



Office for
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26 August 2022

The Rt Hon Lord Benyon
Minister for Rural Affairs, Access to Nature and Biosecurity
Department for Environment, Food and Rural Affairs
2 Marsham Street
London, SW1P 4DF

By email only

Response to the Consultation on the Principles of Marine Net Gain

Dear Lord Benyon,

I am pleased to send our views on your consultation on the Principles of Marine Net Gain.

We very much welcome the overall ambition of the proposed programme to halt and reverse the decline of marine biodiversity. The situation is urgent and there is no time to lose. This programme is being consulted upon against a backdrop of risks of species extinction, ongoing degradation to the marine environment, and failure to achieve Government targets. As we highlighted in our recent monitoring report on the 25 Year Environment Plan, the Government missed the Marine Strategy Framework Directive's target for UK seas to meet *Good Environmental Status* by 2020, failing on 11 out of 15 indicators for marine health.¹

The introduction of marine net gain is an important step towards nature recovery and blue carbon contributions towards net zero. We are also pleased to see the emphasis placed on the importance of considering impacts on both species and habitats due to the highly dynamic, inter-connected nature of the marine environment.

We recognise that the consultation asks for comments on the underpinning principles of marine net gain while the policy programme is still in its preliminary stages. We think it is very helpful that Defra is consulting at this initial stage.

Many of the overarching points we made in our advice on the recent consultation on Biodiversity Net Gain Regulations and Implementation will also apply to marine net gain.² For example, we highlighted the importance of ensuring good governance,

¹ Office for Environmental Protection, 'Taking stock: protecting, restoring and improving the environment in England' (12 May 2022a) <<https://www.theoep.org.uk/report/taking-stock-protecting-restoring-and-improving-environment-england>> accessed 25 August 2022.

² Office for Environmental Protection, 'OEP advice in response to Biodiversity Net Gain consultation' (18 May 2022b) <<https://www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation>> accessed 25 August 2022.

including effective arrangements for the implementation, monitoring, reporting and enforcement of the scheme. The same points will also hold true for marine net gain.

Delivering an effective marine net gain system will be a complex, long-term regulatory endeavour. It is an obvious point, but worth stating when public resources are already stretched: the success of the scheme will depend on the availability of sufficient resources both to set it up well and to ensure its long-term success. This will require investment in education and training, as well as the provision of resources to the appropriate authorities.

There are several further important and challenging issues which will need careful consideration. In our advice on the Biodiversity Net Gain Regulations and Implementation, we highlighted that decades of research have found that terrestrial net gain-type policies often struggle to achieve their objectives of ameliorating the environmental impacts of development. The task of creating a marine net gain scheme is made more difficult by the limited research on the best design principles, effectiveness, and obstacles to success for a marine-based net gain system.³

Recognising this uncertainty, we welcome Defra's intention to develop further evidence and pilot schemes. In our view, these should identify issues and potential solutions (e.g. any methodological, practical, and regulatory issues), and demonstrate deliverability of the intended outcomes before the full system is implemented.

Building on our advice on the Biodiversity Net Gain Regulations and Implementation, we offer the following high-level observations for Defra to consider in further developing the marine net gain policies, legislation, guidance and delivery plans.

Marine net gain needs to include fisheries

Ensuring nature recovery at sea will require a focus on the most significant pressures on marine ecosystems. This means not only ensuring sustainable exploitation of fisheries, but also protecting the wider marine ecosystem from the impacts of destructive activities like bottom trawling. Marine net gain can be a major mechanism for delivering such recovery, and as such we consider that its scope should include fisheries.

We appreciate the particular place the fishing industry has in coastal communities and in the heart of the nation. The change required is likely to be unwelcome. Excluding fisheries, however, would leave this sector as one of the few economic activities not required to assess its environmental impacts before the granting of licenses. What is more, it would also directly undermine what the net gain policy is seeking to achieve. The repeated practice of setting catch limits in excess of scientific advice is an example of a policy resulting in 'net loss', yet one that is currently excluded from the proposed scope of requirements to achieve net gain.

We understand the challenge of delivering marine net gain in fisheries management. However, the absence of a clear consenting process that assesses the environmental impacts of fishing activity serves to demonstrate the case for Environmental Impact Assessments within the sector. We referred to this in our

³ Tara Hooper, Melanie Austen, Aisling Lannin, 'Developing policy and practice for marine net gain' (2021) 277 *Journal of Environmental Management* 111387; Holly J. Niner, Ben Milligan, Peter J. S. Jones, Craig A. Styan, 'A global snapshot of marine biodiversity offsetting policy' (2017) 81 *Marine Policy* 368.

recent response to the Joint Fisheries Statement consultation⁴ and believe this to be a key enabler for marine net gain to drive recovery in the marine environment.

An environmental net gain approach to marine net gain

We note that the consultation seeks views on taking a broader environmental net gain approach. This has the potential to be an important step in delivering proposals in the 25 Year Environment Plan.

We welcome Defra's commitment to a 'nature first' approach, whereby wider environmental benefits, such as from low carbon power generation, would not be considered as a positive impact that contributes to achieving net gain at the expense of marine biodiversity. Ensuring that non-biodiversity environmental gains are not considered when assessing loss to biodiversity and calculating the associated net gain obligations is a critical foundational policy design principle. The development of further detail that will determine how environmental net gain will work in practice, and how it will interact with the biodiversity and marine net gain regimes, will therefore be key to the success of the programme.

Quantifying marine net gain

We recognise the potential complexity and limitations to developing a metric-based approach for the marine environment as detailed in the consultation documentation. In addition, the scope for restorative interventions and the evidence base for a net gain system in the marine environment are both more limited than for those on land.⁵ We are pleased to see that Defra have considered these points.

The consultation suggests prioritising the contributions-based approach, in part because of the technical difficulty in establishing a comprehensive assessment framework and adaptation of the existing biodiversity metric (page 14). Regardless of the approach chosen, Defra will need to develop a rigorous method of assessment to quantify the proposed impact and assign net gain obligations.

Without an adequate assessment process, it will be difficult to demonstrate that the proposed net gain obligations are proportional to the predicted impacts or to audit progress (at both a project and policy level) towards achieving net gain.⁶ We also consider it important that Defra establishes a minimum requirement for net gain for the purposes of implementation, evaluation and enforcement.⁷ Previous research has found that allowing a high degree of discretion has led to decision-makers making inconsistent decisions, including in the UK marine environment.⁸

The inclusion or exclusion of specific types of projects, as well as the length of time the gain must be maintained, are also crucial factors that will affect the programme's

⁴ Office for Environmental Protection, 'OEP response to Joint Fisheries Statement consultation' (18 May 2022c) <<https://www.theoep.org.uk/report/oep-response-joint-fisheries-statement-consultation>> accessed 25 August 2022.

⁵ For further discussion of the constraints associated with the limited evidence base of marine net gain, see Hooper et al (2021).

⁶ Joseph W. Bull, Julia Baker, Victoria Griffiths, Julia P. G. Jones, E. J. Gulland-Milner. (2018). 'Ensuring No Net Loss for people and biodiversity: good practice principles' (Oxford, UK, 2018) <<https://portals.iucn.org/library/node/48350>> accessed 25 August 2022.

⁷ On this point, see Office for Environmental Protection (2022b).

⁸ For example, Emily L. Hague, Carol E. Sparling, Ceri Morris *et al.*, 'Same Space, Different Standards: A Review of Cumulative Effects Assessment Practice for Marine Mammals' (2022) 9 *Frontiers in Marine Science* 1; Andrew Macintosh, Lauren Waugh, 'Compensatory mitigation and screening rules in environmental impact assessment' (2014) 49 *Environmental Impact Assessment Review* 1.

success. As recommended in our advice on the Biodiversity Net Gain Regulations and Implementation, we consider that Government should ensure that all projects are subject to the same minimum net gain requirements, including Nationally Significant Infrastructure Projects.

We also note there is currently a lack of detail on the required duration of net gain interventions. In our view, specifying the minimum length of time that marine net gain interventions will require maintenance, management and monitoring is critical.

Marine net gain and additionality

Clearly defined guidance that ensures additionality will be important for the development of a comprehensive marine net gain programme. The assurance that any proposed net gain activity is additional to existing obligations is a key foundational principle of net gain-type policies.⁹

The consultation states that marine net gain will be “in addition to the compensation and other requirements applicable to marine protected areas” (page 7). However, it is not yet clear how this principle will apply to Government’s commitments in the wider marine environment. One example is the Marine Strategy Regulations 2010, which require the UK to take the necessary measures to achieve *Good Environmental Status* across the marine environment.

Government will also need to consider how to ensure that marine net gain is an additional intervention to existing statutory obligations, and how it will integrate with other proposed changes to environmental assessment processes. This includes potential changes in respect of Habitats Regulations Assessment, Environmental Impact Assessment and Strategic Environmental Assessment within the Levelling-up and Regeneration Bill.

As the policy progresses, therefore, Defra will need to develop a clear approach to ensure that marine net gain passes the tests of additionality (for example, ‘Financing Nature Recovery UK’ propose potential tests for determining if the net gain activity can be considered additional¹⁰). A coherent delivery plan will help to demonstrate how this policy fits with wider commitments to the recovery of the marine environment, such as those within the 25 Year Environment Plan, legally binding targets and as part of the OSPAR Convention.¹¹

In conclusion

The introduction of marine net gain could become a significant and much needed new policy initiative that delivers measurable benefits for nature, supporting the delivery of the 25 Year Environment Plan and legally binding targets. We fully appreciate the significant challenges that will need to be overcome in order to implement a net gain scheme for the marine environment. We welcome Defra’s

⁹ Business and Biodiversity Offsets Programme, ‘The BBOP Principles on Biodiversity Offsets’ (Forest Trends, 2018) <https://www.forest-trends.org/bbop_pubs/principles/> accessed 25 August 2022.

¹⁰ See potential tests for additionality listed in Financing UK Nature Recovery, ‘Stacking & Bundling’ (Background Paper, 2021) <<https://irp.cdn-website.com/82b242bb/files/uploaded/Background%20Paper%20Stacking%20and%20Bundling%20Wo-0001.pdf>> accessed 25 August 2022.

¹¹ OSPAR Commission, ‘Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 2030’ (Agreement 2021-01: North-East Atlantic Environment Strategy (replacing Agreement 2010-03), 2021) <<https://www.ospar.org/documents?v=46337>> accessed 25 August 2022.

commitment to gathering further evidence to support the development of a rigorous, transparent and auditable assessment framework.

We also note that Government has recently consulted on a number of related policy proposals, and that the consultation on Highly Protected Marine Areas (HPMAs) is currently open. It is important that these consultations on the marine environment form a coherent and ambitious package of measures with a clear plan to deliver marine recovery in the necessary timescales. We will be responding to the HPMAs consultation with this in mind.

We would welcome any future opportunity to see further detail and provide advice as you develop the net gain policy and, in due course, legislation following this consultation. We would be pleased to discuss with you or your officials how any further assistance can be of most value.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'G Stacey', written in a cursive style.

Dame Glenys Stacey
Chair, Office for Environmental Protection