UKELA (UK ENVIRONMENTAL LAW ASSOCIATION)

RESPONSE TO THE DEFRA CONSULTATION ON THE NATURE RECOVERY GREEN PAPER: PROTECTED SITES AND SPECIES

INTRODUCTION

1. UKELA (UK Environmental Law Association) comprises over 1,500 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.

2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This consultation response has been prepared by UKELA's Nature Conservation Working Party. It does not necessarily, and is not intended to, represent the views and opinions of all UKELA members but has been drawn together from a range of its members.

3. The UK Government is committed through its nature conservation legislation to setting an example for the rest of the world to follow. Currently the UK has in place a legislative framework for nature conservation that is effective, that is delivering good outcomes for nature when it is properly implemented, and that is understood by stakeholders.

4. It is important that UK's environmental commitments are considered holistically. If not, there is the risk of perverse application with, for example, changes in land management/use to meet one environmental obligation having a significant negative impact on our obligations for species and habitat protection.

PRELIMINARY QUESTIONS

Q1. What is your correspondence address? Please provide an email address or telephone number unless unable to. If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

5. info@ukela.org

Q2. Would you like your response to be confidential? Please see the confidentiality and data protection section at the end of this document.

6. No.

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

7. Organisation / Other (please state): Charity – whose primary purpose is to make better law for the environment.

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

8. UKELA (UK Environmental Law Association).

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

9. Other (please specify): most of those listed to some degree.

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

10. United Kingdom.

Q7. What degree of reform do we need to ensure a simpler and more ecologically coherent network of terrestrial protected sites?

11. There is no need to reform the current network of terrestrial sites either to make it simpler or to make it more ecologically coherent.

12. This is based on a careful reading of Question 7 in light of the explanatory text in Section 3 (page 8-10) and 3.1.1 (pages 10-11) of the Green paper. The question is phrased such that it assumes that a case has been made that the present network of terrestrial protected sites can and should be both simpler and more ecologically coherent, and that some degree of reform is needed in order to correct these deficiencies.

13. The reform of the network of terrestrial protected sites proposed in Section 3 of the Green Paper has not been justified. The fact that the levels of protection and processes of assessment for SSSIs differ from those for SACs and SPAs is not a problem in practice. The long-standing policy that SPAs/SACs must be SSSI means that the two designations work well together.

14. Designating and managing for nature conservation involves an irreducible complexity. To operate successfully, any new system would have to reflect that. There seems to be no awareness of how time-consuming and complicated it would be devise such a system nor how much information has been compiled to date which effectively underpins the existing suite of sites. There is a significant risk of unintended consequences associated with any proposed reform if the associated resources implications and burdens upon Natural England staff in amending and updating the current suite of site documentation necessary to allow any revised system to operate are not fully acknowledged.

15. The present system already allows for differing levels of protection of certain habitats or species within a single protected site, e.g. between European interest features in an SPA/SAC comprising one or more SSSIs, and other features underpinning SSSI notification. Conservation Objectives and related SSSI guidance provide for a tailored approach to any required recovery.

16. On the bullet points outlining what consolidating and modernising the law governing protected areas could bring, UKELA would make the following observations:

    - There is no reason why the designation of sites for broader purposes should involve disturbing existing designations protecting specific scientific interest.
    - There is already a settled consistent system of assessment.
    - All stakeholders appear able to understand the existing system and its legal requirements when their interests are affected. A new system would require time to bed down and become widely understood.
    - There is no reason why "consolidating and modernising" the law governing protected sites should make it any easier to engage the interest of local stakeholders in site improvement plans.
    - The advantages claimed in the final three bullet points are not dependent on changing the law governing protected sites.

17. There can be no assurance that "*any review of legislation relating to protected sites will maintain current levels of protection for the network as a whole and its individual constituent sites*". Reform such as proposed in the Green Paper would necessarily alter the nature and scale of the network of which English European Sites and SSSIs presently form part, and involve the creation of a new legal framework.

18. The Environment Act 2021 provides the Secretary of State with general powers to amend the Habitats Regulations but '*only if satisfied that the* [new] *regulations do not reduce the level of environmental protection provided by the Habitats Regulations'*. In order to do this the Secretary of State '*must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied*' that there has been no loss of protections. It is entirely at the discretion of the Secretary of State to decide what may or may not reduce the level of environmental protection provided, which will be incredibly difficult to challenge in court. There is no accountability mechanism that gives protection to the decision made by the Secretary of State in this regard.

19. The Green Paper consultation explicitly states that the UK Government wants to fundamentally change the way the assessments under Habitats Regulations work, and discusses other amendments to the Regulations. However, there is no specific question on this in the consultation, and there is also no reference or linkage to powers given to the Secretary of State by the Environment Act 2021 to do this. It is unclear how this power is intended to be used in light of the proposals laid out in the Green Paper.

20. The European Union (Withdrawal) Act 2018 enables UK ministers to amend retained EU law to correct deficiencies to ensure EU law remained operable, but that the power can only be used in order to make technical changes, not major policy changes, and not to establish a new legal framework. The amendments as proposed in the Green Paper represent major changes and are therefore incompatible with the Withdrawal Act.

21. The Habitats and Birds Directives, as implemented though national legislation, were the mechanism through which members of the European Union met their obligations to the Bern Convention on the Conservation of European Wildlife and Natural Habitats. The UK is a party of this convention in its own right and, as a result, our obligations to implement the species and habitats protection did not change when the UK ceased to be a European Union Member State. Consequently, in 2021 all of the UK's SACs and SPAs (both terrestrial and marine) were designated as part of the Emerald Network to ensure the long term conservation of species and habitats of European importance.

22. In this context, Minister Goldsmith's confirmation that: "*Our continued commitment to delivering Bern Convention obligations for the Emerald Network will ensure that vital protections for our habitats and wildlife are maintained effectively into the future. This network of sites will have a vital role in supporting the delivery of the Government's targets and ambitions for nature recovery, as well as in delivering the climate goals agreed at COP26*" is welcomed. Greater emphasis of our obligations to Bern and other international conventions for nature protection and recovery would be beneficial.

23. The Secretary of State's powers to change the levels of environmental protection and the systems of enforcement currently in place are constrained not only by the provisions of the Bern Convention and other international agreements such as those arising out of the Convention on Biological Diversity (CBD) to which the UK is a

signatory; they are also constrained by the fact that the UK is a party to the EU-UK Trade and Cooperation Agreement, which has the status of a binding international treaty. This recognises the vital principal of 'non-regression', stating:

> '*A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection'*

24. The Government, in publishing the text of the Agreement, commented '*The domestic supervisory bodies of the UK and EU will cooperate to ensure effective enforcement of their respective environmental and climate laws.'*

25. The Government has established the Office of Environmental Protection (OEP). It remains to be seen whether, in addition to the cooperation over enforcement between EU and the UK, the OEP will be strong and pro-active enough to fill, or at least help fill, the gaps left by the departure from the scene of the European Commission and the European Court of Justice. It must be recognised that there are dangers and disadvantages in attempting to disturb the current network of sites. For instance, the geographical and legal context for the designation of the current network is Europe-wide in the case of SPAs and SACs, and UK-wide in the case of SSSIs and ASSIs. Any attempt to invent a new basis of site designation in England alone is a recipe for chaos.

26. Whilst UKELA does not agree that the existing network needs simplification at a practical level, it is recognised that the differing site names (SAC/SPA/Ramsar) being awarded the same degree of protection might be confusing to the general public, and could even lead to lower levels of awareness over why the sites are important. UKELA would therefore recognise the potential benefits of referring to all sites subject to protection under the Habitats Regulations as 'Emerald Sites' which form part of a 'UK Emerald Network'. This could serve to highlight the fact that the sites are part of a wider ecological network whilst also allowing for greater understanding over protection levels which are afforded to them.

27. UKELA recognises that the EU Exit amendments in Wales and England introduced the phrase 'National Site Network' to refer to the network of European sites. This is already causing confusion as the equivalent provisions in Scotland use the phrase

'UK Site Network' and there is a degree of overlap with terms which have long been used to refer to the 'national network of SSSIs'. UKELA would therefore support a modest degree of simplification with the regards the terminology and naming of sites at a public facing level but reiterate that there is no basis upon which the legislative underpinning for site designation needs reform.

28. The proposals set out in the Green Paper are intended to support the Government's ambitions to restore nature and halt the decline in species abundance by 3030. Legislation to create a new English network of protected sites, and a new legal regime for their protection and management, could not possibly be created and commissioned in time to make any contribution to change by 2030. On the contrary, the upheaval would imperil the protection and improvement of the existing network.

29. In light of the urgent need for immediate action to address biodiversity loss, and the known efficacy of the existing legal framework when fully implemented, focussing on persistent gaps in building on the progress already made by better implementing the existing legislative framework and recommendations to improve implementation would be more effective at this time.

Q8. What degree of reform for the marine protected area network do we need to meet our biodiversity objectives and commitments?

30. None of the options presented are sufficiently well described or justified.

31. Defra manage the current sites as a network with no hierarchy of designation (i.e. SACs/SPAs are not considered to provide a better level of protection than MCZs or vice versa), although the legal requirements relating to licencing requirements differ with BEIS considering the requirements for SACs/SPAs more stringent than those for MCZs. The Benyon Review into Highly Protected Marine Areas (HPMAs) 2019, which recommended the creation of Highly Protected Marine Areas (HPMAs), made no recommendation to amalgamate, consolidate or streamline existing protected site designations. Indeed, the report recommends that the government introduce and manage HPMAs using quick and pragmatic legislative approaches by employing existing powers or amending the Marine and Coastal Access Act (MCAA) through a Statutory Instrument.

32. Revision of the legislative framework for marine protected areas would take several years and further delay urgently needed conservation action. The present system already allows for differing levels of protection of certain habitats or species within a single protected site, with the Conservation Objectives providing for a tailored approach to any required recovery. Whilst the proposed change to the legal framework for marine protected areas may alleviate current legislative complexity, this is different from the effectiveness of site designation and species protection. The state of the marine environment is due to the way in which our activities are managed.

Q9. Do you agree that there should be a single process for terrestrial designation?

33. There is no need for a single process of terrestrial site designation.

34. The designation process for a protected area needs to reflect the type, location, and purpose of the protected area, and the range of stakeholders with a potential interest in the designation and management of the site. While there is a justification for designating networks at UK level to respond to UK-wide conservation objectives, where designation is intended to address national or local conservation objectives it makes little sense to impose a top-down designation process. Vice versa, locally designated protected sites cannot be expected on their own to deliver an ecologically coherent UK protected areas network. The different designation processes reflect the different conservation approaches that co-exist in the UK.

35. The Green Paper is focused on proposals for the legislative framework in England only. However, as nature does not recognise political or legal boundaries it is evident that efforts to achieve nature conservation and wider environmental objectives must be coordinated with neighbouring countries if they are to be successful.

36. Changes to the Habitats Regulations in England would have implications for the coordination of nature conservation actions across the four countries of the UK, potentially creating barriers to effective cooperation and the achievement of conservation objectives within each nation and at UK level. Similarly, changes to the legislative framework in England could also impact coordination with neighbouring countries in Europe in relation to shared habitats and species.

Q10. Should we reform the current feature-based approach to site selection and management to also allow for more dynamic ecological processes?

37. There is no need to reform the current system.

38. There is no reason why climate change should affect the way in which sites are designated. Existing arrangements can be used to ensure that site status or management arrangements are reviewed and adjusted as necessary. Building on our current legal framework to better improve management and, potentially, to expand conservation objectives to include a generic wider biodiversity objective for all sites maybe beneficial if this leads to improved resilience as our climate changes.

39. Many of the habitats for the terrestrial environment that also provide carbon sequestration facilities are already listed for inclusion as potential site features. These need to be managed and protected such that the carbon sequestration services provided are maintained and, where possible, expanded.

40. Carbon sequestration in the marine environment is less well understood, although the overall contribution is likely to be considerably greater than for terrestrial environments. Significant additional work is required on the actual impacts of our activities on these marine carbon stores before management decisions limiting certain activities are taken. When management decisions have the potentially to impact livelihoods and coastal communities, they need to be made on the basis of robust scientific evidence rather than lobbying.

41. Notably for all environments, carbon cycling is often conflated with carbon sequestration. Clarity in this area, particularly when improvements in biodiversity are also being considered, would be welcomed.

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

42. The UK could make better use of the legislative levers available to deliver effective conservation beyond designated sites. For example, the Wild bird populations in the

UK indicator confirms that actions are still needed to halt and reverse the loss of farmland birds in the wider countryside. Defra's Future Farming and Countryside Programme and Environmental land management schemes are expected the reverse this trend. However, until the fundamental ambitious reform of UK agricultural policy is delivered, and backed with sufficient long-term funding, nature recovery beyond protected sites will be extraordinarily difficult to achieve.

43. Reform of England's agricultural policy will be critical for driving nature recovery in the wider landscape, and we strongly endorse the public money for public goods principle that informs the Agriculture Act 2020 as this should direct payments towards environmental improvements and away from land ownership per se. There should be clarity about how the new schemes will support delivery of the new Environment Act targets, and in particular the species abundance and wider habitats targets, as well as clear policy pathways to be set out in the refreshed Environmental Improvement Plan from 2023.

44. Roll out of the new schemes should be as targeted as possible and backed by the provision of specialist advice for land managers so that they can maximise the benefits for nature. In order to ensure that best value for public money is being achieved there must be a rigorous monitoring and evaluation programme to assess outcomes on the ground, and not merely measuring uptake as the determinant of success. The proposed reform of agriculture regulation must be swiftly implemented and robustly enforced to ensure there is no gap left following the ending of cross compliance in 2024. The potential risk to hedgerows if a new regime is not in place has been highlighted in the RSPB report Mind the Gap.

45. Existing protection should at minimum be maintained and long-standing recommendations for amendments to biodiversity duties, and improvements to management and monitoring of sites, and enforcement, should be implemented. Any attempt to weaken nature laws is likely to undermine the Government's claims to be a world leader on environmental action.

Q12. Do you see a potential role for additional designations?

46. With reference back to Q7, UKELA does not support the proposal for consolidation or simplification of the existing site network. However, UKELA does recognise the benefits of additional designations as summarised below.

47. UK designations currently do not include the stricter categories of protected area as classified by IUCN. Adding such designations to the UK legislative framework would provide an additional and potentially very useful tool, but in the absence of sufficient long-term funding for monitoring, management and enforcement, and a high level commitment to actually use strict protection designations, it is unlikely to make a significant difference to the prospects of UK habitats and species.

48. In addition, the Environment Act 2021 means that Biodiversity Net Gain is now a legal requirement in England. It is now inevitable that areas of land across England will be subject to 30 year conservation covenants, with agreements being reached with the landowner for delivery of biodiversity enhancements and/or creation of new habitats. It is clear that during this time there will be proposals coming forward which could undermine the delivery of the biodiversity net gain obligations if the land is not subject to some form of designation and protection.

49. It is the opinion of UKELA that in order for Biodiversity Net Gain to be effective all land identified for delivery of net gain should be subject to some degree of protection as a 'nature recovery area' such that new proposals which might undermine recovery will be subject to control. By way of example, if a landowner agreed to enhance an area of unimproved grassland to lowland meadow and signed a legal agreement to that effect, they would be constrained in their ability to meet their obligations if permission was granted for an intensive poultry unit in an adjacent field. The ammonia emissions and increased nitrogen deposition will heavily constrain the establishment or maintenance of any nutrient sensitive ecosystem once the farm becomes operational.

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

50. There is no requirement for legal reform.

51. The Green Paper acknowledges nature's decline and contains some aspirations to reverse it. One of the most important ways of meeting the promised *'vital protections for our habitats and our wildlife'* will be to retain and strengthen, rather than repeal or dilute, the key provisions of the UK Habitats Regulations. Whilst improvements might be made with regard to implementation, the underlying concepts and structures are sound.

52. The Habitats Regulations have been instrumental in ensuring a high level of environmental protection is maintained. Making good on government commitments to halt and reverse the loss of biodiversity implies at the very least maintaining this high level of environmental protection going forwards. The Habitats Regulations are part of, and intrinsic to, a wider legal framework for achieving note just biodiversity conservation and wider environmental objectives but also economic and social development objectives.

53. The key to success, especially in the time frame indicated by the Green Paper, is to retain the existing suite of sites, with necessary additions or adaptions using existing mechanisms and principles, to retain the existing legal framework with its duties and protective mechanisms, including HRA, and build on this by integrating plans and measures for site recovery, improvement, mitigation and management in a manner which retains, and does not diminish, current levels of site protection.

54. This is consistent with the further development of strategic approaches to issues such as the avoidance and mitigation of harm to protected sites, but allows for increased efficiencies to be made by aligning the delivery of mitigation measures with the management of sites and the taking of steps to avoid deterioration from existing sources. Instances where the Habitats Regulations have imposed constraints on new development are primarily a result of a failure by the UK Government to take steps to avoid deterioration from existing sources (as required under Article 6(2) of the Habitats Directive) resulting in a lack of environmental capacity for new development. These failures are largely resource driven but are exacerbated by a reluctance to make use of existing statutory powers to address existing threats and pressures to

sites. The potential for more strategic approaches, which coordinate the delivery of management, mitigation and improvement should be fully explored in order to deliver nature recovery whilst addressing constraints on new development. The development of such an approach is not an easy option. It will require political determination, and the effective allocation and mobilisation of responsibility and resources to and between suitably qualified bodies along with a recognition of the need to exercise existing statutory powers to deliver environmental improvements. It could bring considerable benefits for nature conservation within and beyond existing protected sites.

55. The retention of the current suite of protected sites, with levels of protection undiminished, and a genuine commitment the necessary powers, duties and resources to rehabilitate them, should be the starting point for achieving the governments wider aspirations to increase biodiversity.

Q14. Should action be taken to address legacy consents?

56. The Green paper provides no indication of what activities are covered by legacy consents nor the sort of action that could be taken to address such consents. It is therefore not possible to respond to this question.

Q15. Should we move to this more outcomes-focused approach to site management?

57. The “outcomes approach” could result in a dilution of conservation objectives to accommodate other competing ambitions which could leave our remaining biodiversity vulnerable to fragmentation, loss, and ultimately extinction. Such an approach is in direct contradiction to the proposal to create highly protected terrestrial and marine sites outlined at Question 7 and 8. Much of the UK’s existing protected areas are IUCN Category IV, meaning that natural resource use is already permitted to take place alongside conservation action in these areas.

58. The Benyon report highlighted the needed for strictly protected HPMAs on the basis that the undisturbed growth and ecological recovery within an HPMA allows the

marine environment to fully recover. An outcomes approach to site management will not allow this to happen.

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?

59. The Green Paper states "*Any review of legislation relating to protected sites will maintain current levels of protection for the network as a whole and its individual constituent sites, and be consistent with the UK's international commitments. These include the UK's contribution to the Bern Convention's Emerald Network of protected sites and our obligations under the Convention on Biological Diversity, which includes those currently being negotiated as part of the Post 2020 Global Biodiversity Framework*." In the light of the above, any reform of Regulation 9 requirements and other aspects of the Habitat Regulation should be constrained by, and have regard to, the Government's various international obligations for the protection of biodiversity.

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 to 127 of the Marine and Coastal Access Act 2009 together could better deliver outcomes for the MPA network?

60. Defra manage designated MPAs as a network with no hierarchy of designation (i.e. SACs/SPAs are not considered to provide a better level of protection than MCZs or vice versa). However, the legal requirements relating to licencing differ. BEIS consider the licencing requirements for SACs/SPAs to be more stringent than those for MCZs.

61. Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 requires that '*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*'. In contrast, sections 125-127 of the MCAA requires that public bodies exercise their '*functions in*

the manner which the authority considers best furthers the conservation objectives stated for the MCZ' and where this is not possible that they are exercised in a '*manner which the authority considers least hinders the achievement of those objectives*.'

62. As previously noted, any reform must have regard to the Government's various international obligations for the protection of biodiversity. If the Government's stated ambitions for conservation and recovery of the marine environment are to be met, then better outcomes will require increased protection and scrutiny of developments rather than less. The requirements on public bodies when executing their functions need to be strengthened rather than eroded.

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.

63. UKELA is generally supportive of the government's ambition to achieve better environmental outcomes. EIA and SEA are an important part of the environmental law framework in the UK and serve to ensure that proposals which would have significant effects on the environment are properly taken into account in the decision-making process, including through a process of formal public participation.

64. The consultation document indicates that details of the government's proposals for the new legislative framework for EIA and SEA will be brought forward shortly. Given the lack of detail available at this stage, in line with its comments on the other areas of reform set out in the Green Paper, UKELA cautions that the proposed reforms to EIA and SEA should retain and strengthen the existing principles, rather than repeal or dilute them, and be targeted at addressing areas where there may be confusion, overlap or inefficiency between the different assessment regimes.

65. EIA is generally well-understood by practitioners and those in administrative and decision-making positions tasked with complying with its requirements. The European Union (Withdrawal) Act 2018 provides a framework for the interpretation of the EIA

and SEA regimes as retained EU law so as to preserve the clarification of the concepts and procedure of EIA law and practice that has been provided by CJEU case law over many decades.

66. As the consultation document notes, there are a variety of EIA regimes, which different government departments are responsible for. To avoid further legislative complexity, any proposed reforms to the operation of EIA should, save where necessary or justified, be generally consistent across the different regimes which will as the consultation document notes require cross-governmental co-ordination.

67. There has already been an increasing fragmentation of environmental law across the devolved administrations as environmental law is a devolved matter, with the result that there is no longer a unified body of UK environmental law. Further reforms prompted by EU exit risk a steadily increasing divergence, particularly where proposed reforms in England are out of step with the position in the rest of the United Kingdom.

68. EIA is an invaluable tool designed to prevent environmental harm that could be used more regularly to conserve and enhance the environment and so contribute to sustainability. Effective, and proportionate, EIA should inform decision-makers and all interested parties and should result in better more environmentally beneficial outcomes.

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

69. As noted in other aspects covered by the Green paper, the detail provided for the proposals to remove the need for an EIA when afforesting in a location identified as low risk is very limited. This makes effective comment on the proposals difficult. Identifying and establishing preferred low risk areas for woodland creation will require a significant level of resource if it is to be done to an appropriate standard as a mechanism for bypassing the EIA process.

70. Tree planting ambitions must be weighed against the potential trade-offs with other land uses, as well as the high risks of failure associated with large scale tree planting. The focus on trees must not distract from the imperative of protecting biodiverse and

carbon rich ecosystems such as peatlands, grasslands, saltmarshes and seagrasses, which also deliver a range of other ecosystem services. These remaining, intact ecosystems are critical components of our ambition to reach net zero and need protecting, as do more marginal areas with the potential for repair and restoration.

71. An Afforestation Strategic Assessment should be done in conjunction with other high-level mapping and analysis. Establishing high risk or 'off-limits' area-mapping for tree planting, where biodiversity/carbon rich areas 'collide', would seem a more logical place to start, with low risk areas then being determined at river catchment level (as with the successful Ullswater Catchment Management Scheme) or on a larger scale, using existing good practice to guide others e.g. The West of England Nature Partnership. These collaborative initiatives act as forums for strategic thinking at catchment and landscape scale. They fill the gap between the Nature Recovery Networks (NRN) and the Local Nature Recovery (LNR) Strategies, thus alleviating the pressures on Local Authorities, who are often poorly resourced and do not have enough staff with specialist skills.

72. There is a danger in green-lighting low risk planting areas at local level, without this collaborative thinking. For example, Forestry Commission England (FCE) in its low risk land afforestation category excludes areas of deep peat, which is classed as peat over 50cm deep. This means that the significant carbon storage potential of shallower peat soils is still being compromised by tree planting, causing carbon emissions and harming biodiversity. If the government's intention is that '…*scientific judgment has a greater role*', then the opinions of peat experts must be followed.

73. The UK Forestry Standard (UKFS) should adhere to the IUCN position statement on trees and require mandatory evidence of applicants' due diligence checks for woodland creation schemes, to ensure that such elements as tree preservation orders, non-statutory historic assets, peaty soils and private water supplies have been given due regard. The FC Constraints Check list, accessed via the FC Map Browser with Land Information Search, (LIS) could provide evidence that an applicant has carried out basic checks on a proposed woodland development site. However, if there is already a collaborative forum in place, spatial mapping of areas suitable for tree planting might already have been identified through the SEA process using LIS and other agency mapping.

Q20. What are your views on our proposed criteria to achieving our 30 by 30 commitment?

74. *'The UK Government committed to protect 30% of land and sea in the UK by 2030 (30 by 30), ahead of signing the international Leader's Pledge for Nature in 2020*.' Whilst this is laudable commitment, the designation of sites does not equate to protection for species and habitats, nor does it necessarily lead to nature recovery. This is clearly evidenced by the current condition of the UK's suite of protected areas on land and in the sea. Without significant improvement to management and a genuine commitment the necessary powers, duties and resources required to look after protected areas, this ambition will be met on paper, but will not lead to any obvious improvements for biodiversity or nature recovery.

75. The use of Effective Area-Based Conservation Measures (OECMs) could have a key role to play in conjunction with Environment Land Management (ELM) and LNRS. Despite OECMs being outlined for consideration in terrestrial environments, they do not appear to be included as part of the consideration for protections in the marine environment. In fisheries focused meetings, Defra officials have stated on several occasions that OECMs will not be considered as part of the approach for the marine environment. It is unclear why a different approach is being proposed for the terrestrial environment, particularly when there is plenty of evidence regarding the value of OECMs in marine environments.

Q21. What are your views on our proposal to reform forestry governance and strengthen protections for the Nation's Forests?

76. The Green paper includes a '*strengthen our commitment to ensure no net loss in the size of the nation's forests*', but does not indicate how this will be achieved other than to introduce '*a new duty to protect nature and promote biodiversity, alongside expanded powers to deliver these duties*.'

77. Tree planting needs to be considered in the context of biodiversity policy objectives, as well as the additional benefits such as including carbon capture, flood prevention and wellbeing. Planting is ideally a complementary strategy to natural regeneration,

which is widely acknowledged as far more cost-effective, if the right conditions for re-colonisation are in place.

78. Natural regeneration is far superior to new planting from a biodiversity perspective, favouring local races of a tree species rather than imported ones and reducing disturbance to remaining habitat biodiversity. In many cases where fragments or at least a few species of previous native woodland remain, clearing the land and replanting on recently degraded ancient woodland is disastrous for biodiversity and boosts carbon emissions for some time after. If there is nothing left, new planting is worthwhile, but using, where possible, local stock to reduce risk of disease spread.

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

79. The Green Paper does not provide any detail on the changes being proposed to adjust the permanency requirements for certain projects. There is no indication of the type of project being referred to or the levels of permanency currently required.

80. The Forestry Act requires a balance to be met between afforestation, the management of forests and the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest. The Act prevents the felling of trees without the permission of the Forestry Commission. It is possible that a condition of the felling license will be replanting, but this is not a legal requirement.

81. The Keepers of Time policy statement is focused on the protection of ancient woodlands, veteran trees and other native woodlands, enabling sustainable management in a wider landscape context and recognising their importance as a living cultural heritage. Removing any permanency requirements for such important habitats and cultural heritage would be incompatible with their protection and the Government's ambitions.

82. Conversely, the Open Habitats Policy 2010 provides a framework for the recovery of important habitat types such as heaths and moors, marshlands, fens and bogs, enabling the conversion of selected woodlands into open habitats. Consequently,

there does not appear to be any obvious legal reason discouraging landowners from undertaking tree planting. Improved implementation of current powers and duties may, however, be beneficial.

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?

83. The Green paper sets out three proposed changes:

- replacing the 6-yearly publication of the monitoring framework with a live online repository.
- refining our monitoring programmes to develop our understanding of the efficacy of measures
- creating a stronger link between the assessment of UK seas and the actions taken to improve their state to strengthen accountability.

84. The lack of detail provided in the Green Paper makes effective comment on these proposals difficult. For example, will the online repository be a list of the monitoring being undertaken or is it expected to incorporate the results of monitoring? If the latter, who will have access and what quality controls will be put in place to ensure only appropriate data is incorporated?

85. The ambition to refine monitoring programmes and creating a stronger link between the assessment of the status of UK seas and the actions taken to improve their state would be beneficial. The marine environment is incredibly complex and without significant additional investment in monitoring of the potential factors affecting a particular element, it will be difficult to demonstrate that a management intervention actually led to the changes observed. However, there are some target indicators and assessments where initial work in this area could potentially focus (e.g., the impact of bycatch of protected species on the conservation status of seabirds, marine mammals and protected fish species).

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

86. No. It is unclear why this proposal has been made. Each of the 15 high-level GES descriptors is underpinned by a series of individual targets which are already publicly available (Marine Online Assessment Tool [MOAT]). As a result, the current process already enables the progress within each of the individual descriptors to be highlighted.

87. In order to achieve GES for the marine environment all of the high level descriptors must reach GES. Further significant investment in monitoring and assessment is required if we are to more accurately assess our progress toward achieving GES.

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

88. The potential areas for reform laid out in the Green paper are protections, licencing and enforcement.

89. For protections, because there is only cursory or no linkage made to recent consultations on Local Nature Recovery Strategies, Biodiversity Net Gain, targets required by the Environment Act 2021 and the quinquennial review of the Wildlife and Countryside Act, the proposals are not placed in the wider legislative context. The outcomes from all of these will have significant and relevant bearing on species protection. Until the Government's responses to these consultations have been published, it is difficult to determine whether the reforms proposed in this area are the right ones.

90. For example, in our response to the WCA consultation, UKELA raised issues with the criteria proposed for listing species that are in need of protection. Restricting protection of a species to when it has already reached a status of critically endangered or endangered will be too late. Interventions to support a species recovery need to be made much earlier if they are to be effective. Consequently, providing protection for species considered to be vulnerable or threatened will prove beneficial as early conservation action is more likely to be successful and cost

effective. Species of cultural importance can also be considered using a similar approach.

91. UK's environmental commitments need to be considered holistically. If not, there is the risk of perverse application with, for example, changes in land management/use to meet one environmental obligation having a significant negative impact on our obligations for species protection. Whilst the desire to avoid differing protections in overlapping legislation is understandable, often having these overlapping requirements is beneficial. From an international perspective, multiple listing of a species on different Conventions helps focus attention and provides a broader remit of species needs for conservation and protection. In short, it helps to achieve the stated ambitions and goals.

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?

92. A wide variety of criteria are required for the determination of species protection, depending on local, national and international priorities. The following are considered important:

- 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).
- 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.

Q27. What proposals should we look at to improve our current licensing regime?

93. Nature recovery and biodiversity need to be placed at the heart of every decision taken by Government in licencing particular activities, with equal footing to economic considerations. This will require the introduction of a strong legal framework and a significant shift in approach.

94. Business as usual is not an option. For development to be truly sustainable we cannot continue with the nature versus development attitude. It is not one or the other, we must find a way to accommodate both at a practical level.

95. The current licencing regime is split across many ALBs, often making applications complex and lengthy. Introduction of a single point of contact for licencing through which all permissions could be arranged coincidentally would be beneficial. For example, development of a new production site for bivalve aquaculture requires licences and permissions to be obtained from up to seven different ALBs, all of which must be approached separately. Unlike traditional farming on land, some of these permissions also require renewing every few years. This is not conducive to the business development of one of the most sustainable forms of food production, one that provides vital investment and employment in coastal communities, and one that is also capable of providing a significant nature based solution in terms of water quality issues.

Q28. What proposals do you think would make our enforcement toolkit more effective at combatting wildlife offences?

96. Harmonising penalties will make decisions easier. The penalties for wildlife crime also need to be significantly increased such that they become deterrent to all, rather than being something that could be factored into costs.

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

97. The importance of ALBs in supporting delivery for nature recovery and improvements in biodiversity cannot be stated strongly enough. Of greatest importance are the Statutory Nature Conservation Bodies who have an obvious focus on species and habitat protection. Also of importance are the regulatory bodies such as Marine Management Organisation and the Environment Agency with responsibility for controlling our activities.

98. These ALBs need to be given the resources and legal means to perform their duties properly. Over recent decades, resources for environmental work have been severely cut and has led to the situation we find ourselves in today with regard to the state of the natural environment.

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

99. There is relatively little overlap or duplication between the ALBs or between the ALBs and Government. Instead, many of the ALBs either lack the resources or the legislative power to perform their duties. The is clearly exemplified by water quality issues associated combined sewer overflow discharges and the ability of the Environment Agency to take enforcement action against Water Companies.

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

100. Creation of a single body to deliver all environmental regulation will present significant challenges and there is the risk that large segments of the environmental ambitions and goals will not be delivered. The obvious risk to the creation of such an organisation is that it will distract from the vital work required immediately in order to deliver nature recovery and to halt the decline in species abundance by 2030.

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

101. Whether considered successful or not, the creation of National Resources Wales (NRW) from three ALBs (Countryside Council for Wales, the Forestry Commission Wales and the Environment Agency Wales) provides an example of how this proposal might be achieved. However, the development of NRW has been guided by a number of key legislative drivers including The Well-being of Future Generations (Wales) Act 2015. There is currently no English equivalent to this. As highlighted in Q31, creation of such a body will present significant challenges and carry obvious risk to the work required to deliver nature recovery and to halt the decline in species abundance by 2030.

Q33-37

102. Questions 33 to 37 are beyond the expertise of UKELA and have not been answered.

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