with a scale of protections.**
- d) Other**
- e) **No reform**
- f) **Don't know**

There is a desire in the consultation paper to work towards developing a more streamlined and coherent set of legal provisions in relation to nature recovery and climate change, consolidating an area that is legally complex, stemming from domestic and EU legislation.

Whilst we welcome this in principle, the consultation paper lacks detailed information as to how the government would engage in this process. Further, whilst we accept that the range of marine designation types can cause confusion, there is no guarantee that adopting a tiered approach or streamlining the site designations will necessarily assist in meeting the objectives for protecting habitats and species.

In fact, the consultation paper states that the MPA networks are ecologically coherent and through this network, the government will be able to meet its marine habitat and species objectives. Due to this, we have concerns in relation to the options for reform that are proposed in the consultation paper and consider that an alternative approach may be required.

Q9 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 e.g. 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.

a) Yes

b) No

c) Unsure

We agree that there should be a simpler and more ecologically coherent network of protected sites to offer the prospect of wider reform to reflect other UK government priorities for both the climate and better governance and to ensure that various duties and accountabilities are equally consistent and coherent and they reside in the same place. However it is unclear from the Green paper how the UK government proposes to achieve a simpler and more ecologically coherent network of protected the sites and the UK government needs to provide more detail as to how it will achieve this.

The UK government has also not provided evidence to support its proposal of the benefits that would be achieved in terms of nature recovery and protection of sites if designations of protected sites were to be vested in 'Ministers'. This would have the effect of making the designation of a site political rather than it being made by a Nature Conservation Body who make evidence based designations. If 'Ministers' were to be solely responsible for the designation of sites this would also lead to concerns of bias and lack of independent decision making leading to challenges by way of judicial review.

Q10 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.

- a) Yes, for both terrestrial and marine sites
- b) Yes, for terrestrial sites only
- c) Yes, for marine sites only
- d) No, neither for marine not terrestrial sites
- e) Unsure

The consultation paper states that the MPA networks are ecologically coherent and through this network, the government will be able to meet its marine habitat and species objectives. If the government is confident in achieving this goal, we consider that reform should be focused on terrestrial sites.

The consultation paper does not put forward any firm suggestions in relation to how site selection can be managed on a more dynamic basis and/or how sites can be made more resilient to climate changes and other challenges. The paper suggests that a more “holistic approach” “holistic approach” is adopted, which may be warranted, but it is difficult to assess this based on the lack of specificity in the consultation paper.

We note that the consultation paper suggests re-wilding as a “more holistic approach” to site management. We consider that re-wilding should be considered on a case by case basis only as a means to deliver nature recovery. Whilst this can be effective in certain situations, in the absence of supporting evidence we would urge that re-wilding is considered in conjunction with other suitable options and is not considered as a solution that is attributable to all circumstances.

Q11 How do we promote nature recovery beyond designated protected sites?

A uniformed approach needs to be adopted by public authorities in relation to the promotion of nature recovery outside of designated protected sites. There is much that public authorities can do to promote nature recovery. A joined up approach to the management of road side verges is a good example. Road side verges are important habitats for wildflowers, mammals’ insects and birds. They provide physical links from one habitat to another and are therefore a crucial wildlife corridor. Road side verges could become a key part of a national Nature Recover Network by ensuring that public authorities such as Local Authorities and the Highways Agency adopt a national strategy in relation to road side verge management. Plant life ‘Managing Grassland Road Verges’ is good practice guide and its guidelines fulfil a recommendation in the UK government’s National Pollinator Strategy. As the guidance highlights proper management of all road side verges would create a pollinator habitat the size of London, Birmingham, Manchester, Cardiff and Edinburgh combined.

Another means of promoting nature recovery beyond designated protected sites is through education. Many people (members of the public) are ignorant through no fault of their own of the needs and requirements of many of the UK’s fauna and flora. More action needs to be taken by the UK government to educate people of simple steps that can be taken to protect and nurture nature.

Q12 Do you see a potential role for additional designations?

- a) Yes**
- b) No
- c) Unsure

Please provide detail in the free text box.

Q13 Do you agree we should pursue the potential areas for reforms on assessments and consents?

- a) Yes**
- b) No – keep as it is
- c) No – reform but not these areas or additional areas [please state]

The consultation provides that the key areas for further exploration identified by Lord Benyon's working group to improve the HRA are:

“ a single reformed assessment process which complements proposals for simplified designations set out in section 3.1

- a reformed decision-making framework aimed at making the process clearer and more certain*
- a more strategic approach to mitigation of existing and new pressures on protected sites.”*

We agree with the second and third items above and with the strategies proposed to achieve them described in the “Habitats Regulations Assessment Review Working Group summary of findings”. Regarding the first item, we refer to our response to Question 7 above.

Q14 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.

- a) Yes**
- b) No
- c) Unsure

The consultation paper provides that legacy consents “issued many years ago were done so under less protective legislation and so they may not reflect current scientific knowledge and available evidence, take into account the effects of climate change or align with modern regulatory standards [...]” We agree with

this position, but we consider the modification or revocation of the legacy consents should still be done on a case-by-case basis, as the government needs to evaluate the particularities of each case.

Our understanding is that the government is looking for a cheaper (“cost-effective”) way to deal with this issue. A mass expropriation of legacy consents would likely not be cost-effective as compensation would need to be paid to each consent holder, which is not ideal as many of the consents are dormant. Similarly, imposing umbrella restrictions on the rights contained in the legacy consents could amount to indirect expropriation, which could start a wave of litigations.

Alternatively, the government could try using market-based mechanisms. For example, a voluntary surrender scheme for legacy permits could be in place, which would incentivise owners to give up their old permits in exchange for monetary compensation. This could help the government save resources.

Q15 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.

- a) **Yes using Site Improvement Plans**
- b) **Yes but building on Site Improvement Plans to offer a holistic site outcome plan**
- c) **No**
- d) **Other**
- e) **Unsure**

We agree with the redesign of SIPs to give them a major role. As the SIPs will identify actions to be done and the stakeholders responsible, then could become an effective and clear site management tool.

As SIPs are going to be amended, we disagree with the proposal of using them for making a “holistic site outcome plan”. Doing this would involve adding an unnecessary layer of complexity. It is true that the identification of the actions to be taken and the people responsible for those actions should be carried out in a holistic way, but it does not make sense to make a secondary plan after these actions and responsibilities have already been assigned.

Notwithstanding the above, the consultation does not explain how the SIPs will be amended, apart from the suggestion of “*making the concept statutory*”. Additionally, it remains unclear who are the stakeholders that will be tasked to carry out the positive actions and how will this be enforced. For those reasons, it is not possible to give a definitive answer to this question.

Q16 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.

- a) Yes
- b) No
- c) Unsure**

We do not have any specific views on how Regulation 9 requirements should be reformed to support deliver of England's 2030 species target or other long-term biodiversity targets and to improve our natural environment.

Q17 Do you have suggestions for how processes under Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 and sections 125-127 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.

- a) Yes**
- b) No
- c) Other
- d) Unsure

Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 states that *"any competent authority having functions relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of the Habitats Directive and the Wild Birds Directive."*

Sections 125-127 of the Marine and Coastal Access Act 2009 impose duties and requirements on public authorities in relation to protected marine areas.

We agree that any reform and development in the marine environment will require careful consideration of the above legislation to ensure that it is not at odds with the regulations and duties. It may be that that the government could seek to consolidate this legislation to ensure that this is more coherent and accessible to public bodies and local authorities.

Q18 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.

- a) Yes – Marine Works EIA regime**
- b) Yes – Forestry EIA regime**
- c) Yes – Agriculture EIA regime**
- d) Yes – Land Drainage EIA regime**
- e) Yes – Water Resources EIA regime**
- f) No**
- g) Unsure**
- h) Please highlight if a comment refers to a specific regime.**

We have one suggestion applicable to all EIA regimes, which is to transition to a digital EIA process. The digitalisation of EIA information would mean that the information could be shared more easily, reducing time and costs for both the government and the developers, and would also help to improve the certainty regarding the conditions of the environment in the UK.

This digitalisation involves moving to digital submissions of environmental assessments and other EIA related documents, which would make it easier for all stakeholders to access the existing environmental information and would simplify the submission process. This would not only benefit the local planning authorities and developers, but also the environmental regulators, like the Environment Agency, which commonly struggle to have fast access to documents such as the environmental management plan of a project.

Another advantage of having digitalized EIA information is that it makes it easier for the government to work with that information. With this information, the government could create a National data hub of EIAs and also feed in this information into the already existing Defra's Magic map and the National map of planning data. If, for example, the government would allow the drawings of development proposals and direct/indirect impact areas to be uploaded using its UTM coordinates in the maps above, then identifying if the proposed development overlaps with areas with special environmental protection would become a simple exercise of turning on/off the layers in these maps. Furthermore, if this information is available to the public online, it would boost accessibility to environmental information, which is helpful for both current and future developments.

The above shows only some advantages of digitalisation, which could be explored further by the government.

Q19 What are your views on our proposal to establish priority areas for afforestation?

Provide a comment to explain your views.

We consider that there are a number of advantages in seeking to ease the administrative burden for afforestation projects, however we would also urge caution in relation to the unintended negative impacts that this may have.

To mitigate this, we consider that strategic assessments, although seeking to provide a less administrative route, the government should ensure that they remain comprehensive enough to properly identify and consider afforestation projects. Otherwise, there is a risk that unintended environmental impacts are not properly mitigated against.

In line with the increased target for woodland cover in the Environmental Targets consultation, woodland creation must become an appealing choice for farmers. To encourage this, we consider that DEFRA and the Forestry Commission should concentrate their efforts on making the woodland creation process more accessible and efficient. We consider that this is key in achieving the targets set out in the DEFRA Environmental Targets consultation.

DELIVERING 30 BY 30

Q20 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

The proposed criteria for areas that contribute to 30 by 30 are that they must:

- have a clear purpose of conserving biodiversity (although this may not be their primary purpose)
- have long-term protection and/or management in place that works against adverse pressures on the area's biodiversity objectives, or actively results in improved outcomes for biodiversity
- deliver the appropriate and necessary biodiversity outcomes. These will be measurable, monitored and can be used to assess the ongoing improvement in these areas.

We consider that that above criteria is key in achieving the 30 by 30 commitment.

Q21 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 agree that the effective management is vital to ensure that that nation's forests deliver on the wide range of benefits that woodlands can provide and to seek to mitigate and adapt to the ever present challenge of climate change.

Whilst the contents of the consultation paper is agreeable, there is a lack of detail in relation to how this will be implemented in reality and the evidence to support the positive impact that this will have on nature recovery. For instance, we note that the government is considering easing the regulatory burden to encourage land managers to consider afforestation. We agree that regulation may be a barrier to afforestation for a number of land managers, but also recognise the important role that it plays in mitigating any unintended negative environmental impacts and ensuring that policies operate in the manner that they are intended.

It is difficult for us to assess the proposed relaxation of regulations due to the lack of detail in the consultation paper, but we would urge caution in adopting this approach.

Q22 What are your views on our proposal to adjust forestry permanency requirements for certain project types?

Provide a comment to explain your views

We note the potential benefits to easing the forestry permanency requirements, but echo our concerns detailed in question 21 with regards to a rise in unintended negative environmental consequences caused by a lack of regulation or legislation.

However, we agree that a more flexible approach to certain projects could encourage the uptake of tree planting by farmers and land managers, as long as the focus remains on establishing woodland, not only the initial tree planting phase. Further, we consider that existing woodland and Ancient Semi-Natural Woodland sites would be exempt from these more from a more flexible approach to ensure that these sites remain protected.

Q23 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.

- a) Yes
- b) No

c) Unsure

The strategy is formed of 3 parts which are each reviewed on a 6-yearly cycle:

1. UKMS part one, which assesses the status of UK seas and sets objectives and targets for GES
2. UKMS part two, which sets out our UK marine monitoring programmes
3. UKMS part three, which sets out our programme of measures.

We welcome the suggestion to replace the 6 yearly publication of the monitoring framework with a live online repository. This will allow greater coordination with devolved administrations and will mean that this can be easily updated as changes occur.

Further, we would welcome a greater link between parts 1 and 3 of the strategy. This would hopefully ensure that the setting of targets and objectives are considered in line with the programme of measures so that these steps can work together to make progress.

Q24 Do you support the approach set out to split the high-level Good Environmental Status (GES) target into individual descriptor level GES targets?

- a) Yes
- b) No
- c) Unsure**

We note the proposed amendments to the GES targets, which we welcome in principle. However, more detail is required in relation to how these targets will be separated out or assigned to ensure that they paint an accurate picture of the progress or lack thereof towards the objectives and targets.

SPECIES

Q25 Do you agree we should pursue the potential areas for reforms for species?

- a) Yes**
- b) No – keep as it is
- c) No – reform but not these areas or additional areas [please state]

We agree with the grounds for amending Licensing, Enforcement and Penalties for wildlife and poaching offences. However, we need to express our concern regarding the grounds for amending Protections to species.

The consultation provides that, for example, “some invasive non-native wild birds have a similar, if not higher, level of protections than native species we consider to be more vulnerable.” In the government’s

opinion, this happens due to “overlapping pieces of legislation” and because the lists are “not necessarily linked to a scientific basis”.

We agree that amending the lists should be a natural exercise as the situation of species can change, and for that reason the protection given to species should be based on a scientific basis. Nevertheless, the wording in the consultation seems to have a nationalistic tone irrelevant in a scientific context, as it seems to give preference to native “British” species over “Non British” species. For carrying an evaluation on a scientific basis, the government should take into consideration matters like the effect that each species has on the environment and the current situation of each species. We should remind the government that the UK is the temporary home of several migratory birds. International treaties, such as the Migratory Bird Treaty 1916, deem these migratory species worthy of protection even though they are non-native of the UK. Reducing protection to these birds just because they are non-native would go against the scientific basis the government claims will use to reassign protections to species.

Q26 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.

- a) Threat of local or national extinction**
- b) Welfare of wild animals**
- c) Controls in trade**
- d) 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).**
- e) 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).**
- f) Importance to genetic biodiversity (endemic species or sub-species within England that are important for the wider genetic diversity of the species).**
- g) Management requirements (a species where management is required for public health, to protect agriculture, commercial interests and to protect habitats)**
- h) Socio-economic importance (a species that could be protected to benefit people and communities, for example to promote tourism)**
- i) To support efforts to reintroduce species or re-wild habitats.**
- j) Unsure**
- k) Other – please state**

Q27 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.

We consider that the current legislation is complicated and confusing due to overlapping provisions. We believe a simplification should be carried out. The Law Commission's Consultation Paper No 206 – Wildlife Law (2012) already identified this issue, but a holistic solution has not been reached yet:

"4.4 This is partly the result of the manner in which wildlife law has been enacted. Each piece of legislation (and its subsequent amendments), including the Wildlife and Countryside Act 1981, has been a reaction to a particular pressure on domestic law, whether domestic or external. The introduction and content of the Wildlife and Countryside Act 1981 was driven by the Wild Birds Directive. However, it also reflected earlier domestic legislation, such as the Protection of Birds Act 1954. The Conservation of Habitats and Species Regulations 2010¹ is the domestic implementation of the EU Habitats Directive. Each of the species specific Acts, such as the Conservation of Seals Act 1970 and the Protection of Badgers Act 1992, were driven by concerns focused on those particular animals. Several Acts are the result of private Member's Bills, and may not have been drafted with a view to fitting with the rest of domestic legislation².

[...]

4.7 An example of unnecessary complexity is the provision for hunting of wild birds. The hunting of wild birds is currently provided for in three different ways. Certain birds can be hunted under schedule 2, part 1 to the Wildlife and Countryside Act 1981.⁷ Game birds are covered by the Game Acts.⁸ For other species, including woodpigeon, general licences are relied on for hunting. This is a confusing approach."

Q28 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.

Make wildlife crimes notifiable

We understand that following discussions with both Defra, the Home Office and the NWCUC that a "shortlist" of offences have been put forward for consideration for notifiable status, which would ensure that they are officially recorded. If this is taken forward it would start to address the data gap that has hindered action on wildlife crime.

Ensure police investigations into wildlife crimes are consistent

Police forces need to have adequate funding to ensure that it has not only sufficient numbers of wildlife crime officers but also that they are adequately trained. It is reported that Hare coursing in the UK has been infiltrated by organised crime gangs who make huge amounts of money illegally through illegal betting syndicates as far away as China. Police forces need to ensure that it has trained staff, with the

appropriate resources available to them, to not only investigate wildlife crimes but that they have the appropriate staff in place such as police call handlers and crime scene investigator support staff.

Build in early CPS advice into criminal wildlife crime investigations

There is evidence that the CPS guidance on wildlife crime and its recommendations has not been clearly available to police officers since the removal of wildlife guides within the Authorised Professional Practice. This should be rectified.

The CPS should also ensure that it has appropriately trained lawyers in wildlife crime prosecuting wildlife crime to ensure appropriate convictions and sentences are secured against offenders.

Publish sentencing guidelines for wildlife crime

There are currently no Sentencing Guidelines in place for wildlife offences which leads to a wide disparity in sentences for wildlife offences. We have experience of prosecuting environmental cases prior to and after the introduction of the Environmental Sentencing Guidelines. We also had some involvement in our role as members of UKELA in the content of the Guidelines. The effect of the Environmental Sentencing Guidelines has been significant with increased but uniformed sentences for environmental offences.

The Sentencing Council should produce sentencing guidelines for wildlife crimes. We also have some experience in assisting and advising a West African NGO to lobby its government for the introduction of Sentencing Guidelines for wildlife offences in order to secure parity in relation to sentence.

Implement the United Nations Office for Drugs and Crime (UNODC) recommendations

We are aware that during the first half of 2021, the UNODC wildlife inspection team investigated the state of wildlife crime in the UK from all perspectives using the International Consortium for Combatting Wildlife Crime (ICWC) inspection toolkit. Its report has been provided to stakeholders in draft form, it is recommended that Defra and other Government departments implement its recommendations contained within it.

DELIVERING NATURE RECOVERY

Q29 What are the most important functions and duties delivered by Defra group ALBs to support our long-term environmental goals?

We believe the most important function would be the scientific, advisory and operational expertise in environmental matters, which is widely recognized. We consider that, whatever decision is taken regarding

the number and functions of DEFRA's ALBs, the government should aim to preserve the level of expertise that the ALBs have developed in this function.

Q30 Where are there overlaps, duplication or boundary issues between ALBs, or between ALBs and government? How could these be addressed?

Provide a comment to explain your views

The enforcement function is split among different ALBs. For example, while the Environment Agency is responsible for enforcing laws that protect the environment, other ALBs enforce specific environmental matters (for example the Forestry Commission enforces matters related to the illegal felling of trees). While this situation is explained because of the history of these institutions, we believe that all enforcement functions for environmental matters should be in only one entity. This would help to keep the enforcement expertise concentrated in only one place and would help to keep a coherent way of enforcing environmental law in different situations.

Q31 What are the benefits and risks of bringing all environmental regulation into a single body?

Benefits:

- The expertise in environmental matters would concentrate in only one entity. This would greatly aid in sharing knowledge between the departments of that unit.
- A single body would help to have a uniform interpretation of environmental principles and application of environmental law in different contexts. This would aid to make the decisions on environmental matters more predictable, which would benefit the economic development.

Risks:

- Some expertise could be lost during the transition to a single body. For example, enforcement officers working for the entities being absorbed could feel alienated when working for an entity with a larger objective, which could result in their resignations. Losing professionals with ample experience would damage the correct functioning of the new institution. Any plan should need to include measure to avoid this type of loss of expertise.
- Local knowledge will be more difficult to access. For example, environmental permits are provided by local authorities if the activity is a Part A(2) or Part B. Local authorities would have knowledge of the needs and special situation of the area of their jurisdiction. If, for example, these functions were transferred to a single body, then it will be unlikely that the officers working in the local authorities would also be transferred to the single body. In that situation, the knowledge of the local area that those officers had would be lost for the single body. While this could be theoretically circumvented by good communication channels with local authorities, in practice it is unlikely that the local knowledge would remain as easily accessible as before.

Q32 What are the opportunities for consolidating environmental delivery functions into a single body? Which programmes and activities would this include?

We consider that the Environmental Impact Assessment (EIA) process could be included as part of the functions of this single body. Currently, environmental assessment is carried out by each of the different Local Planning Authorities (LPAs), which have its own interpretation regarding what level of information is required to satisfy the EIA requirements. Furthermore, only a handful of developments need to submit an environmental statement, then the LPAs do not usually have permanent teams experienced in dealing with EIA.

If the EIA evaluation function is transferred to a single body, it would allow this entity to have a permanent group of officers with considerable experience in EIA, which would save both money and time in the evaluation of the environmental impacts of a development. Additionally, as the team evaluating the EIA would not be directly related to the area where the environmental impacts and mitigations measures would take place, then there is a higher chance that their evaluation would be done in a neutral and science-focused way. However, coordination channels would need to be implemented between this single body and the LPAs, as the LPAs would still have to make the final decision in the grant of a planning permission.

Q33 Please provide your views on how more effective cost recovery for regulation would affect: a) environmental protections b) businesses

We do not have any specific views on how more effective cost recovery for regulation would affect either environmental protections or businesses save to say if the costs recovered were set aside for 'green projects' or for adequate funding to protect nature or invested in training for the police in wildlife crime or Natural England to monitor the protection of designated sites would be very much welcomed. An effective cost recovery could also encourage businesses to take its environmental responsibilities seriously and ensure that it is compliant with environment and wildlife legislation. The polluter pays principle whereby the costs of pollution should be borne by those causing it is already enshrined in environmental legislation and should equally apply to regulation of wildlife crime.

Q34 What is the most efficient way of ensuring businesses and regulated persons pay an appropriate share of the cost of regulation?

A system could be put in place that is similar to the Health and Safety Executives Intervention Fee Scheme.

Q35 What mechanisms should government explore to incentivise the private sector to shift towards nature-positive operations and investment?

We consider that private investment is necessary to enabling the government to reach its ambitious targets in relation to fundraising to support nature recovery.

Due to the increasing importance of environmental and social governance for private companies as well as net-zero commitments, we consider that large private companies are more conscious of their environmental impact and the image that this portrays to consumers and investors.

With this in mind, we suggest that the government should establish a pipeline of investible nature projects for companies to invest in. We note that the public-private Big Nature Impact Fund will launch later this year and we consider that blended investments of this nature can assist to incentivise private companies.

Q36 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?

Please refer to our response to question 35 above.

As highlighted in our responses to questions 21 and 22, there is a risk that by easing regulatory constraints, this may lead to negative environmental consequences. That said, it is important to ensure that private companies and other bodies are incentivised to contribute to nature recovery, without which, the government may fail to reach its targets and objectives.

We would suggest that making regulations and legislation more accessible and coherent would be a better approach to incentivise investment in nature recovery, whilst also ensuring that measures to protect the environment remain in place.

Q37 What financial impact do you think the proposals set out in this Green Paper would have either on business (e.g. 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 please try to evidence any financial estimations of cost/benefit.

We do not have any views on any financial impact that the proposals set out in this Green Paper would have either on business, landowners or government save to say that investment in nature recovery is an



investment worth making particularly as it one means of addressing climate change. The cost to government, businesses, landowners and the public would be far greater in the longer term if the proposals contained within the Green Paper are not imposed.

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