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11 May 2022

The Rt Hon George Eustice MP

Secretary of State for Environment, Food and Rural Affairs

Rebecca Pow MP

Minister for Nature Recovery and the Domestic Environment

Department for Environment, Food and Rural Affairs

2 Marsham Street

London

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By email only

Dear Secretary of State and Minister Pow

Advice on the Nature Recovery Green Paper

I am pleased to provide the OEP's advice on your proposals for reform of the Habitats Regulations Assessment (HRA) as requested. I also provide our advice and observations on the Green Paper's proposals for possible changes to environmental law, and wider content.

We offer some overarching comments below and in Annex 1. We deal with the HRA process and related matters in Annex 2. In Annex 3 we provide advice on further specific points. We list all our recommendations in Annex 1 and discuss them in more detail in Annexes 2 and 3.

In developing our advice, we have engaged with stakeholders across a wide range of sectors. We have also reviewed the available evidence, including those written submissions considered by the HRA Review Working Group which your officials have supplied to us.

Overarching comments

We welcome the focus the Green Paper gives to nature recovery, which is fundamental to Government's 25 Year Environment Plan (25YEP) ambitions. We note the Green Paper is high-level, exploratory, and discursive and we understand intentionally so, with specific evidence, assessment of impacts and detailed proposals to follow.

There is a pressing need to improve and strengthen our designated sites network. We welcome the intention to designate sites for recovery, ensure a central role for scientific judgement, make it easier for farmers and other landowners and managers to deliver benefits for nature and people, and support the role of nature in climate change mitigation and adaptation.

We understand Government sees the opportunity to replace a mix of EU-derived and domestic laws with new national legislation to reap potential benefits of greater clarity and

coherence. Yet there are also risks. Reform should be approached cautiously so as not to undermine existing high levels of environmental protection.

The Habitats Regulations¹ have been a key pillar of site protection for several decades. They are familiar. The further any reforms move from current provisions, the greater the implications in disapplying established practice and accustomed understanding. This will inevitably create new uncertainties and risks of legal challenge.

We advise that non-legislative aspects could be improved now to make processes work better and faster. More generally, whatever pathway is chosen, any change should, in our view, represent a considerable step up on what we already have, to justify the risks, and what is more to deliver the significant action required to protect and restore nature in line with the 25YEP mission and the pressing timeframe.

To be most effective, action needs to go beyond current nature legislation to join-up different policy initiatives within Defra and across Government. This should include, for example, biodiversity and environmental net gain, nature recovery networks, environmental land management schemes, and reform of agriculture, fisheries, and planning policies. There is a common view that it is difficult to navigate or to sense coherence. Yet to be most effective, both clarity and coherence are so important.

We believe the crucial test of any new framework is its capacity to achieve better environmental outcomes and to do so at pace, noting there are only eight years to meet the 30 by 30 commitment and the species abundance target.

We have the timeframe very much in mind. While there may be other drivers for reform, we advise that, to achieve Government's stated objectives, reforms should only be pursued that will clearly improve on current protections and support nature's recovery at pace. Government will need to develop clear and specific policy proposals and assess their pros and cons to be confident of this.

Attributes of an effective framework for nature protection and recovery

We outline below five key attributes of an effective, strategic framework for nature protection and recovery. We provide more detail in Annex 1. We advise that Government design the overall package of any proposed changes, legislative or otherwise, around these attributes:

- i) The legal framework, and arrangements for its implementation, monitoring and review should be underpinned by rigorous and independent scientific understanding and advice.
- ii) Nature protection and recovery will be best supported by an ambitious, coherent vision which applies across all relevant government policy areas, aligned to the timeframe and approach of the 25YEP.
- iii) The vision to deliver nature recovery should be strengthened by a coherent set of ambitious and measurable targets.
- iv) A key test for deciding on any actions should be their demonstrable ability to halt nature's decline and bring about substantive recovery at scale and pace.
- v) Effective delivery requires good governance, resourcing, evaluation, and continuous improvement to ensure the necessary oversight, accountability and communications.

Habitats Regulations Assessment process and related matters

You have asked for advice specifically on the proposed HRA reform. We have considered this alongside the closely linked matter of possible reform of protected sites in Section 3.1 of the Green Paper, providing our advice below and in Annex 2. We have considered both legislative and non-legislative options for reform and summarise our thinking overleaf.

¹ The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012).

To inform the further development of its proposals, we advise that Defra seeks to establish more clearly where problems in achieving environmental outcomes are down to the current HRA process and site designation frameworks, or else other causes. We also advise that any change should take the opportunity to streamline the system.

We recommend that in developing detailed proposals, Government apply the environmental principles in the Environment Act. This is an early and important opportunity to exemplify the effective application of the principles.

In designing and implementing change, Defra will need to manage notable risks, for example distraction from more effective or urgent actions and transboundary anomalies. We advise Defra to develop clear communications relating to the changes and to engage stakeholders and the public in concerted ways, to increase the prospects of early success.

i) Non-legislative improvements to current regimes

The Green Paper highlights the need to tread with care, noting that aspects of the current system are working. We agree. The HRA process generally works well at putting nature protection first. But we see scope for non-legislative improvement of the HRA process.

We recommend that Government take the opportunity to improve implementation of the current legislation, whether or not it also pursues legislative reform. Some of this may seem inefficient or even nugatory if pursuing legislative reform, but we advise it is likely to secure more immediate benefits. This is important in terms of pace, especially in the context of the species abundance target and timeframe. It has greater potential for near-term benefits compared with developing and bedding-in new legislation and processes.

Information considered by the HRA Review Working Group and Defra's 2012 review² of the Habitats and Birds Directive suggests actions that do not require changes in law. These include clarifying terminology, agreeing standards of evidence, and improving access to data. We also advise that implementation of the in-combination assessment could be improved.

In addition, there are several existing legal tools to manage and improve protected sites which have been used infrequently to date. We advise that Government should review these tools to identify how they could be used more frequently and successfully, before considering new measures such as making Site Improvement Plans (SIPs) statutory.

We note in Annex 2 that the HRA has been seen as problematic for house building, for example in respect of rivers in unfavourable condition due to excessive nutrient loading from agricultural runoff and discharges from sewage treatment works. To avoid any misapprehension, the problem here does not lie with the HRA process itself. Rather, it is a manifestation of the poor condition of protected habitats, and the fact that additional pressures must be avoided to halt further deterioration.

In short, unless and until the state of the environment is improved by tackling the systemic issues and activities affecting designated site condition, we expect any process aiming to protect these sites would reach the same outcome.

ii) Reform or replacement of the HRA or site designation frameworks

We recognise Government's desire to consider a single assessment process to match a rationalised set of designations. Reform offers the possibility of a more joined-up approach. We also see that the current system of multiple designations looks fragmented and complex. You would not sensibly design such a system afresh, today.

² Defra (2012). *Report of the Habitats and Wild Birds Directives implementation review*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf.

We have not yet seen a substantive evidence base or specific proposals that present the case for reform, however, and this will be central to designing a more effective and efficient system. In evaluating options, it will be important, for example, to recognise those aspects of the current arrangements that do work well or can be made to work well.

Wider contents of the Green Paper

Annex 3 sets out our advice on specific issues in sections 4 to 6 of the Green Paper. We include further recommendations, notably to enshrine 30 by 30 in law, and to approach any reform of Defra and its Arm's Length Bodies so that Defra's delivery arrangements are focused more firmly on what is needed to deliver the 25YEP.

In conclusion

I trust that you find our advice helpful. We would be pleased to discuss with you or your officials any aspects of it, or how any further advice we might give can be of most value. We would also welcome the opportunity to consider additional detail and provide further advice as your thinking develops.

We plan to commence our own further work to assess and report on the implementation of existing nature legislation concerned with the HRA, protected site designation and management, and other matters concerning biodiversity. We will report on our findings once available. We trust they will offer further useful insight into the matters covered in the Green Paper, as Government develops its proposals.

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

Annex 1 – Overall recommendations and overarching considerations

List of recommendations

We list all of our recommendations below. They are discussed further in Annexes 2 and 3.

Recommendation 1: Government should develop a specific action plan for measures to protect and improve nature under the current legislative framework.

Recommendation 2: Alongside any future legislative proposals, Government should develop and publish analyses and evidence on how proposed reforms will maintain and improve on current protection and contribute to nature's recovery at scale and at pace.

Recommendation 3: When developing detailed proposals for any future legislation, Government should apply the environmental principles in the Environment Act.

Recommendation 4: Before introducing any new measures for managing protected sites, Government should:

- i) identify why existing tools have not been used more widely for nature recovery**
- ii) consider whether existing provision for the adoption of Protected Site Strategies could offer a basis for delivering site improvements.**

Recommendation 5: Government should promptly resolve the practical issues to improve the existing HRA process identified by the HRA stakeholders (page 2 of the HRA Review Working Group summary of findings). This would bring immediate benefits and could be undertaken in parallel to developing any new legislation.

Recommendation 6: Government should consider how data collection can be standardised and shared so it is accessible to future project proponents and others making decisions which may affect protected sites and species. Data should be 'collected once, used many times'. As part of better data use, we recommend that Government should consider whether to make Evidence Plans mandatory.

Recommendation 7: In accordance with the mitigation hierarchy, before any environmental compensation is considered, the requirement should be to first avoid any impacts as a priority, then to minimise, then to mitigate so that compensation remains a last resort.

Recommendation 8: Any new process for selecting and designating protected sites should be clear, transparent, evidence-led and based on scientific factors. Any process should retain the primary responsibility for designating sites with the statutory nature conservation body.

Recommendation 9: Any provision for individual judgements by individual case officers should only be made within a clearly defined, consistent and objective decision-making framework that reflects effective governance processes.

Recommendation 10: We recommend that any future legislation includes provisions to enshrine 30 by 30 in law as a key supporting target to halt species decline. Those provisions should set an ambition to protect at least 30% of land and seas by 2030, recognising international commitments and ongoing requirements after that date.

Recommendation 11: Any Other Effective area-based Conservation Measures (OECMs), or other area-based conservation tools, should meet IUCN and other accepted criteria and definitions to ensure that they can credibly contribute to nature's recovery and the goal of 30 by 30.

Recommendation 12: Government should retain the coherent vision set by a high-level compound target which recognises the inter-dependence between all drivers of marine degradation. We advise against splitting the fifteen descriptors of Good Environmental Status into individual targets.

Recommendation 13: Any reform of Defra's Arm's Length Bodies should be aligned around delivery of the Environmental Improvement Plan goals and associated targets.

Key attributes for an effective framework for nature protection and recovery

i) The legal framework for nature protection and recovery, and arrangements for its implementation, monitoring, and review, should be underpinned by rigorous and independent scientific understanding and advice

We advise that mechanisms for nature protection and recovery should be evidence-based and reflect the best available scientific understanding. Current legislation provides for statutory independent advice and a central role for science. We advise that any change should retain these features, to support objective and defensible designation and decision-making and mitigate litigation risks.

Evidence should be presented impartially by knowledgeable experts within independent, statutory advisory bodies. Ideally, scientific evidence should be peer-reviewed. We advise that presentation of scientific advice should avoid any intermediate steps between the advisor and decision-maker. This negates the risk of the scientific advice being compromised.

We also advise that enhancing nature protection and driving its recovery should be primary factors in decision-making for site designation and protection. We recognise that, on rare occasions, other factors may lead to a different outcome in the wider public interest, but for the large majority of decisions, nature ought naturally to be at the fore. A system too open to other factors will not achieve the step change needed.

We see an opportunity to identify potential synergies between economic and social factors and nature protection and recovery. We advise that any new system should be designed to explore and stimulate thinking about where these synergies could exist in the interests of empowering communities in relation to the protection of their local environment.

ii) Nature protection and recovery will be best supported by an ambitious, coherent vision which applies across all relevant government policy areas

There is an opportunity (in the next iteration of the 25YEP) to sharpen the vision for the environment articulated in Government's 25YEP. We advise Government to develop a vision that sets the direction, pace and focus required for nature's recovery: to deliver by 2042, in line with the 25YEP timescales and with key intermediate milestones, such as halting nature decline by 2030.

Having a clear vision for the natural environment with equal status to net zero for climate change is important for industry and wider stakeholders and to engage the public's commitment, support and participation. To achieve full effect, this vision needs to be embraced and applied across Government. The creation of the cross-government directors' group is a good start but we consider that more could be done to continue increasing the pace and depth of change.

iii) The vision to deliver nature recovery should be reflected in a coherent set of ambitious and measurable targets

There is a confusing proliferation of environmental targets. We advise that Government's ambitions are more likely to be met if 'apex' targets prioritise those aspects of the environment experiencing severe deterioration, and emerging or established major pressures. We also advise that those targets should be supported by equally challenging, complementary targets including SMART interim targets that drive early action.

The Green Paper says that the species abundance target "will be our compass, which will deliver our commitment to leave the environment in a better state than we found it" (page 4). Our initial view of the evidence for Government's environmental targets consultation is that the target to halt decline, and the subsequent target to increase species abundance, will not

be sufficient to leave the environment in a better state for future generations. We will provide further advice in connection with the targets consultation.

Beyond the biodiversity targets, wider measures will be important to attain positive outcomes including other targets under the Environment Act 2021, delivering the 25YEP and effective application of environmental principles. An effective, system-wide approach is needed.

iv) A key driver for deciding on any actions should be their demonstrable ability to halt nature's decline and bring about substantive recovery at scale and pace

Targets are important drivers for action but it is the action itself that delivers outcomes. The quality of action matters and in the past, intended outcomes have not always been achieved. Protected sites overall are still not in the desired state despite many previous measures, targets, and deadlines for improvement. For instance, while the 2011 publication "Biodiversity 2020"³ stated that, by 2020, at least 50% of English Sites of Special Scientific Interest (SSSIs) would be in favourable condition, only 38% had met this standard in 2021⁴.

We advise that the test for any possible action should be whether it will contribute towards halting nature's decline and supporting its recovery. Actions taken need to be capable of delivering these outcomes within the time available – initially by 2030 and then by 2042. This should apply equally to actions under the current framework and to consideration of possible legislative reforms.

We also see a need to increase practical action on the ground. Unless undertaken with particular care, significant legislative reform risks creating delay. It takes time to develop and embed new legislation, practices and guidance and for new caselaw to evolve. Care should be taken to avoid these risks compromising Government's ambitions to achieve its aims.

v) Effective delivery requires good governance, resourcing, evaluation and continuous improvement to provide the necessary oversight, accountability and communications

The Green Paper does not set out how good governance of nature protection and recovery will be ensured. Such governance should include mechanisms to support implementation, monitoring, reporting, enforcement, evaluation and continuous improvement. The public should be able to engage with nature protection and recovery strategies so that they can understand and influence them. To do this it will be essential to engage stakeholders and the public effectively and in an accessible and engaging way.

The current lack of detail is understandable given the Green Paper's exploratory, high-level nature. As any proposals are taken forward, well thought out governance arrangements will make a substantial difference to Government's prospects of success. As part of this, the question of who makes decisions on site designations will be important, as we discuss in Annex 2.

³ Defra (2011). *Biodiversity 2020: A strategy for England's wildlife and ecosystem services*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf.

⁴ Defra (2021a). *Extent and condition of protected areas*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1025282/1_Extent_and_condition_of_protected_areas.pdf.

Annex 2 - Advice on the proposals for HRA reform and related issues in Chapter 3: "Protecting wildlife sites – on land and at sea"

i) General recommendations

We provide three general recommendations below. We advise that Government should implement the first recommendation regardless of any legislative reform. The two subsequent general recommendations apply to any such reform.

Recommendation 1: Government should develop a specific action plan for measures to protect and improve nature under the current legislative framework.

There is more that can be done under current law, regardless of any possible change in legislation. We advise careful review of how the current legislation is being implemented, covering matters such as adequacy of resourcing, data sharing, and skills and training. Our advice is that there is opportunity for rapid improvements here.

Previous reviews have suggested improvements within the current system. For example, the Lawton review⁵ recommended "Better, bigger, more and joined" in relation to protected sites, echoing longstanding science and similar findings from previous studies. It stated that there is "compelling evidence that England's wildlife sites are generally too small and too isolated, leading to declines in many of England's characteristic species". The number, size, condition and connectivity of protected sites can be improved without significant change in legislation.

We note in the Green Paper that Government is "not waiting for the conclusions from this consultation to be implemented in order to put the other necessary measures in place to put us on the right trajectory". We advise that Government acts quickly to develop a coherent plan under the current legislative framework, taking account of the Lawton review and others' experience and advice. The plan should include how issues in the wider environment that affect nature, such as poor water quality, will be resolved.

Any legislative reform might, therefore, aim at building on what is already possible, for example to allow and support nature to adapt to climate change and to better protect those landscape features which help deliver necessary connectivity between protected sites.

Recommendation 2: Alongside any future legislative proposals, Government should develop and publish analyses and evidence on how proposed reforms will maintain and improve on current protection and contribute to nature's recovery at scale and at pace.

If Government chooses to pursue legislative reform, it could do so through a variety of routes, including publishing draft legislation for further scrutiny and consultation. This would allow consideration of more specific proposals once developed. We therefore provide advice below which is intended to support any such further scrutiny process and to inform Government's development of final legislation.

Given the importance and possible complexity of any reforms, we advise that effective scrutiny of any draft legislation and its development to benefit nature protection and recovery will be best served by publishing detailed analyses and evidence on several important points, as part of Government's impact assessments and other accompanying materials. This would allow Parliament and others, including the OEP, to scrutinise and further advise on the proposals in more depth. We advise that it would be helpful for Government to consider, and to develop and present the evidence and analyses relating to, the following:

⁵ Lawton, J. et al. (2010). *Making Space for Nature: A review of England's Wildlife Sites and Ecological Network*. Report to Defra.
<https://webarchive.nationalarchives.gov.uk/ukgwa/20130402170324mp/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>.

- A fuller assessment of the specific barriers to nature's recovery that any such reform is expected to resolve
- Comparison of any proposed changes against current arrangements to demonstrate an increased level of environmental protection that will lead to nature's recovery
- Mechanisms for giving continued effect to international obligations and goals
- The approach to, and consequences of, the transition from the current system to new arrangements, including the possible diversion of effort from urgent, practical action to halt nature's decline by 2030 and how this risk can be mitigated
- How the new arrangements will relate to other significant policy and legislative developments, most notably under the Agriculture Act as well as the Environment Act 2021, implementation of the 25YEP and Local Nature Recovery Strategies. Government should set out how these will work together to accelerate nature's recovery and realise wider 25YEP outcomes.

Recommendation 3: When developing detailed proposals for any future legislation, Government should apply the environmental principles in the Environment Act.

Environmental principles underpin existing environmental law and form a key element of England's new environmental governance framework. Government has not yet adopted a final environmental principles policy statement under the Environment Act 2021, but has independently committed to respect environmental principles, for example through the UN Convention on Biological Diversity. Hence, with possible reforms of such importance, we advise that Defra should apply the environmental principles, and adhere to the policy statement (once published), in further developing its proposals.

This would ensure the Government's legal commitments and its policy on environmental principles are implemented as intended. It would also provide additional reinforcement of the content of the proposals brought forward by taking account of these core principles. We suggest that it would be good practice for Government to set out how it has applied the principles as part of the information accompanying any draft legislation.

ii) Non-legislative improvements to current regimes

We recommend that Government take the practical opportunities we outline overleaf, whether or not it also pursues more significant legislative reform. Such action will be likely to secure more immediate benefit, which will be important in the context of the species abundance target, compared with developing and bedding-in new legislation and processes over a longer period.

We note the bullets on page 9 of the Green Paper outlining what can be achieved by consolidating and modernising the law governing protected sites could deliver. We think the majority could be implemented now and, in some cases, without the need for new legislation.

Site management and protection (Section 3.2)

Recommendation 4: Before introducing any new measures for managing protected sites, Government should:

- i) identify why existing tools have not been used more widely for nature recovery**
- ii) consider whether existing provision for the adoption of Protected Site Strategies could offer a basis for delivering site improvements.**

When assessing the impacts of proposed activities on protected sites, the complexity and scientific uncertainty about their ecological consequences can lead to legal uncertainty. This is exacerbated when protected sites are in unfavourable or declining condition.

An example of this is the recent moratorium on housebuilding in the catchments of Special Areas of Conservation (SAC) rivers which are in unfavourable condition due to excessive nutrient loading from intensive farming. The need to avoid damaging already degraded

protected sites leaves little room for flexibility in these circumstances. This means that the HRA can be seen as a blocker to development, when in truth it is simply a reflection that the existing pressures affecting the protected sites means that no additional pressures can be added without undermining their conservation objectives further. Any new process, designed to support nature's recovery, must inevitably lead to the same outcome.

A necessary element of any solution to this problem should be identifying the underlying drivers for poor protected site condition and implementing measures to improve that condition.

The Green Paper proposes a greater role for Site Improvement Plans (SIPs) to identify "the actions needed on each site to address existing pressures and threats impacting [the site's] conservation status" (page 18). It suggests that SIPs could be placed on a statutory footing. We advise that whilst an important role could be played by such a legally binding document, of equal if not more importance is delivering the measures public authorities and others must implement to secure nature's recovery in respect of that site.

In this respect, several existing tools would seem, in principle, capable of delivering the objectives suggested for statutory SIPs. For example, Management Schemes, Management Notices and SSSI Byelaws under Sections 28J to 28L and 28R of the Wildlife and Countryside Act 1981, and Special Nature Conservation Orders, Stop Notices and SAC or Special Protection Area (SPA) Byelaws under Regulations 27 to 30 and 32 of the Habitats Regulations are available to help protect nature and drive its recovery. Yet we understand they are rarely used. There are statutory hurdles: in some cases, there are obligations to provide financial compensation to those prevented from undertaking environmentally harmful activities (on the face of it, in contradiction to the polluter pays principle). This may offer some explanation for their limited use.

Before new legislative tools are developed, we advise Government should identify the barriers to the use of current tools and consider whether a better course would be to address those barriers. If new tools are then considered necessary, legislation should be designed to ensure any new tools do not encounter similar issues.

In addition to the tools mentioned above, since 24 January 2022 Protected Site Strategies have been available to Natural England (under Section 110 of the Environment Act 2021), with Species Conservation Strategies also potentially available subject to commencement of Section 109 of the same Act. In principle, these appear to be suitable and readily available vehicles for setting out matters relevant to securing a site's or species' recovery, leaving it unclear what statutory SIPs would add.

Protected sites will be better able to accommodate activities and development pressures, without impacts on their conservation objectives, when their ecological condition is robust. The first of the nine changes stated in the recent Nature Positive 2030 summary report⁶ that will have "particularly high impacts on reversing biodiversity loss this decade" is to ensure that wildlife thrives within protected sites through improving their management. Regular monitoring of protected sites is also key to ensure that ongoing management continues to help deliver the site's conservation objectives. Your proposals in section 3.2 to enable improved monitoring and better feedback are therefore most welcome.

Recommendation 5: Government should promptly resolve the practical issues to improve the existing HRA process identified by the HRA stakeholders (page 2 of the HRA Review Working Group summary of findings). This would bring immediate benefits and could be undertaken in parallel to developing any new legislation.

The HRA Review Working Group put forward a single new assessment process as one possible solution to address the two main themes it identified from the representations it

⁶ Natural England, et al. (2021). *Nature Positive 2030 - Summary Report*. JNCC. <https://jncc.gov.uk/our-role/the-uk/nature-positive-2030/>.

received. We note that none of the areas highlighted by the HRA stakeholders (pages 2 and 3 of the HRA Review Working Group summary of findings) suggested discarding the HRA process. Rather, they highlighted that its implementation should be improved.

Overall, the areas highlighted on pages 2 and 3 are, in our view, sensible proposals. Many were also suggested in Defra's 2012 implementation review of the Habitats and Birds Directive (Defra's 2012 implementation review). Most, if not all, could be delivered without new legislation and we advise that Government should promptly pursue these opportunities, and prioritise those measures with the greatest potential to support nature recovery. We advise that Government should evaluate the outcomes delivered by resolving these practical implementation issues when considering the case for legislative reform.

We are also aware that stakeholders consider the in-combination assessment to be overly burdensome. The Habitats Regulations do not detail parameters as to which plans and projects should be considered in combination with a proposal under consideration. This can lead the competent authority and proponent to be overly cautious. We advise that Government should resolve this issue, for example through guidance.

Following resolution of such practical issues, Government may find that the staged HRA process (based on initial screening, detailed assessment and application of exceptions) could be the single new assessment process for any new series of protected sites that deliver nature's recovery.

Recommendation 6: Government should consider how data collection can be standardised and shared so it is accessible to future project proponents and others making decisions which may affect protected sites and species. Data should be 'collected once, used many times'. As part of better data use, we recommend that Government should consider whether to make Evidence Plans mandatory.

The HRA Review Working Group summary of findings proposes a clearer decision-making framework to address what are referred to as process issues said to have been raised by the HRA stakeholders. On the face of it many of these are sensible measures for Government to consider further.

The Working Group's summary states that "Evidence provision is a critical element of assessment processes and we have heard that this is at the heart of some issues with the HRA process". We agree that the availability of, and access to, data and evidence can be a key limiting factor. In our view, more should be done to ensure that scientific information is collected and made more easily accessible.

Defra's 2012 implementation review found that "This has implications for every stage of the decision-making process, with uncertainty around evidence requirements and interpretation potentially increasing the risk of delay and higher costs. The shortage of baseline data is a particular issue in relation to the marine environment"⁷. It is also a prevalent feature of the majority of points made in the Working Group's summary of how they believe the existing process could be improved.

It is usually the case that the more information available, the better potential effects on a protected site can be determined, and the less need there is to take a precautionary approach. If there are too many unknowns about the potential impacts of a development or activity, we understand why the competent authority may attach "an elevated level of caution around decision making" to manage the uncertainty. In addition, when sites are not regularly

⁷ Defra (2012).

monitored⁸, the best available ecological information to inform decision-making will be the partial snapshots gathered by project proponents.

We advise that Government considers how ecological information can be made more widely and easily accessible in a timely way. Some progress could be achieved through guidance or codes of practice, albeit we recognise that contractual and commercial confidentiality issues may need to be addressed. The Government can also consider and learn from experiences in other countries. For example, Defra's 2012 implementation review states: "In Germany, once data has been collected it is held by the Länder (regional authorities) to help their decision making. In France, data becomes publicly available unless a developer can justify why it should remain private. The Netherlands has a National Data Authority which holds data from NGOs and from previous assessments"⁹.

It is also sensible that there should be reasonable and clear expectations of the required evidence base to inform decision-making. We agree that this should be made more accessible, specific, and proportionate to each situation. Environmental information generated in support of decision-making can be extensive and detailed¹⁰. It may, therefore, reduce costs and improve transparency and public participation if guidelines were provided to standardise the way in which environmental reports are written.

We believe the Evidence Plans (as suggested by the HRA Review Working Group) would also be an effective aid to implementation. As part of better data use, we recommend that Government should consider whether to make such Evidence Plans mandatory. Evidence Plans, with agreed standards of evidence required to conclude an assessment, and proportionate to the activity under assessment, would better direct scientific inquiry to fit the requirements of statutory nature conservation bodies. This should reduce the scope for disagreements over methodology and modelling and improve consistency in the requests for information from both competent authorities and statutory nature conservation bodies.

As the Working Group's summary states, these changes could be made through guidance and the power in the Environment Act to amend Part 6 of the Habitats Regulations.

Proposals for a clearer decision-making framework (Section 3.2.1)

Recommendation 7: In accordance with the mitigation hierarchy, before any environmental compensation is considered, the requirement should be to first avoid any impacts as a priority, then to minimise, then to mitigate so that compensation remains a last resort.

We agree that the proposal for strategic solutions to streamline the consenting process is sensible and note that effective strategic solutions, such as Thames Basin Heaths, have been delivered under the existing legislation. We note the proposal to further explore the

⁸ In response to a Parliamentary Question in 2018, Defra stated that almost half of England's SSSIs had not been monitored in the previous six years as required by the national monitoring guidelines. This lack of regular monitoring may be continuing. See: Question asked by Caroline Lucas MP, answered by David Rutley MP (tabled on 19 June 2018). *Sites of Special Scientific Interest - Parliamentary Question for Department for Environment, Food and Rural Affairs*. Retrieved from <https://questions-statements.parliament.uk/written-questions/detail/2018-06-19/155250>. On reviewing information on one of England's largest SSSIs – the Wash – in March 2022 we found that 70% of the site's SSSI units (divisions of the SSSI for management and monitoring purposes) have not been monitored since 2009. See: Natural England. *The Wash SSSI*. Retrieved from Designated Sites View: <https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S1002591&SiteName=wash&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>.

⁹ Defra (2012).

¹⁰ For example, the EIA Environmental Statement which accompanied the National Highways Development Consent Order application for an underpass at Stonehenge ran to 7,000 pages comprising 250 documents and over 100 maps. See: National Highways (2019). *Environmental Statement goes digital*. Retrieved from Latest News: <https://nationalhighways.co.uk/our-work/a303-stonehenge/latest-news/environmental-statement-goes-digital/>.

potential for "environmental compensation" to support nature's recovery. Whilst we support the aim, we advise that compensation policy should be consistent with the mitigation hierarchy and a competent authority should not consider the acceptability of compensatory measures before it has exhausted the preceding steps in the mitigation hierarchy.

If environmental impacts and offsetting measures can be dealt with at a plan level, strategic solutions can be efficient, as suggested by the HRA Working Group. Ideally, more can be achieved in one strategic approach than piecemeal mitigation measures created by different actors. Strategic approaches could also reduce assessment requirements at project level, where these are related to the strategic plan, as seen in the South Humber Gateway¹¹.

In the **South Humber Gateway** allocated development zone, a strategic approach has been taken to both facilitate development and safeguard protected birds in the Humber Estuary. Due to the area's ecological importance, development can only proceed following robust assessment of the impacts on wintering and migratory waterbirds.

A strategic approach has been secured in the Local Plan whereby the local authority (North East Lincolnshire Council) has proactively created wet grassland habitat managed for birds. Developers make a single financial contribution to 'draw down' on this available land in proportion to the size of their development site. This approach, based on partnership working and extensive up-front evidence-gathering surveys across the whole Gateway, has removed the need for developers to gather their own evidence or establish their own mitigation strategies on a site-by-site basis. This has enabled them to meet planning requirements without delay and with greater certainty.

The approach recently won the RTPI excellence in planning for the natural environment award. The judges noting that "if others worked in this way, we believe it would significantly improve the planning system"¹².

The approach has also been popular with developers. A developer of a £300 million energy from waste project stated "The South Humber Bank mitigation scheme provides confidence to developers on the practical requirements of the Habitat Regulations. We found engagement with [the] Council to be a positive experience and the speed and scale of habitat delivery is impressive. We hope other local authorities set up similar schemes".

Strategic solutions to offset impacts on protected sites can be undertaken under existing legislation. They have not been delivered widely, however. As set out in the case study, this strategic approach was based, as it must be, on extensive evidence gathering so that mitigation offsets the impacts of development. Local authorities may find it difficult to take such strategic approaches, for example at Local Plan level, if they do not have evidence to support it. We emphasise the importance of data in recommendation 6.

We advise that Government diagnoses and addresses any barriers affecting the wider use of strategic solutions to mitigation and, where appropriate, compensation, whether or not it also pursues more significant legislative reform. This is likely to secure more immediate benefit, both for the environment and for project proponents.

¹¹ North East Lincolnshire Council (n.d.). *Humber Gateway*. <http://www.nelincs.gov.uk/planning-and-building-control/planning-policy/the-local-plan/local-plan-background-information/south-humber-gateway/#:~:text=The%20provision%20of%20strategic%20mitigation%20sites%20for%20roosting,to%20develop%20employment%20site>.

¹² RPTI. (2020). *RPTI Awards for Planning Excellence 2020*. www.rpti.org.uk/media/5126/rpti_a4_ape_20_winners_brochure.pdf.

iii) **Reform or replacement of the HRA or site designation frameworks**

We provide the following advice should reform be taken forward.

Government proposals for a new consolidated approach to designated sites (Section 3.1)

The Green Paper indicates Government is considering creating a new system of designated sites, consolidating existing designations – domestic and international – into a rationalised set. The proposal is that this would then allow for a single assessment process for activities that may affect these sites.

The implementation of legislation should be as simple and accessible as reasonably possible to achieve the intended outcomes. Legislative consolidation and rationalisation should be considered where this is not the case.

The current protected site framework has evolved over a period of years, and sites are managed via multiple overlapping pieces of legislation. This may not be easy to understand for the non-specialist, albeit we are not aware of evidence that indicates this is creating barriers to nature's recovery in practice.

The Green Paper proposes replacing the current system of protected sites with a multi-tiered approach, either via different types of designation or via a single type of designation with different levels of protection. It states "This approach could involve having a single legal mechanism for terrestrial designation and a single legal mechanism for marine designation, but within each having the possibility of varying levels of protection which could be site or species specific" (section 3, page 9).

This would create different regimes that need to be considered when assessing activities that cross from land to sea. Given the Government's desire to rationalise the different types of designations and its new ambition for offshore wind (50GW by 2030)¹³ we question whether different legal mechanisms should be proposed on land and at sea.

There are also risks of transboundary issues to consider when exploring a new regulatory framework that diverges from those used by the Devolved Administrations. This will affect businesses which operate across the UK, as well as cross-boundary sites (like the Severn Estuary) and cross-boundary issues like water quality.

The currently available information does not provide a basis for us to determine which option is most likely to be effective between the three options for designated site reform set out in this section of the Green Paper.

Government proposals for a single new assessment process (Section 3.2.1)

The Habitats Regulations contain measures designed to support nature's protection and recovery. They have been in place since 1994 with practices, caselaw, guidance and expertise built up over that time. Any change away from the HRA should therefore carefully consider what elements of the regulations work well and should be retained.

The Green Paper signals a desire to emphasise scientific judgement, which we support. We agree that good environmental law should avoid creating processes for their own sake but should focus on outcomes – in this context nature's protection and recovery. However, some level of process is important, for example to ensure rigour and consistency in decision-making.

¹³ BEIS (2022). *British Energy Security Strategy: Secure, clean and affordable British energy for the long term*. HM Government.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1069973/british-energy-security-strategy-print-ready.pdf.

This is delivered currently through the sequential nature of the HRA, which seeks to balance rigour with proportionality by allowing for initial screening before more detailed assessment, and then for the application of exceptions. The HRA does not focus purely on process (unlike, for example EIA or SEA). Rather, it requires a particular outcome, that approved plans or projects do not adversely affect the integrity of protected sites (unless the exceptions apply).

We advise that any new assessment process developed to replace the HRA should also proportionately but rigorously assess activities, to ensure protected sites are not harmed (unless the exceptions apply). This could be achieved through a similarly sequential approach to that of the current HRA process, albeit other approaches may also deliver the same outcome. When considering any new assessment process, we advise Government to consider stronger protections in order to meet its goal of nature recovery.

Implementation of the current HRA process incorporates the environmental principles and we advise this too should be retained within any new assessment process.

We advise that in deciding on the extent and approach to any reform, the Government should give due consideration to avoiding the uncertainty and disruption likely to result from any significant legislative change, particularly change aimed at moving away from current terminology and caselaw. We note that section 3.2 of the Green Paper quotes Mr Justice Sullivan (as he then was) in *R (Hart DC) v Secretary of State for Communities and Local Government*¹⁴. Aspects of *Hart* (though not the quoted text) were overturned in 2018 by the *People over Wind* judgment¹⁵. Following EU Exit, and should they judge it appropriate, domestic appeal courts may now reverse *People over Wind* (or any other Court of Justice of the European Union caselaw). In this particular case, (*People over Wind*), we can see why one may wish to revert to the previous domestic caselaw as a more pragmatic, but still environmentally protective, approach.

If Government is concerned about the effects of specific rulings of the Court of Justice, it could propose that Parliament address those directly and transparently via legislation. That would allow a move away from selected caselaw and terminology where that is judged appropriate, whilst retaining elements which continue to be relevant and beneficial, thereby minimising practical disruption and legal uncertainty.

To deliver the stated goal of not only halting the decline in nature but restoring it and to avoid distraction from this goal, we advise careful thought be given to the timing and nature of any legislative reform of the current HRA process.

Government proposals for a new consolidated approach to designated sites (Section 3.1)

Recommendation 8: Any new process for selecting and designating protected sites should be clear, transparent, evidence-led and based on scientific factors. Any process should retain the primary responsibility for designating sites with the statutory nature conservation body.

The Habitats Directive was developed to reflect international law arising from the Bern Convention. It also plays an important role in implementing, amongst other commitments, the Convention on Biological Diversity. Both conventions continue to apply in the UK and we welcome the Government's commitment to meet or go further than its international obligations require and to put nature recovery at the heart of protected sites.

Section 3.1.3, p12 refers to the Climate Change Committee's advice that climate change will result in changes to protected sites in terms of species' range shifts. We support the goal of

¹⁴ [2008] EWHC 1204 (Admin).

¹⁵ Case C-323/17 *People over Wind and Sweetman v Coillte Teoranta* (2018) ECLI:EU:C:2018:244.

enabling sites to be more resilient and better able to support nature in adapting to climate change. A key aspect of this will be to ensure they form an ecologically coherent network.

This section also suggests that all protected sites could be designated by the Secretary of State. Currently, SSSIs are notified by Natural England using its powers under Part II of the Wildlife and Countryside Act 1981. Natural England designates a SSSI where it is of the opinion that land is of special interest by reason of its flora, fauna, or geological or physiographical features. Natural England's Board can only decide not to notify a site if it is of the opinion that none of the area notified is of special interest. That opinion will be formed considering the evidence that has been gathered and by giving regard to guidelines published by the Joint Nature Conservation Committee for the selection of SSSIs.

Whilst international sites are designated by the Secretary of State, there is little discretion to depart from the scientific advice provided by the statutory nature conservation body¹⁶.

In order to achieve Government's aims for nature's protection and recovery, it is important that the selection of sites for designation is based on scientific evidence and follows a clear and fully transparent process. We advise that it would not be sufficient for full transparency to apply just 'with regard to the decisions taken' as the Green Paper suggests. We also advise that the independent evidence on the importance of sites for protection, and on understanding the conditions that support nature's recovery, should be the primary factors in decision-making. A system that is too open to other factors working against nature protection and recovery, such that they can prevent selection or lead to selecting for protection at a lower level than the science suggests, will not achieve the step change needed.

In considering this issue of who designates sites for protection, we have considered the recommendations of the Farm Inspection and Regulation Review ("the Stacey Review")¹⁷. This highlights that the UK has a strong tradition of legally independent national bodies to regulate and deliver policy. It states that:

“Regulators must balance the wants and needs of the government, those they regulate, consumers and the wider public, and the competing elements of their own (usually statutory) objectives, in the public interest. In doing so, they must behave and act objectively, impartially and consistently, without conflict of interest or bias – in other words, independently.

Regulatory decisions and functions should be conducted with the utmost integrity, so that people have confidence in the regulatory regime. Independent regulators have sufficient autonomy to exercise their regulatory functions free from undue interference or influence.”

Where potentially harmful activities can still go ahead subject to appropriate controls, we advise that the statutory nature conservation bodies should be responsible for designation. In circumstances where the consequence of designation is to prevent activities outright (such as in Highly Protected Marine Areas), these highly protected designations, only, may be more appropriate for designation by the Secretary of State, given the more fundamental economic and social trade-offs that may be involved. In such circumstances, the independent evidence underpinning all the sites proposed for designation should be made publicly available.

If Government decides to progress policy proposals for a new system of designated sites, we advise that careful consideration should be given to the importance of the existing protected site supporting documents (for example, those establishing conservation

¹⁶ The Conservation of Habitats and Species Regulations 2017, reg 12.

¹⁷ Stacey, G. (2018). *Farm Inspection and Regulation Review*. Department for Environment, Food & Rural Affairs, 49.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764286/farm-inspection-regulation-review-final-report-2018.pdf.

objectives and views about management). We recognise that a rationalised set of designations gives the opportunity to rationalise these supporting documents.

To deliver the Green Paper's goal of nature recovery, and to enable protected sites to adapt to climate change, objectives and measures need to be set which will deliver recovery, then these need to be followed. Supporting documentation for any new designation of protected sites will therefore be key. Those responsible for managing these sites will need to do so in accordance with the site's objectives. For example, the supporting documents for the proposed nature recovery sites will need to set out whether the objectives for the site are to maintain certain features through management, or to allow or support change and natural succession. Competent authorities and project proponents will need to assess the potential impact of any proposed activities, under any new assessment process, to determine whether the site's objectives will be undermined by the proposal.

Government proposals for a single new assessment process (Section 3.2.1)

Recommendation 9: Any provision for individual judgements by individual case officers should only be made within a clearly defined, consistent and objective decision-making framework that reflects effective governance processes.

The current HRA process seeks to ensure decisions follow scientific evidence in a sequential way. Proposals with a lesser effect on the protected site conclude assessment at an earlier stage than those with greater effects. It comprises individual evidence-based judgement on a case-by-case basis, informed by rigorous environmental assessment. There is a framework for this individual judgement with the competent authority required to consider the specific evidence – information about the site and information about the plan or project – at every stage. This is a logical approach.

We therefore welcome the Green Paper's recognition of the importance of due process in arriving at reasonable and rational decisions in a consistent and clear manner (section 3.2, page 16). However, we also note that the Green Paper proposes to promote individual evidence-based judgement by an individual case officer on an individual case to avoid uniformity of procedure (section 3.2, page 16).

This is concerning. A proper procedure is crucially important. It helps ensure proportionality and consistency of decision-making, and provides clarity and an important degree of certainty for those involved. It ensures fairness in which individual rights are respected and public participation provided for (as required by the Aarhus Convention). Uniformity of procedure is not the same as uniformity of outcome and, as we advise above, outcomes should reflect scientific evidence, so they may differ from case to case.

We are not clear how Government expects proposed individual judgements to work in practice. However, an approach based on individual judgement and a departure from uniform process risks undermining transparency and accountability as well as being likely to result in increased uncertainty. It risks arbitrary, capricious decision-making, contrary to good regulatory practice¹⁸.

An evaluation of the screening process under the Australian federal government's EIA regime found that almost 1 in 5 screening decisions were unlawful¹⁹. The paper's authors determined this to be due to limited resources, tight timeframes for decision making and pressure from project proponents. This resulted in the development of an "informal custom" whereby "what the department considered important ... mattered more than the written laws". One of the key influences on how the process worked in practice was therefore the culture of the decision-making authority.

¹⁸ See for example the regulatory principles that apply to HRA currently - Legislative and Regulatory Reform Act 2006 s 21.

¹⁹ Macintosh, A., & Waugh, L. (2014). Compensatory mitigation and screening rules in environmental impact assessment. *Environmental Impact Assessment Review*, 49, 1-12.

The Green Paper proposal for individual decision-making (to avoid uniformity of procedure) risks being influenced in a similar way. This is likely to lead to a lack of consistency both in decision making within a public authority, and in decision making between public authorities.

Individual officers could be subject to unreasonable pressure and influence, and there is also a risk that decisions could be unlawfully made if irrelevant considerations are taken into account, increasing vulnerability to legal challenge. For example, the lack of ecology skills in local planning authorities is a well-known issue. Recent survey-based research for biodiversity net gain identified that, of the 298 local planning authorities who participated in the research, 112 stated that it was not practical to administer and deliver net gain. 21% (24) stated this was because they do not have an in-house ecologist²⁰. This could increase the risk that irrelevant considerations are taken into account if decisions can be made outside of a uniform process.

We also note that whilst this section of the Green Paper refers to individual case officers being confident in 'their decision', they are not ultimately the accountable decision makers. Case officers are officers of the public authorities for whom they work, and it is those authorities who are accountable for decisions under their legal functions. Their staff must, therefore, act within the legal framework that applies to that authority, and the authority must ensure that decisions are taken properly. Individual case officers will need to be confident that their decisions, or recommendations for such decisions, are in accordance with the law and reflect the functions delegated to them by their employers.

²⁰ Robertson, M. (2021). *The State of No Net Loss/Net Gain and Biodiversity Offsetting Policy in English Local Planning Authorities: Full Report*. CIEEM. <https://cieem.net/resource/lpa-survey-morgan-robertson/>.

Annex 3 – Observations and advice on specific issues in Chapter 4: "Delivering 30 by 30" and Chapter 6: "Delivering nature recovery"

In this Annex, we provide observations and advice in relation to the proposals in Chapter 4 "Delivering 30 by 30" and Chapter 6 "Delivering nature recovery". We focus on areas with particular relevance to the 25 Year Environment Plan, its refresh due by January 2023, and Government's proposal for long-term targets under the Environment Act 2021.

What should count within 30 by 30 and Other Effective Area-based Conservation Measures (OECMs) (Section 4.1)

Recommendation 10: We recommend that any future legislation includes provisions to enshrine 30 by 30 in law as a key supporting target to halt species decline. Those provisions should set an ambition to protect at least 30% of land and seas by 2030, recognising international commitments and ongoing requirements after that date.

The fact that 30 by 30 is not currently proposed to be put into UK law weakens its standing when set alongside proposed statutory targets in other areas, and may lead to less monitoring and review. As a key Government commitment (including in international negotiations) and a strong driver for nature protection and recovery, we advise that 30 by 30 would be given increased strength and clarity if reflected as a target in law.

We appreciate that the Environment Act only provides for the setting of binding targets which have a specified date for compliance of no less than 15 years after the date on which the target is initially set. Another legislative vehicle will be needed.

We also advise that the target should be to protect at least 30% of land and sea by 2030 – this should be a minimum target rather than a fixed one. Research indicates that 30% should not be a ceiling, and greater levels of protection may be needed for areas with high levels of species diversity or rare or scarce species or habitats²¹. Pursuing increased protection after 2030 would support the ambitions of ongoing further improvement and recovery.

We further advise that to count towards this target, areas of land or sea should be under appropriate management and monitoring, to achieve good condition in a specified period.

We note that Defra's cited evidence base for their 30 by 30 commitments states that area-based percentage targets should be complemented with an accompanying focus on the quality of sites²². There is a growing international ambition for action in area-based site protection and conservation^{23,24}.

²¹ For example, Defra (2021b) cited IUCN-WCPA Task Force on OECMs. (2019). *Recognising and reporting other effective area-based conservation measures*.

<https://portals.iucn.org/library/sites/library/files/documents/PATRS-003-En.pdf>.

²² Woodley, S., et al. IUCN. Retrieved from

www.iucn.org/sites/dev/files/a_review_of_evidence_for_area-based_conservation_targets_for_the_post-2020_global_biodiversity_framework_-_final.pdf cited in Defra. (2021b). *Global Ocean Alliance: 30by30 initiative*. Defra. Retrieved from <https://www.gov.uk/government/topical-events/global-ocean-alliance-30by30-initiative/about#scientific-evidence-for-change>.

²³ Dinerstein, E., et al. (2019). A Global Deal For Nature: Guiding principles, milestones, and targets. *Science Advances*, 5, 2869.

²⁴ Convention on Biological Diversity Secretariat. (2021). *First draft of the post-2020 global biodiversity framework*.

Recommendation 11: Any Other Effective area-based Conservation Measures (OECMs), or other area-based conservation tools, should meet IUCN and other accepted criteria and definitions to ensure that they can credibly contribute to nature's recovery and the goal of 30 by 30.

We support Government's commitment to OECMs, and recognise the important ecological connectivity, management and biodiversity conservation these initiatives could achieve.

The lack of a specific designation for OECMs may result in less protection, both in law and in practice, than is afforded for other sites, reducing OECMs' potential. To address this risk, we advise that the introduction of OECMs should be undertaken in accordance with the Convention on Biological Diversity definition and IUCN guidelines.^{25,26} These are about maintaining the effectiveness of measures to make sure OECMs perform in their role and so contribute to nature's recovery.

The introduction of OECMs could be a beneficial supporting measure for the 30 by 30 goal and could enable stakeholders to play a role in nature recovery networks. The key measure to achieve 30 by 30 will of course be expansion of the protected sites network by designating relevant protections to valuable sites meeting the appropriate criteria. OECMs should therefore complement rather than replace these primary measures.

Delivering our commitments at sea (Section 4.2)

Recommendation 12: Government should retain the coherent vision set by a high-level compound target which recognises the inter-dependence between all drivers of marine degradation. We advise against splitting the fifteen descriptors of Good Environmental Status into individual targets.

We support the Government's proposal to streamline and integrate the three parts of the UK Marine Strategy delivery programme. We also recognise the value in focusing more on progress across each individual component of Good Environmental Status (GES) and support the suggestion to bolster this with clear, timebound commitments.

We advise that splitting the fifteen descriptors of GES into individual targets would risk undermining a joined-up approach which recognises and takes account of the inter-dependence between each descriptor. For example, setting individual targets for commercial fish and benthic habitats risks reducing coherence when these are inter-dependent. One target is unlikely to be achieved without the other.²⁷ Changing or removing the overarching GES target would also risk undermining the consistency and confidence business depend upon to invest and operate.

Delivering for nature through public bodies (Section 6.1)

Recommendation 13: Any reform of Defra's Arm's Length Bodies should be aligned around delivery of the Environmental Improvement Plan goals and associated targets.

We welcome the review of Defra's institutional and delivery arrangements signalled in the Green Paper. We appreciate the importance of many of the activities undertaken by the Defra Group: animal disease control, flood management and so on. We also recognise the anxiety and distraction associated with organisational reform. There is an opportunity,

²⁵ IUCN-WCPA Task Force on OECMs (2019).

²⁶ Hockings, M. (ed) (2018). Developing capacity for a protected planet (special edition). *PARKS*, 24(02).

²⁷ Sell, A., & Kröncke, I. (2013). Correlations between benthic habitats and demersal fish assemblages — A case study on the Dogger Bank (North Sea). *Journal of Sea Research*, 80, 12-24.

however, to reset the purpose of organisations and their statutory roles and responsibilities and to remove any legacy constraints, so that Defra's delivery arrangements are focused more firmly on what is needed to deliver the 25YEP.

In our view, the more clarity on what is to be delivered, the more successful any reconfiguration is likely to be. To give one example, more effective monitoring of the environment would be a laudable strategic aim in support of the 25YEP, and there is an opportunity to embed that responsibility and be clear of expectations.

We also welcome the commitment to review the recommendations made by the Farm Inspection and Regulation Review²⁸. We advise that any reform of the Defra group should embody the principles of effective regulation it proposed. In our view, there is much to be gained by taking an extensive view of regulation (including the provision of advice and incentives).

²⁸ Stacey (2018).