

Planning Committee

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Agenda item number 11

Nature recovery Green Paper: protected sites and species

Report by Planning Policy Officer

Summary

The Nature Recovery Green Paper outlines some key remaining areas where change is required to meet the Government's nature recovery ambition. In particular, it seeks to do this by proposing changes to EU derived domestic legislation to ensure that the new framework works as intended.

Recommendation

Report for information only.

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1. Introduction

- 1.1. Following our departure from the EU, the UK Government has set out a new framework of environmental targets under the [Environment Act 2021](#) (the Environment Act). This includes an ambitious target on species abundance, with the objective to halt the decline in nature by 2030.
- 1.2. Two further Acts of Parliament create the powers to help deliver these ambitions. The [Fisheries Act 2020](#) created a new system of sustainability objectives and the powers to manage our marine resources. The [Agriculture Act 2020](#) creates the powers needed to change the way we support farmers and enhance the farmed landscape.

- 1.3. The [Sustainable Farming Incentive](#) will incentivise interventions that promote soil health and biodiversity, sensitive hedgerow management and Integrated Pest Management.
- 1.4. [Local Nature Recovery](#) will support interventions that make space for nature within the farmed landscape creating species rich grassland, planting trees around field boundaries, creating ponds and other water features and other habitats. And [Landscape Recovery](#) will support more ambitious projects leading to land use change, such as new woodland creation and peatland restoration.
- 1.5. The Nature Recovery Green Paper outlines some key remaining areas where change is required to meet the Government's nature recovery ambition. In particular, it seeks to do this by proposing changes to EU derived domestic legislation to ensure that the new framework we have established works as intended.
- 1.6. The Green Paper can be found here: [Nature Recovery Green Paper Consultation Protected Sites and Species.pdf \(defra.gov.uk\)](#)
- 1.7. The consultation period for this Green Paper runs for 8 weeks from 16 March until 11 May 2022.

2. What the Green Paper says

- 2.1. A Green Paper usually presents a range of ideas and is meant to invite interested individuals or organisations to contribute views and information. It may be followed by a White Paper, which is an official set of proposals which it is proposed to develop into legislation.
- 2.2. The main chapters of the Green Paper are:
 - chapter 3: 'Protecting wildlife sites - on land and at sea' considers whether there are effective designations and systems of management and protection in place to deliver nature recovery and address the drivers of nature decline;
 - chapter 4: 'Delivering 30 by 30' sets out how it is intended to achieve the commitment to protect 30% of land and sea by 2030 and ensure it delivers for nature recovery;
 - chapter 5: 'Protecting Species' sets out proposals to modernise wildlife legislation to support more effective protection and recovery of England's wildlife;
 - chapter 6: 'Delivering nature recovery' considers key elements of delivery necessary to achieve the nature recovery ambitions, including financing and a review into how to bring coherence to the functions of nature regulators.

2.3. The following is taken from the Green Paper, to provide a very brief summary.

2.3.1. A new consolidated approach

- a) Terrestrial sites: considering the concept of ‘highly protected’ and ‘protected’ terrestrial sites. These new designations could replace existing SSSIs, SACs and SPAs, and ensure we meet or go further than our international obligations require, such as, for Ramsar sites.
- b) Marine sites: the range of marine designation types can cause confusion. As with the terrestrial network, there may be benefits to consolidating designations and we want to explore this.
- c) How we designate sites: The intention is to have one consistent decision-making process as part of a rationalised site protection system
- d) Nature recovery sites: taking forward the implementation of a Nature Recovery Network with willing landowners using a range of public and private financial incentives including the Landscape Recovery and Local Nature Recovery Schemes, Biodiversity Net Gain (BNG), and the Nature for Climate Fund.
- e) Recognising alternative forms of nature recovery on land: Providing renewed flexibility in what areas could be designated in the system, and in the prescriptive requirements once designated, could help further protections for areas that have particularly significant value for nature recovery.

2.3.2. Site management and protection – promoting scientific judgement

- a) The old EU directives such as the Habitats Directive had good intentions, but their interpretation has often led to high levels of legal uncertainty which can be corrosive to good governance.
- b) The lack of certainty for decision makers about the level and type of evidence required, as well as the precise meaning of some generic terms such as ‘plans’ and ‘projects’, has led to those concerns. This, in turn, has led to a risk averse situation where decision makers and statutory nature conservation bodies are preoccupied with litigation risks on activities which are subject to the full Habitats Regulations Assessment (HRA) process.
- c) Therefore, the UK Government wants to fundamentally change the way the assessments under Habitats Regulations work to create clearer expectations of the required evidence base at an early stage, for example, building on the concept of a site improvement plan. 16 of 42 The approach should focus on the threats and pressures both on and off the site that, when addressed, will make the greatest difference to the site and help drive nature recovery whilst enabling truly sustainable development – addressing challenging issues such as nutrient neutrality and marine development.

2.3.3. Assessment and consents

- a) In 2021, the Secretary of State appointed a working group, chaired by Lord Benyon, to explore options to improve the HRA whilst maintaining or enhancing the level of protection.
- b) The group has concluded some key areas for further exploration:
 - i. a single reformed assessment process which complements proposals for simplified designations.
 - ii. a reformed decision-making framework aimed at making the process clearer and more certain.
 - iii. a more strategic approach to mitigation of existing and new pressures on protected sites.
- c) The summary can be found here: [Background Doc 1 HRA Review Working Group Summary of Findings.pdf \(defra.gov.uk\)](#)

2.3.4. Addressing the legacy impact of dormant SSSI consents

- a) One particular issue with the existing system for regulating non-conservation activities is that many SSSI consents issued in the past by Natural England's predecessor bodies permitting certain land management activities might, if exercised, cause damage or deterioration to some protected sites.

2.3.5. Management of protected sites

- a) The current purpose of the HRA and SSSI consenting process is to stop protected sites deteriorating as a result of the impact of new activities. We want a future protection process which can also support the management of the site and nature recovery.

2.3.6. The Habitats Regulations: the power to amend the general duties

- a) The Environment Act confers on the Secretary of State a regulation making power to amend the 'general duty' under Regulation 9 to better deliver our domestic and international biodiversity goals within the framework of the Environment Act including the UK Government's ambitious targets for nature. It allows for the refocusing of Regulation 9 duties towards our domestic framework supporting delivery of our biodiversity priorities, without reducing the level of environmental protection provided.

2.3.7. Management at sea

- a) This legislation together manages development in MPAs, ensuring effects on MPAs are considered prior to authorising them. We are interested in exploring whether these processes can deliver improved outcomes for the MPA network and better support our objective of protecting important marine habitats and species, while

supporting Government objectives to deliver the infrastructure necessary to reach Net Zero.

2.3.8. Environmental Impact Assessments (EIA)

- a) the Government is committed to reforming both Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) processes. This will require primary legislation, and the development of a new framework of regulations across the many existing Government EIA regimes that ensures environmental considerations are embedded effectively in decision making at the earliest possible stage.

2.3.9. Establishing priority areas for woodland creation

- a) One option, to ease this administrative burden for those wishing to undertake afforestation projects, is for the Forestry Commission to undertake an Afforestation Strategic Assessment – a landscape scale scoping project that assesses the relevant features likely to be affected by afforestation in order to establish preferred low risk areas for afforestation.

2.3.10. Delivering 30 by 30

- a) 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
- b) Areas contributing to 30 by 30 must:
 - i. have a clear purpose of conserving biodiversity (although this may not be their primary purpose)
 - ii. have long-term protection and/or management in place that works against adverse pressures on the area's biodiversity objectives, or actively results in improved outcomes for biodiversity
 - iii. deliver the appropriate and necessary biodiversity outcomes. These will be measurable, monitored and can be used to assess the ongoing improvement in these areas.

2.3.11. Other Effective Area-Based Conservation Measures

- a) We also want to explore how land that is delivering for biodiversity outside of our designated protected areas can play a role in contributing to our 30 by 30 target, where they meet our framework criteria.

2.3.12. Preserving the nation's public forests for biodiversity

- a) We are proposing to strengthen our commitment to ensure no net loss in the size of the nation's forests to secure these valuable habitats for future generations.

2.3.13. Protecting species

- a) We have the opportunity to support nature recovery through producing modern and cohesive legislation on protected sites and species, tailored to British biodiversity. We want to make wildlife protection and management clearer, less complex, and more responsive to new evidence and environmental change.

2.3.14. Consolidation and rationalisation

- a) Species are protected by overlapping pieces of legislation, which in some cases offer different level of protection.
- b) Simplifying and improving consistency in licensing will help ensure that species protection legislation works for people as well as wildlife.
- c) rationalise and simplify the enforcement tools available to the police or inspectors to investigate wildlife crime.
- d) Minimum penalties should be harmonised across all wildlife provisions to ensure the protection of all species and should be comparable to those recently introduced for animal welfare offences.

2.3.15. Tiered approach to species protection

- a) A tiered approach to protecting wild animal species would provide clarity and bring a coherence with protected sites reform.
- b) Our proposed framework for protection has 3 categories: Tier 1 - Minimum management standards. Protections that we may offer in this category are welfare protection for wild animals. Tier 2 – Protected Tier. This would be similar to the protections in the Wildlife and Countryside Act 1981. Tier 3 - Highly protected. This would be similar to the protections provided for in Part 3 of the Habitats Regulations (Protection of species).

2.3.16. Delivering nature recovery

- a) The importance of accountability
- b) The best way to deliver for our environment is to have a legal framework of long-term statutory targets and then a government that has the powers needed to deliver those targets, freed from the distractions that have held back progress in recent decades.

2.3.17. The right bodies to support our ambitions

- a) We want to develop an operating model that delivers our outcomes, applies consistent and clear regulation, is simple for customers to navigate, and where bodies work together to take integrated approaches to tackle environmental challenges.

2.3.18. Cost recovery for public bodies

a) Options we are considering include:

- i. a 'fee for intervention' similar to that used by the Health & Safety Executive, so that where someone is in material breach of environmental law, they would have to pay for the time it takes the regulators to identify and remediate the breach;
- ii. reviewing the environmental permitting regulations and the marine licensing framework to ensure scope and cost remain fit for purpose;
- iii. simpler and more regular reviews of charging schemes to ensure fees are appropriate and up to date, ensuring all environmental regulators and public bodies are able to recover their costs for providing advice on permit / licence determinations.

2.3.19. Financing nature recovery

- a) Government has set an ambitious new target to raise at least £500 million in private finance to support nature's recovery every year by 2027 in England, rising to more than £1 billion by 2030. Government is committed to building clear, long-term policy frameworks to help stimulate and guide these investments.

3. Commentary

- 3.1. The Green Paper proposes further ways of tackling impacts on biodiversity. Many of these proposals are relevant to the Broads Authority as a whole. Some specific proposals are particularly relevant to planning.
- 3.2. The proposals to consolidate sites and the proposals to alter the HRA process will be of great relevance to the Local Plan and indeed determining planning applications. When commissioning the consultants to undertake the HRA of the Local Plan for the Broads, the potential for changes to the HRA process were part of the tender. Officers at the Broads and indeed the consultants commissioned to undertake the HRA for the Local Plan will keep informed of the changes. Considering the Local Plan will take a few years to produce, it may be that earlier versions are assessed under the existing regime, with later stages assessed under any new regime.
- 3.3. Similarly, the reference to changes to Environmental Impact Assessments (needed by some projects) and Strategic Environmental Assessments (needed for Neighbourhood Plans and Local Plans (through Sustainability Appraisals)) will be of relevance to many parts of the planning process. Again, we will keep informed of these changes and implement as required.

4. Consultation response

- 4.1. Similar to the consultation on Biodiversity Net Gain consultation, there is no proposed Broads Authority response. Instead, National Parks England are drafting a response, led by the Ecology Group (which has Ecologists from all the National Parks and The Broads).

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