

Report of the Habitats and Wild Birds Directives Implementation Review



March 2012

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Foreword by the Rt Hon Caroline Spelman MP, Secretary of State for Environment, Food and Rural Affairs



The purpose of this Review was to take a fresh look at the way the Habitats and Wild Birds Directives are being implemented in England and to find out how to do things better, more simply, and more efficiently without compromising the founding objectives of the Directives.

This important piece of work has been led by a skilful and dedicated team within Defra who have assiduously gone through the Directives and looked at the opportunities for improving the way they are administered and the experiences people have when they have to deal with them.

This approach is a good one and is consistent with the way the Coalition Government is looking at regulation and administration across Whitehall. For too long successive Governments have simply introduced more and more rules and regulations without stepping back and looking at how existing legislation is actually working on the ground. By doing that I think they have missed opportunities to reflect on how well they are actually delivering on the objectives for which they were created.

In the case of the Habitats and Wild Birds Directives specifically, this Review has been a timely opportunity to look at the extent to which their implementation is driving the environmental improvements we all want to see, but also how they work for end-users of the legislation: households, civil society, businesses, charities, green groups – many of whom have to spend a great deal of time and resource satisfying the terms of the Directives.

What this Review has delivered is a series of sensible, pragmatic measures which will uphold the integrity and laudable ambition of the original Directives, yet will also reduce many of the administrative headaches which can impede the sort of progress and flexibility people want to see in their daily lives. It demonstrates that important work can be done to alleviate unnecessary red tape and improve efficiency without watering down the ultimate objectives. It speaks to two fundamental human instincts: on one hand the desire to protect that which is most precious and on the other the urge for growth and progress. This Review demonstrates that they can be compatible.

A handwritten signature in black ink that reads "Caroline Spelman".

Caroline Spelman MP
Secretary of State for Environment, Food and Rural Affairs

Executive summary

1. The Government is committed to ensuring that England's most valuable habitats and species are protected and that development is carried out in a sustainable manner. Recognising and supporting the critical role that the environment plays in delivering long term sustainable growth is at the heart of the Natural Environment White Paper, the England Biodiversity Strategy, and is central to this Review of implementation of the Habitats and Wild Birds Directives.
2. At the same time, the Government believes that there is significant scope for improving the effectiveness of our regulations whilst reducing costs for business. This Review has focussed on implementation of the Habitats and Wild Birds Directives, in particular the authorisation processes for plans and projects, where there is greatest potential to reduce delays and minimise costs to developers.
3. This report sets out the conclusions of the Government's Review. It also details the actions that Government will take, in partnership with others in the public, private and voluntary sectors, to improve implementation and in doing so strengthen the environmental purpose and integrity of the Directives.

Facilitating nationally significant infrastructure projects

4. Sustainable development and low carbon growth in the economy over the long term requires the right infrastructure. The Government set out its ambitions to deliver a programme of major investment in infrastructure in its National Infrastructure Plan (2011). This Review firmly supports this objective. To facilitate the smooth interaction between major infrastructure projects and the Habitats and Wild Birds Directives, we will:
 - Establish in April 2012 a cross-Government Major Infrastructure and Environment Unit to improve pre-application identification and support resolution of issues associated with the Habitats and Wild Birds Directives for 'top 40', and other nationally significant infrastructure projects.
 - Clarify the role of competent authorities when several are involved in a single development, by publishing advice in July 2012.
 - Consult on new guidance by July 2012 (to be finalised by November 2012) on the use of the 'Imperative Reasons of Overriding Public Interest' (IROPI) test for major projects. We will likewise identify as soon as possible which of the 'top 40', and other nationally significant, infrastructure projects are likely to fall within the scope of IROPI.
 - Set up by summer 2012 a new Multi Stakeholder Infrastructure and Habitats Group, chaired by the Defra Secretary of State, to identify potential issues and improve collaboration on the 'top 40', and other nationally significant, infrastructure projects.

Improving implementation processes and streamlining guidance

5. Successful and efficient implementation on the ground requires a clear and consistent framework that is both accessible and widely understood. Guidance is a key part of this framework. The Government is committed to improving the guidance by streamlining and simplifying it, and a risk-based approach to implementation is favoured where this is compatible with the requirements of the Directives. To do this, we will:
 - Consult by November 2012 on a new customer-focused overarching guidance manual (to be published by March 2013) to provide clear advice on key legal terms in the Directive.
 - Undertake and complete by March 2013 a comprehensive stock take of the existing extensive portfolio of guidance.
 - Create a single easily accessible web-based portal for all guidance, by August 2012.
 - Ask the Law Commission to consider recommending a new right for an applicant for a European Protected Species licence to appeal against a decision to refuse a licence, or to attach unreasonable conditions to a licence, as part of their current review of wildlife management legislation.

Improving the quality, quantity and sharing of data

6. The Government is determined to improve the quantity and quality of data on protected sites and species. We are also keen to ensure proportionality in the standard of evidence required, as uncertainties and gaps in evidence, particularly in the marine environment, lead to slow and/or overly precautionary decisions by regulators. To do this, we will:
 - Introduce by September 2012 a new process for agreeing upfront evidence requirements for the 'top 40', and other nationally significant, infrastructure projects.
 - Establish by July 2012 a Habitats and Wild Birds Directives Marine Evidence Group to address marine data sharing issues, evidence gaps and ways of improving post construction monitoring.
 - Consult by November 2012 (to be finalised by March 2013) on new consistent standards on the acceptable range and quality of evidence needed to enable statutory bodies to provide their advice.
 - Facilitate by December 2012 agreement by all parties on a practical plan to share more widely environmental data, while recognising the need to respect commercial sensitivities.
 - Work closely with environmental NGOs and others to improve existing surveillance of protected species and pilot new approaches.

Improving the customer experience

7. The Government strongly supports the need to ensure that developers' experience as a customer of the advisory and regulatory bodies is positive. Building both on the shared ambition of all parties to work in partnership, and existing progress on embedding a customer-focussed culture within statutory bodies, we will work collectively to:
- Ensure commitment to culture change is demonstrated by the corporate plans and improvement plans of Natural England and the Environment Agency and the corporate plans of the Joint Nature Conservation Committee and the Marine Management Organisation; and ensure that these commitments are reported on regularly and openly to demonstrate progress.
 - Establish from April 2012 interchange arrangements between businesses, Statutory Nature Conservation Bodies (SNCBs) and regulators to improve partnership working.
 - Support the industry-led development of professional standards for ecological consultants, aiming for a charter mark launch in 2013.
 - Explore and promote new ways of supporting and developing ecological expertise, especially within local authorities.

Looking to the longer term

8. The Government's Natural Environment White Paper (2011) set out how an ecosystems approach, which considers the full range of benefits that the natural environment provides, will result in better informed and integrated decisions. This in turn delivers stronger natural, social and economic wellbeing today and in the long term. We will support the move towards a broader ecosystems approach by inviting the newly established Natural Capital Committee to give early consideration to the following issues:
- How an ecosystems approach can help evaluate any specific choices over mitigation or (ecological) compensation.
 - The extent to which an ecosystems approach could help to identify suitable measures to help deliver Favourable Conservation Status.
 - The wider role an ecosystem approach can play in helping to make strategic choices about mitigation/compensation where a number of projects are impacting on the same area.

Summary of measures

Facilitating nationally significant infrastructure projects

Objective: to improve interaction between ‘top 40’, and other nationally significant infrastructure projects and the Directives to reduce unnecessary delay and cost while ensuring that environmental and economic objectives are fulfilled.

Measure	By when	Who	Para
1. Establish a cross-Government Major Infrastructure and Environment Unit (MIEU) to work at the pre-application stage with ‘top 40’, and other nationally significant infrastructure projects	April 2012	Defra	39
2. Publish advice on the circumstances that a competent authority may, or should, adopt the reasoning or conclusions of another competent authority	July 2012	Defra	Page 19
3. Produce guidance on the key factors that need to be considered for a project to be deemed IROPI, including “alternatives” to a plan or project.	Consult July 2012; publish November 2012	Defra	Page 19
4. Identify which of the ‘top 40’ infrastructure projects, IROPI considerations and “alternatives” to a plan or project are likely to apply	Case by case	Defra	Page 19
5. Consider which of the “top 40” infrastructure projects would benefit from a “lead” competent authority being identified	Case by case	Defra	Page 19
6. Set up a Multi-Stakeholder Infrastructure and Habitats Group	July 2012	Defra	Page 19

Improving implementation processes and streamlining guidance

Objective: to give clearer guidance, with a more consistent, risk-based approach to implementation that avoids excessive precaution, while being compliant with the Directives.

Measure	By when	Who	Para
7. Produce a new customer-focused overarching guidance manual	Consult November 2012; publish March 2013	Defra	52
8. Undertake a stock-take of over 1,600 pages of current guidance and make proposals for simplification	March 2013	Defra	52

9. Provide customer-focussed and up-to-date information on the Directives on one website with sign-posting to point businesses and others to detailed guidance.	August 2012	Defra	52
10. Ask the Law Commission to consider recommending a new right for an applicant for a European Protected Species licence to appeal against a decision to refuse a licence or to attach unreasonable conditions to a licence.	Ongoing	Law Comm.	56
11. Implement vigorously the Penfold Review measures to streamline non-planning consents processes	Ongoing	NE, EA, DCLG	57

Improving the quality, quantity and sharing of data

Objective: to improve evidence based decision making; increase data availability.

Measure	By when	Who	Para
12. Introduce a new process for agreeing upfront evidence requirements for 'top 40', and other nationally significant infrastructure projects	September 2012	Defra	60
13. Introduce new consistent standards on the acceptable range and quality of evidence that will enable statutory agencies to provide their advice	Consult November 2012; publish March 2013	NE with EA, MMO, JNCC	64
14. Publish new approach to increasing the information on the conservation objectives of protected sites	June 2012	NE with JNCC	66
15. Establish a Habitats and Wild Birds Directives Marine Evidence Group to address marine data sharing, research gaps, and post-construction monitoring	July 2012	Defra	69
16. Explore the practical implications on operating capacity with MEDIN, the MEDIN Data Archive Centres and other equivalent data sharing facilities	October 2012	Defra	71
17. Commit to managing data consistently and sharing priority data not yet publicly accessible; ensuring data can be identified through MEDIN and accessed from the MEDIN Data Archive Centres or equivalent data sharing facilities	December 2012	Industry, NE, EA, JNCC, MMO, Crown Estate	71
18. New rolling programme of post construction monitoring reviews on priority marine sectors	Ongoing	CEFAS, MMO	71
19. Identify priority terrestrial data and put programme in place for sharing priority data not yet publicly accessible	December 2012	NE, JNCC	75

20. The Environment Agency will make available their information about the risks posed to protected sites by activities they regulate	December 2012	EA	75
21. Review the effectiveness of mitigation measures for species licences through evaluating post-licence monitoring data	December 2012	NE	75
22. Continue to work with NGOs to agree actions to improve the relevance and consistency of existing surveillance and monitoring schemes for species of European importance	March 2013	Defra, NE, JNCC	75
23. Work with NGOs such as the Wildlife Trusts, Amphibian and Reptile Conservation Trust and the Bat Conservation Trust, to develop local pilot studies and initiatives, linked to Nature Improvement Areas where appropriate, to explore and develop new ways to improve monitoring of European Protected Species	April 2013	Defra, NE, JNCC, Wildlife Trusts, BCT, ARC and others	75

Improving the customer experience

Objective: to encourage a shared culture of openness, transparency and delivery.

Measure	By when	Who	Para
24. Lead Government agencies to commit in Corporate Plans to a culture of co-operation, transparency, openness and delivery focus, with appropriate key performance indicators (KPIs)	April 2012	NE, EA, MMO, JNCC	81
25. Defra Ministers will host a stakeholder roundtable discussion in 6 months to look at how the recommendations are establishing the culture we want	Autumn 2012	Defra	84
26. Establish staff interchange arrangements between businesses, SNCBs and regulators to improve partnership working	Ongoing from April 2012 (progress report to Defra by Oct 2012)	NE Industry Development Group, MMO	85
27. Welcome the industry-led development of professional standards. Defra, NE and other delivery bodies will work with the Institute of Ecology and Environmental Management to support them in the development of the Charter Mark for Ecologists	April 2012 onwards	Defra, NE, IEEM	86
28. Defra workshop with the Institute of Ecology and Environmental Management (IEEM) and the Association of Local Government Ecologists (ALGE) to explore new ways to manage ecological expertise	September 2012	Defra, IEEM, ALGE	87

1. Introduction

The purpose of the Review

9. The Chancellor of the Exchequer announced in November 2011 a review of the way that the Habitats and Wild Birds Directives were being implemented in England (and relevant offshore waters), with particular reference to the burdens placed on business by the authorisation process for development proposals. The full Terms of Reference for the Review, as well as details of the wide-ranging stakeholder engagement process which formed part of it, can be found in Annex A.
10. These two Directives, which are implemented mainly by the 2010 Habitats Regulations and the 2007 Marine Conservation Regulations, together provide some of the most important protection for our rarest, most threatened habitats and species. They underpin both the goals of the England Biodiversity Strategy and our European obligations to protect species and sites which form part of the Natura 2000 network. The Government remains firmly committed to these goals and to the important measures for the enhancement of the natural environment which it announced in the Natural Environment White Paper in June 2011.
11. It is vital that we maintain the integrity of the purpose of these Directives. In the vast majority of development cases, where major problems do not arise, it is important that the authorisation process under the Directives is as easily understood, accessible and efficient as possible. In those relatively few cases in which problems arise, for one reason or another, there can be unwelcome delays and additional costs for developers, uncertainty for the local communities and the environment, and a risk of clouding the reputation of the Directives as a whole. This Review is designed to address these concerns and find ways to ensure that they are minimised in the future.
12. Sustainable development is at the heart of the Government's policy, and growth in the low-carbon and green sectors of the economy can make a major contribution towards this. At the same time the Government believes that there is significant scope to improve the regulatory process for all parties in support of growth. This Review is consistent with both these priorities.
13. The Review took an objective and evidence-based approach. It looked at examples where implementation appeared to be working well, and where significant costs or delays appeared to be occurring. It also looked at the way that key players in the implementation process (including statutory advisers and competent authorities) discharged their duties. Finally, the Review sought to learn lessons from the way in which other EU Member States and the Devolved Administrations of the United Kingdom have approached implementation of their legal obligations.

14. The Review has been led by Defra on behalf of Government. It has drawn on a broad range of expertise, experience and evidence from within and outside of Government. Further details on the way the review has been conducted can be found in Annex B.

The wider context: sustainable development and better regulation

15. Unblocking barriers and restoring robust economic growth as a key contributor to sustainable development is a central objective of the Government. The Government's Natural Environment White Paper (June 2011)¹ recognised that that environmental and economic goals are complementary and that long-term economic growth relies on services provided by the natural environment. These are often referred to as 'ecosystem services'. The Economics of Ecosystems and Biodiversity study² (2010) showed that protected natural areas can yield returns many times higher than the cost of their protection. A recent report by the Institute for European Environmental Policy³ likewise estimated that the economic value of ecosystem services from across the EU from the terrestrial "Natura 2000" network alone is worth between €200 and €300 billion per year. There are also multi-million pound opportunities available from greener goods and services, and from markets that protect nature's services.

Delivering jobs and protecting the Severn Estuary environment

In 2006, Bristol Port Company made an application for a major new container terminal on the Severn Estuary, which would have direct and indirect impacts on an important and protected winter feeding area for around 3,000 waterbirds. The company engaged positively with the nature conservation obligations and worked closely with regulators and nature conservation NGOs to identify key impacts and agree mitigation, compensation and monitoring measures. These were set out in a detailed legal agreement. As a result of this agreement, statutory advisers and the RSPB withdrew their objections. This allowed for the development to be successfully approved without recourse to a public inquiry. It is estimated that this expansion will eventually create 1,800 new jobs and safeguard nearly 8,000 current jobs, as well as generating over £114m a year to the local economy.

¹ www.official-documents.gov.uk/document/cm80/8082/8082.asp

² www.teebweb.org/LinkClick.aspx?fileticket=bYhDohL_TuM%3D

³ See IEEP (2011) "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network". Available at http://circa.europa.eu/Public/irc/env/financing_natura/library?l=/benefits_natura_2000/estimating_benefits/project_reports/2000_benefits_main/EN_1.0_&a=d and 'Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners' (September 2009 Edition) http://ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf

16. Our new green economy will only thrive if our European legal obligations are transposed into UK law without “gold plating” and are then implemented and communicated in the most business-friendly way. The Environment theme of the Government’s Red Tape Challenge, which included wildlife related regulation in its scope, has focused on the latter issue and its conclusions were published on 19 March 2012.
17. The Penfold Review of environmental consenting procedures is also highly relevant to the issues examined in this Review of the Habitats and Wild Birds Directives and a number of its recommendations are taken further in this Report. Annex C contains further details of Penfold-related commitments.

Key provisions of the Habitats and Wild Birds Directives

18. A range of policy instruments exist to support the transition to a more sustainable economy. These include environmental-taxes, market based incentives and voluntary agreements, as well as environmental regulation. In England, our wildlife is protected under several pieces of legislation, and this legislation helps to contribute towards the Government’s aim set out in ‘Biodiversity 2020’ (2011)⁴ to halt the overall loss biodiversity by 2020 and, in the longer term, to move from a position of net biodiversity loss to net gain. As the Natural Environment White Paper made clear, the network of Natura 2000 and nationally designated sites is the cornerstone of protection for the environment in England and will continue to remain so into the future.
19. Designed in particular to address significant declines in species and habitats across Europe, the Habitats and Wild Birds Directives have been in place since 1992 and 1979 respectively⁵. The Habitats Directive⁶ contains a wide range of obligations designed to protect a range of habitats and species, including our rarest and most vulnerable types. Similarly the Wild Birds Directive⁷ provides protection to all naturally occurring bird species, and singles out the rarest, and regularly occurring migratory species, for additional protection.
20. The provisions in the Directives are transposed into domestic legislation by a variety of instruments, in England principally the Wildlife and Countryside Act 1981 (as amended)⁸, and the Conservation of Habitats & Species Regulations 2010 (as amended)⁹. These regulations apply in the terrestrial environment and

⁴ www.defra.gov.uk/publications/files/pb13583-biodiversity-strategy-2020-111111.pdf

⁵ Further more detailed information on all aspects of the Directive can be found at:

www.defra.gov.uk

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0043:20070101:EN:PDF>

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF>

⁸ www.legislation.gov.uk/ukpga/1981/69

⁹

www.legislation.gov.uk/uksi/2010/490/contents/made;jsessionid=n06yPpQVLqQ1Cd1TXZx1LL11kyd12Hh1pJJ2fgnxmk1SWGwBvKrC!-278907202?lang=en

in territorial waters out to 12 nautical miles. For UK offshore waters, the Directives were transposed by separate regulations – The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended)¹⁰.

Making a difference – the Bittern

Bitterns used to be common in England, but a variety of factors, including hunting and the drainage of England's wetlands resulted in their extinction by 1886.

Early in the 20th century the population slowly began to return and by the 1950s there were 80 “booming” male bitterns in the UK, but water pollution and poor habitat management resulted in the population declining again, to 11 in 1997.

The Bittern is a protected species under the Wild Birds Directive. Its preferred reed-bed habitat is likewise protected under the Habitats Directive. Through a mix of site protection, habitat creation and improved nature reserve management, the population today is at least 75 booming male birds, mostly in southern England.

21. Together, the Habitats and Wild Birds Directives directly support ecosystems by protecting biodiversity in Europe through the conservation of natural habitats and of wild fauna and flora. One of the principal measures for achieving this is through the establishment of a network of European protected sites (the Natura 2000 network) namely:

- Special Areas of Conservation (SACs) for certain habitat types/species under the Habitats Directive; and,
- Special Protection Areas (SPAs) for the protection of certain wild bird species and their habitats under the Wild Birds Directive.

22. In England, protected sites under the Habitats and Wild Birds Directives cover about 6% of land and nearly 23% of English inshore waters. By the end of 2012 over 7% of UK offshore waters will be protected sites. In the rest of Europe the figures range between 9% and 35% with the average of all 27 Member States being 17.5%¹¹. The Government is committed to creating an ecologically coherent network of Marine Protected Areas (MPAs)¹² that will provide a valuable contribution to the protection of rare, threatened and valuable habitats throughout

¹⁰ www.legislation.gov.uk/ukxi/2007/1842/contents/made

¹¹ Natura 2000 – European Commission Nature and Biodiversity Newsletter – Number 31 January 2012

¹² The network will comprise Marine Conservation Zones (MCZs) (created under the Marine and Coastal Access Act 2009), Special Protection Areas, Special Areas of Conservation, Sites of Special Scientific Interest, and Ramsar sites

our seas. Beyond the specific requirements of the Habitats Directive, we will formally consult on possible Marine Conservation Zone (MCZ) sites in December 2012, before designating the first round of sites in summer 2013. Appropriate management measures will then be put in place.

23. The Directives also provide strict protection for Europe's most threatened native species. While the Habitats Directive lists several hundred protected species, in Britain this translates into nine plants, twelve individual animal species, plus all species of bats, dolphins, porpoises and whales and five species of marine turtle. These are defined as European Protected Species (EPS) in the transposing regulations. A full list of EPS relevant to the UK is in Annex D.
24. Responsibility for the implementation of the Habitats Directive in terrestrial or inshore areas in Scotland, Wales and Northern Ireland is largely a matter for the Devolved Administrations. The UK Government is responsible for the implementation of the Directive in UK offshore waters (those beyond 12 nautical miles), other than offshore waters adjacent to Scotland where executive responsibility has been devolved to Scotland (except for certain reserved matters).
25. The essential purpose of the Directives, to which the Government remains firmly committed, is to ensure that the protected species and habitats are maintained at, or restored to appropriate levels¹³. The Directives provide a common legislative framework to follow, for example when seeking to authorise activities that might affect protected sites or protected species, wherever they occur. This common framework involves the competent authority following a number of steps before permission for an activity is granted. Whether or not the planned activity may have a significant effect¹⁴ on the protected site¹⁵ is an early question to be addressed, and if the answer is "yes" then a detailed assessment (an "appropriate assessment") is required. This assessment must identify whether the planned activity may have an "adverse effect" on the integrity of the site and if there is none, then permission for the activity can be granted. If there may be an adverse effect then permission will be refused. However, in certain situations (and with certain conditions attached¹⁶), the activity may still proceed in spite of the possibility of there being an adverse effect if there are no feasible "alternatives"

¹³ In the Habitats Directive this is the concept of "favourable conservation status" (FCS). The Wild Birds Directive contains no obligation to achieve FCS, but there is an obligation in Article 2 to maintain populations of all wild bird species.

¹⁴ 'Likely to have a significant effect' is a term used in both the Habitats Directive and the Habitats Regulations. However, case law (Waddenzee C-127/02) has interpreted this as meaning that there may be (as opposed to is likely to be) a significant effect

¹⁵ The assessment requires the effect of any activity (technically known as a 'plan' or a 'project') to be assessed alone or in combination with other 'plans' or 'projects'.

¹⁶ The criteria are that there are no feasible alternatives, the plan or project must proceed for imperative reasons of overriding public interest (IROPI) and that compensatory measures are taken to protect the overall coherence of the protected site network.

and the activity is justified by "imperative reasons of overriding public interest" (IROPI).

26. Member States have ultimate responsibility for taking appropriate steps to avoid the deterioration of natural habitats, habitats of species, and the significant disturbance of species for which areas have been designated. There are a number of other organisations which also have a key role to play in the way that the Directives are implemented in relation to protected sites: the competent authorities and the statutory advisers. The competent authority is principally the decision making authority, whilst the statutory adviser is the relevant nature conservation agency, whom the competent authority is required to consult before making a decision. For major infrastructure developments there is likely to be more than one competent authority, which may in some cases include the promoter of the development itself.

List of competent authorities and statutory advisers in England in relation to the Habitats and Wild Birds Directives:

Competent authorities include, but are not restricted to:

- Local Planning Authorities;
- The Environment Agency (England and Wales);
- Harbour Authorities;
- Marine Management Organisation (England and Wales and UK offshore);
- National Park Authorities;
- Forestry Commission (England);
- The relevant Secretary of State, including when a Government Department has proposed a plan or project, which may impact on a European site.

Statutory Nature Conservation Bodies (sometimes referred to as statutory advisers)

- Natural England, for terrestrial and inshore (up to 12 nautical miles) activities);
- Joint Nature Conservation Committee (JNCC), for UK offshore marine area activities.

2. Findings from the Review

27. It was clear from the wide range of evidence and views submitted in the course of the Review that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained.
28. For instance, Natural England receives around 26,500 land use consultations annually; of these, they 'object' to less than 0.5% of these on Habitats Regulations grounds. Most of these objections are successfully dealt with at the planning stage.
29. However, some cases do encounter delays for one reason or another. Although the Habitats Directive may only be one contributory factor, the evidence presented to the Review, and a number of well publicised individual cases, showed that costs and delays for developers can arise in the implementation process. The Review undertook an extensive and detailed examination of the nature of the issues which can arise and the ways in which they can be addressed. It is clear that there is scope for improving the way the Directives are implemented in England in four main areas:
- The complexity of the legislation and guidance. The transposing terrestrial regulations alone covering approximately 134 regulations and 7 schedules over 94 pages, and guidance (EU and National and non-Government) amounts to over 60 documents totalling over 1,600 pages. This can be difficult for competent authorities to navigate and is all the more daunting for developers, large and small. It also reinforces a perception of inconsistency and lack of transparency in the process.
 - The complexity of the authorisation process for development. Responsibilities in the Directives fall across a range of bodies, each potentially with different priorities and different experience in dealing with the issues. Where there is a lack of coordination between them, there is the potential to add to costs and delays.
 - The availability and comparability of data. 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.
 - The culture and capacity of all organisations involved in the process. While good practice exists, there is still scope to strengthen the customer-focused, collaborative culture in statutory bodies. Skills and capability gaps also occur in all bodies – statutory bodies, developers and their ecological consultants.

30. In addition, the evidence submitted to the Review suggested that these issues were magnified in large scale projects and were particularly challenging in relation to offshore wind farms.

Shell Flat – barriers to offshore wind development

In 2003, Cirrus Energy submitted a proposal for a 90 turbine wind farm, five miles off the coast of Blackpool. Although The Crown Estate licensed this application, lack of marine data meant that the developers were unaware that its proposal would impact on a major concentration of around 50,000 scoters. Despite the developer's best efforts to find a solution, it was unable find a way of altering turbine deployment to mitigate the impact on scoters without impacting on other interests, such as interference with radar systems at BAe's Warton Aerodrome and navigation channels. Eventually, five years after the application was first submitted, the project had to be abandoned.

31. This Review also examined how other EU Member States and the UK Devolved Administrations have implemented the Directives. It focussed in particular on Northern European countries likely to be facing similar issues to ourselves, including France, Germany and the Netherlands, which recently carried out its own review of the Directives. It was clear that while Member States and Devolved Administrations recognised the important role that the Directives played in providing valuable protection for nature, implementation of the Directives had not always been straightforward. In some cases it is still not yet complete. In particular, there was a common view that challenges were particularly acute in the marine environment as a result of issues regarding data availability and ability to compensate.
32. As part of this work, the Review uncovered different approaches being taken to resolve potential issues around implementation. The UK Devolved Administrations are in some cases taking a very local, early stage approach to front load the process and secure a quick resolution. France has recently taken a new approach to reducing uncertainty and speeding up decisions by publishing a series of lists of 'damaging' activities where the need for an 'appropriate assessment' would have to be considered. Elsewhere in the EU, Germany has dedicated official resource to dealing only with Imperative Reason of Overriding Public Interest (IROPI) cases, and requires early consideration of alternatives. This approach has helped them agree a way forward for a number of potentially difficult road and rail development cases.
33. 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.

Local working – Scotland

In Scotland, a local collaborative approach in the siting of an open-cast coalmine in Ayrshire saved around three years of discussion through “front loading” the process, which helped deliver a replacement mine and the necessary levels of environmental protection. The Chair of the Regulatory Review Group facilitated discussions on the whole project with the developer, local community, local authority, Government environmental agencies and a green NGO before any application was made. The mine was eventually located a short distance from the original proposal and proceeded without further delays.

Marine habitats and offshore wind – Germany

In Germany, strategic planning enabled the early designation of marine sites. This helped provide certainty to industry on where offshore wind developments could occur. The Germans are also trialling an approach where conditions can be attached to wind licences. For example, in the event of certain weather conditions turbines could be shut down to avoid damage to bird species.

34. We have considered all of this evidence and have identified four key areas where change will improve the implementation of the Directives for the benefit of both the economy and the environment. These are:

- i. Facilitating nationally significant infrastructure projects**
- ii. Improving implementation processes and streamlining guidance**
- iii. Improving the quality, quantity and sharing of data**
- iv. Improving the customer experience**

35. In the following sections, we set out the actions we will take to deliver these changes.

3. Policy measures

Facilitating nationally significant infrastructure projects

36. Investing in infrastructure is a key part of this Government's economic strategy. Investing now to enhance transport infrastructure, to build a high-speed broadband network and a low carbon energy supply to meet climate change targets and increase energy security, will create the foundations of a stronger, sustainable and more balanced economy. The National Infrastructure Plan (2011)¹⁷, together with sector specific National Policy Statements, sets out how this investment will happen. It identifies:

- A 'top 40' list of infrastructure projects and programmes that are of national significance and critical for growth.
- A pipeline of over 500 infrastructure projects worth over £250 billion planned to 2015 and beyond.

37. A number of these important forthcoming infrastructure projects have the potential to impact, sometimes significantly, on European protected habitats and species. The projects will need to comply with provisions set out in the Habitats Regulations. While it is expected that most of these projects will proceed smoothly with appropriate environmental mitigation where needed, given the complexity, sensitivity and scale of these planned investments, it is imperative to minimise the risk of unnecessary increased costs and delays.

38. To reduce these risks, the Government is helping to facilitate these 'top 40' and other nationally significant, infrastructure projects to ensure that from the outset any potential conflicts with the regulatory requirements of the Directives are minimised.

39. Building on the work of the existing 'Problem Solving Unit': **Defra will establish from April 2012, a cross-Government Major Infrastructure and Environment Unit (MIEU).**

40. The MIEU will help to ensure that commitments under the Directives are met without placing unnecessary burdens on the 'top 40', and other nationally significant, infrastructure projects. It will improve identification, and support resolution, of issues associated with the Directives for those projects at the pre-application stage. This will help facilitate key infrastructure development, consistent with the principles of sustainable development.

¹⁷ www.hm-treasury.gov.uk/national_infrastructure_plan2011.htm

Making progress on complex and sensitive cases

In discussions around the Autumn Statement in November 2011 four complex and sensitive infrastructure cases were highlighted. Since then progress has been made on each of the cases, together worth approximately £1.3 billion to the economy:

- Chilterns Railway: the issue of licensing disturbance of bats has been agreed between Natural England and the developer, and is due to be revisited at Public Inquiry.
- Able Marine Energy Park: the application is now with the Infrastructure Planning Commission as part of the planning process following confirmation that the Habitats Directive is not a barrier to progress;
- Falmouth: the MMO and Port of Falmouth have agreed a way forward on a six month scientific trial to resolve environmental issues, which is likely to start in May 2012. Should this trial be successful a decision is expected in 2013;
- Greater Wash wind farms: DECC, Natural England, JNCC and Defra are continuing to work closely to ensure DECC is able to make a timely decision on how to proceed with the case.

Following the Autumn Statement, a Defra-led Problem Solving Unit was set up to maintain oversight of these cases, report progress to Government Departments and work with the statutory agencies.

41. The Government expects the creation of the MIEU to help realise the following benefits:

- Reduced risk of delay at the pre-application stage to those 'top 40', and other nationally significant, infrastructure projects likely to have complex Habitats and Wild Birds Directives issues to resolve.
- Early identification of, and action to address, potential blockages before the formal application stage is reached, providing greater clarity to developers.
- Increased assurance to Government on the progress of complex and sensitive cases referred to the MIEU.

42. The new MIEU, to be overseen by a high-level cross-Government board, will report progress to Ministers through the Cabinet Committee process. It will work with statutory agencies and Government Departments to identify and anticipate potential Habitats and Wild Birds Directives issues which may arise for future nationally significant infrastructure projects. The Unit will also work with other projects that are complex or sensitive that are referred to them either by Departments or statutory agencies.

43. The MIEU will not give direction or intervene in the advisory or decision making roles of statutory advisers or competent authorities. However, by playing a key early stage risk management role, the Unit will support collaboration between parties; oversee a new process for agreeing evidence; and provide greater clarity to developers on key requirements. This will reduce the likelihood of delays arising from meeting our obligations under the Directives.
44. The Government is committed to reducing the burdens on developers. This includes helping to deliver quicker and more appropriate environmental advice and decisions. A key part of this is the Penfold Review commitment to consult on the introduction of Environmental Account Managers from April 2012, with pilots in place this year.
45. An Environmental Account Manager will improve the customer experience by facilitating co-ordinated delivery of the environmental decisions for a development project, including handling assessments under the Directives. The Environmental Account Managers will be a source of advice and key contact point for developers, and will help reduce unnecessary delays in the system. Their services will be offered to developers on a full cost recovery basis and help address capacity issues within statutory agencies. For projects referred to the MIEU, Environmental Account Managers, where they exist, will be a source of advice and a contact point for the MIEU.
46. The focus and priorities of the MIEU are set out in full in its Terms of Reference being published alongside this report.

Headline priorities for the new Major Infrastructure and Environment Unit (MIEU)

- i. To assess and identify at the pre-application stage potentially significant Habitats and Wild Birds Directives issues for 'top 40', and other nationally significant, infrastructure projects;
- ii. To increase clarity and consistency for developers on requirements of the Habitats and Wild Birds Directives for 'top 40', and other nationally significant infrastructure projects by issuing:
 - advice in July 2012 on the circumstances in which a competent authority may, or should, adopt the reasoning or conclusions of another competent authority; and,
 - in July 2012 a consultation on guidance (to be finalised by November 2012) on the key factors that need to be taken into consideration for a project to be considered to have Imperative Reasons of Overriding Public Interest (IROPI), as well as the scope of "alternatives" to a plan or project.
- iii. On a case-by-case basis, the MIEU will:
 - consider which of the 'top 40', and other nationally significant, infrastructure projects would benefit from a "lead" competent authority being identified and assigned; and
 - at an early stage, identify to which of the 'top 40', and other nationally significant, infrastructure projects considerations about IROPI and "alternatives" to a plan or project are likely to apply.
- iv. To oversee and produce advice, by September 2012, on a new process for agreeing evidence requirements for the 'top 40', and other nationally significant, infrastructure projects which may present significant Habitat and Wild Birds Directives issues.
- v. In addition, where complex and sensitive cases are referred to the MIEU, it will support decision making by ensuring a robust process is in place between the relevant parties to find solutions as quickly as possible. The MIEU will not take decisions or offer formal advice on these cases.
- vi. To improve the interaction on infrastructure and Habitats and Wild Birds Directives between Government, industry and NGOs by supporting a Multi-Stakeholder Infrastructure and Habitats Group, to be chaired by the Defra Secretary of State. This Group will identify potential issues and improve collaboration on the 'top 40', and other nationally, significant infrastructure projects. It is intended that the Group's first meeting will be before summer 2012.

Improving implementation processes and streamlining guidance

47. Guidance plays a key role in the implementation of the Habitats and Wild Birds Directives. It explains key legal terms and provides advice on how to apply them in practice. Guidance in relation to these Directives has been produced by the European Commission, Government, statutory advisers and industry and, in combination, runs to well over 1,600 pages. The challenge is to assess the usefulness of the existing guidance and whether it remains fit-for-purpose, for example in the light of recent case law.

48. In looking at implementation processes we also need to consider the means by which regulatory decisions can be challenged and, if necessary, appealed against. It is also important to note the improvements that statutory advisers and competent authorities are already making following the Penfold Review.

The scope for improvement

49. Stakeholders agreed that current guidance could be improved to help improve implementation. For example, the ports sector asked for an audit of current guidance with a view to producing a new authoritative document; and the Institute of Ecology and Environmental Management asked for clear and concise guidance to clarify areas of the Regulations that can cause misunderstanding.

50. Three main areas for improvement were identified:

- **Accessibility:** the proliferation of guidance from multiple bodies (e.g. the European Commission, Government agencies and non-Government) spread across many different organisations' websites made it difficult for businesses to understand it, or even know of its existence.
- **Consistency and accuracy:** the current guidance has evolved piecemeal over many years and has not been subject to a comprehensive review, so it is not clear whether deficiencies in the guidance might be causing inconsistent implementation on the ground.
- **Gaps in the guidance:** a number of stakeholders identified gaps in current guidance, for example the absence of a single up-to-date explanation of the key legal provisions affecting businesses, and how the Government expects them to be applied on the ground by regulators and statutory advisers. Others suggested the need for additional sector-specific guidance.

51. The Review found differences of opinion on whether current guidance was leading to an over-precautionary approach by regulators. Several businesses felt the guidance was not sufficiently clear on how and when key regulatory decisions should be made. They suggested that this led to uncertainties which could encourage excessive precaution. The energy sector asked for greater clarity on how to decide when there was a "reasonable" level of information on which to take decisions. They highlighted cases where they considered that regulators had been overly cautious in requiring extra data, leading to added costs and delays for

the businesses. Similar comments were made in relation to a perceived lack of clarity over other key regulatory decisions, including on the assessment of “likely significant effects”, “adverse effects on the integrity of a site”, and how mitigation and compensation might be applied to address potential effects.

52. The Government is committed to make the process of implementing the Directives effective and straightforward for all, including small businesses and non-experts, to understand the regime and to access the right level of guidance. The Government also wants to give regulators more confidence to make proportionate decisions. To achieve this we will:

- Publish a **new customer-focussed overarching guidance manual** for public consultation by November 2012, with a view to having the new guidance in place by March 2013. Aimed at businesses, statutory advisers and regulators, it will focus on the consenting process for plans or projects which affect Natura 2000 sites, and the licensing process for operations which might affect European Protected Species. It will explain Government policy on how the Regulations should be applied; for example, looking at how to apply a risk-based approach to implementation that avoids excessive precaution yet is compatible with the Directives. It will also explain key legal tests with a view to increasing consistency of understanding and providing a benchmark to which other Government and agency guidance should adhere.
- As part of this exercise, undertake a **stock-take of the over 1,600 pages of current guidance produced by multiple bodies and make proposals for simplification**. This work will evaluate the clarity and effectiveness of current guidance; assess whether it encourages insufficient or excessive precaution; identify gaps in the provision of guidance; and make proposals for how Government guidance should be simplified. It will look specifically at whether the needs of small businesses are being met, and the possible need for new sector-specific guidance to sit under the new overarching guidance. The stock-take will run in parallel to the production of overarching guidance, with recommendations produced by March 2013, and actions following thereafter¹⁸.
- Provide **customer-focussed and up-to-date information on the Habitats Regulations on one website** with sign-posting to point businesses and others to detailed guidance appropriate to their specific needs. This new information will be in place by August 2012.

¹⁸ As part of the stock-take, Defra will review the current draft of the new guidance on “disturbance” and decide whether to publish it as it is, or make further amendments in the light of this Review.

New overarching guidance: legal terms

53. The new overarching guidance manual will cover key legal terms and decision points under the Habitats Regulations. With regard to Natura 2000 sites the legal terms to be covered will include:

- Plan or project: e.g. making clear how these terms should be interpreted.
- Not directly connected with or necessary to the management of the site: e.g. guidance on the type of activities which could be considered necessary to the management of the site.
- Likely significant effect: e.g. making clear where proposals could be screened out as soon as possible.
- Reasonable level of scientific certainty: e.g. guidance on how to decide when there is sufficient information on which to base decisions.
- Adverse effect on the integrity of a site: e.g. making clear that this relates to the coherence of the site's habitats and species, not simply any possible adverse effect on the site.
- Cumulative effects: e.g. making clear that the consideration of cumulative effects of proposals in combination with other plans and projects should only include plans or projects which have happened or are likely to happen in the future (rather than any possible future plans or projects).
- Appropriate assessment: e.g. explaining good practice in agreeing what information needs to be gathered and agreeing indicative timetables for the process.
- Mitigation: e.g. explaining good practice in applying mitigation pragmatically to increase the chance that low impact proposals can proceed.
- Alternatives: e.g. clarify that consideration of alternatives to a plan or project means genuine alternatives rather than any possible alternatives, and that if a strategic policy is in place (e.g. development of offshore wind energy) the consideration of alternatives should be framed by that policy.
- Imperative reasons of overriding public interest (IROPI): explaining how IROPI should be considered, including the process for seeking an opinion from the Commission in relation to priority habitats and species¹⁹.
- Compensation: e.g. explaining how compensatory measures should be applied.

¹⁹ The UK has never applied for a Commission "opinion" under Article 6(4), and across the EU it has only been applied for 17 times in the life of the Directive.
http://ec.europa.eu/environment/nature/natura2000/management/opinion_en.htm

54. With regard to European Protected Species, the legal provisions to be covered will include:

- *Species offences*: e.g. giving practical advice on how the Government expects the species offences established by the Regulations to be applied, including decisions on when actions should be assessed as being “deliberate” or “not deliberate”²⁰.
- *Species licensing*: e.g. explaining the licensing process, and giving guidance to promote pragmatic mitigation solutions, and giving clarification of how to deal with low-impact species cases, including cases involving very low numbers of newts or bats.

IROPI and “non like-for-like” compensation – the Netherlands

The Netherlands has produced general guidance for IROPI (imperative reasons of overriding public interest). Issues considered are socio-economic, human health, public safety and the environment. Public Economic interests are considered in the long term and within the overall context of benefits to Europe, and are balanced with natural values. The Netherlands sought the opinion on the European Commission and was able to compensate for the Port of Rotterdam on a non like-for-like basis, with compensation based on the quality of the area.

55. Some stakeholders also raised the absence of a right to appeal against a refusal to grant species licences, or to attach unreasonable conditions to licences²¹. In “challenge panel” sessions held as part of the Review there was a widespread view that such rights should be introduced, and the issue has also been raised outside the context of the Review by judges and academics. In practice, very few licences are refused outright²², though delays can occur if there are repeated requests by regulators for information. While it appears that there have been no judicial reviews against a refusal to grant a licence²³ (and while the absence of a

²⁰ This would include broad advice on the types of situation where it should be assumed that an offence has not been committed, for example where a person or company has taken reasonable steps to avoid disturbing or harming a protected animal, but such disturbance or harm has occurred inadvertently.

²¹ There is also no appeal mechanism in the Habitats Regulations for applicants whose plan or project has been refused on grounds that it may negatively affect a protected site. However, in practice, there are alternative routes of appeal under the existing consenting regimes. For example, most site consent applications will take place under the planning system, where planning appeals rights would apply.

²² Natural England reports that very few licence applications are refused, with about 96% are eventually granted with or without conditions.

²³ Defra is not currently aware of any Judicial Reviews having been made against a decision. However, it is not possible to know whether this is a result of satisfaction with the outcome of the decision or whether the potential expense and length of a Judicial Review process acts as a deterrent to would be appellants.

right of appeal here is in line with most wildlife legislation in England), it is unusual in the context of most other modern environmental legislation.

56. To address this Government will ask the Law Commission to consider recommending **a new right of appeal for an applicant for a European Protected Species licence who is refused a licence, or considers that conditions attached to a licence are unreasonable.** This would be considered as part of the Law Commission's ongoing review of wildlife legislation. At the same time the Government will ask the Law Commission to consider whether similar appeal mechanisms may be appropriate for other wildlife licensing decisions outside the scope of the Habitats Regulations.²⁴
57. The Government is committed to progress measures in the Penfold Review designed to improve the working practices of public bodies, so that in future their work on implementation is conducted more transparently, efficiently and effectively. **We will ensure that Natural England will implement vigorously the Penfold Review measures relating to species licensing** (see Annex C)

²⁴ The Law Commission is currently carrying out an independent review of wildlife management legislation. It aims to publish provisional proposals for reform in summer 2012, followed by a three month public consultation. It will report to Defra in early 2013. Given that the Commission's review is ongoing, and that the appeals question is relevant to wider wildlife legislation, we intend that the Commission should consider the whole issue in the round and make recommendations to Government in due course.

Improving the quality, quantity and sharing of data

58. Data and evidence and its interpretation inform every decision made by regulators. Uncertain or weak data can potentially lead to extra surveys being required and/or a more precautionary approach being taken on licence decisions, licence conditions and mitigation measures. This can lead to increased costs and delays for developers. Improving the evidence base and making the data more accessible could potentially deliver significant improvements for developers, reducing uncertainty in the system and costs. It also enables regulators to make more informed decisions that support the robust environmental objectives of the Directives.
59. The Review has identified a number of concrete ways to improve the quality, quantity, accessibility and use of data. These include improving the way evidence requirements and standards are set; strengthening the way data is shared and addressing priority data gaps in the marine environment. The need to address gaps in marine data has become more acute given the scale of proposed offshore wind developments, which are crucial to both the economy and climate change targets.

Improving evidence standards and requirements

60. Submissions to the Review indicate that changes to evidence requirements, particularly late on in the process, increase costs and delays with perceived minimal benefit to environment. To help avoid the risk of continually changing evidence requirements throughout the pre-application stage, the Government will **introduce a new process from September 2012. This will be overseen by the new Major Infrastructure and Environment Unit, for agreeing upfront evidence requirements, timetable and gateways for 'top 40', and other nationally significant infrastructure projects which may present significant Habitats and Wild Birds Directives issues.**

Case study: the value of agreeing evidence requirements upfront

The Teesport Container Terminal is a major £300m new container port in the Tees Estuary which received approval in 2007. The project required redevelopment of brownfield land and 1km of dredging to deepen the main estuary channel. There were potential adverse impacts on a nearby Special Protection Area through changes to the sedimentation patterns and cumulative impacts with another similar project. Early on in the application process, detailed discussions between the developer's consultants and English Nature took place and resulted in agreement on the scope of the impact assessment and application of geomorphological modelling to inform the likely impacts. This pro-active engagement provided a degree of certainty on what constituted appropriate evidence and ultimately enabled the development to be approved without the requirement for further evidence to be provided.

61. As part of this new process, statutory agencies, together with the relevant competent authorities, will agree upfront an evidence plan and timetable with the developer. This plan will specify the methodologies and models to be used, the surveys needed, and will include gateway review points. Where the evidence required is particularly complex, or where there are substantial uncertainties and agreement is not easy to reach, the developer, competent authority and statutory agency could agree to seek independent advice.
62. To provide greater clarity to developers of the 'top 40', and other nationally significant, infrastructure projects on this new evidence process, the Government will **publish advice on the new evidence process by September 2012** covering:
- How the new process will work, including the mechanism for agreeing the evidence plan and timetable.
 - How the gateway review process will operate, including what constitutes a change of requirements.
 - What happens when the evidence plan cannot be agreed and the process for seeking independent advice.
63. A review of the new process will take place by September 2013. It will check whether the process is fit-for-purpose and contributing to improved implementation of the Directives, and it will look at whether the process could be applied to other types of development.
64. Government recognises that the issue of data certainty and transparency cuts across all projects, regardless of their size. As such **Natural England, working with MMO, JNCC, and the Environment Agency, will consult by November 2012 and introduce by March 2013, new consistent standards on the acceptable range and quality of evidence that will enable statutory agencies to provide their advice.** This consultation will include advice, based on proportionality, risk and good practice, on the likely range and quality of evidence required per development type.

Applying a consistent approach to conservation objectives

65. Conservation objectives are required under the Habitats Directive for each designated site. They are used as the basis for the assessment of impacts of plans or projects. The objectives should remain up-to-date, be easily accessible and allow applicants to assess the impact of their proposed development against them. At present, in England, conservation objectives are not always readily accessible. This can make it difficult for developers to assess the impacts of their planned development, and can add to uncertainty in terms of defining and assessing data requirements. Clear conservation objectives are also key in identifying the focus and direction for site management plans, since the objectives of site management are to maintain, or restore the site to favourable conservation status.

Natural England's project to revise European site conservation objectives

As part of Natural England's ongoing work to improve the way it manages Habitats Regulations issues, it is revising the standard text for European Site Conservation Objectives for all sites to make them clearer and more readily available for developers via its website. This information will be available from May 2012.

The revised information will ensure that when developers carry out a development or change their land management in a way which is likely to affect a European site, they are clear what the conservation objectives for the site are and how they may be used in an "Appropriate Assessment". It will also help developers understand what targets and attributes are used to assess the relevant condition of a site.

66. To Improve this situation, **Natural England, working with JNCC, will publish by the end of June 2012 its new approach to increasing the information available on conservation objectives including the features on the sites.**

This will also include how Natural England and JNCC will prioritise sites facing heavy development pressure. It will enable developers, regulators and others to assess the likely impact of a plan or project on a site as well as the factors that the nature conservation body will take into account when providing their advice.

Improving marine data and evidence

67. Uncertainties and gaps in evidence on the marine environment were identified in the Review as a specific issue to address, particularly in view of the scale and pace of new marine development, notably offshore wind. Moreover, improving our understanding of the characteristics and biodiversity of UK marine habitats is challenging, as noted by the UK National Ecosystem Assessment and shown by the information collected for the Charting Progress 2²⁵ assessment. This is due to the extent and diversity of UK seas and the high costs of marine survey work.

68. Reflecting this challenge, the Review has identified scope to prioritise evidence improvement around issues which can most hamper decision making related to the Directives. It has also identified opportunities to improve the use and availability of existing data, including that held by statutory agencies, regulators, developers and The Crown Estate. The Review also uncovered opportunities to improve aspects of data collection and how to target better post construction monitoring. Post-construction monitoring is important because it provides evidence on the effectiveness of mitigation measures and can influence future

²⁵ Charting Progress 2 is a comprehensive report on the state of the UK seas providing key findings from UK marine research and monitoring (<http://chartingprogress.defra.gov.uk>).

licensing conditions and support more evidence-based decision making in the future.

Improving post-construction monitoring – Felixstowe Port

Hutchison Ports proposed in 2003 to redevelop part of Felixstowe Port to provide significant increase in container handling capacity which would create over 1400 jobs by 2015. The development was expected to accelerate mudflat erosion and adversely affect the Stour and Orwell SPA.

A package of mitigation and compensation measures was proposed, which included a new sediment replacement technique. Monitoring primarily focussed on establishing the efficiency of this technique and was complemented by the establishment of a Regulators Group to disseminate results.

Periodic monitoring concluded that the technique had been successful, which enabled the scaling down of the mitigation measures initially identified as necessary without compromising the overall mitigation/compensation objectives.

69. To improve implementation of the Directives in the marine environment and to ensure industry interacts more effectively with the Directives, Defra will:

- **Establish, by the end of July 2012, a new Habitats and Wild Birds Directives Marine Evidence Group bringing together Government, its agencies, The Crown Estate, industry, environmental organisations and academia** to focus on three priorities:
 - i. Improving accessibility and use of marine data through better data sharing (including looking at legal issues) and ensuring maximum use is made of evidence from existing data and information.
 - ii. Addressing the priority research gaps where improved understanding of existing evidence, or filling gaps in research, would help to reduce undue precaution in decision making. Areas identified in the Review include:
 - Modelling of effects on population of seabirds and validating critical input parameters, e.g. population framework, collision and displacement risk;
 - Modelling of effects on populations of marine mammals and validating critical input parameters, e.g. population framework, displacement risk;
 - Impacts of marine activity (e.g. offshore wind, cabling) on the seabed and on priority species;
 - Cumulative impacts of marine activities;
 - Understanding better the specific impacts of different marine sectors and how they can be avoided and the solutions more widely applied;

- Understanding better the populations of mobile species at appropriate scales and the population implications of any impacts from significant infrastructure projects in English waters.
- iii. Developing a more strategic approach to post construction monitoring of marine developments so that monitoring is better designed and targeted to inform future development proposals, mitigation measures and conditions of licence. This could also include development of post construction monitoring protocols with individual sectors.

70. Defra will publish an update on the work, and outputs, of the Marine Evidence Group by March 2013.

71. Alongside the work of the new Habitats and Wild Birds Directives Marine Evidence Group, data will be made more readily available to regulators and developers alike by improving data sharing. Actions to be taken include:

- The statutory agencies, MMO, The Crown Estate and industry **committing to manage their data consistently with published MEDIN²⁶ standards**;
- The statutory agencies, MMO, The Crown Estate and industry **ensuring that data can be identified and accessed through MEDIN and made available through MEDIN Data Archive Centres or an equivalent facility** except where there are justifiable reasons not to, such as commercial sensitivities;
- Defra **exploring the practical implications with MEDIN and other data sharing initiatives of these new measures on operating capacity**, with recommendations presented to the new Habitats and Wild Birds Directives Marine Evidence Group by October 2012;
- The statutory agencies and the MMO **identifying priority data and setting out their programmes for sharing those data that are not yet publicly accessible** (through MEDIN and associated data sharing facilities) by December 2012;
- CEFAS and MMO undertaking a new rolling programme of **post construction monitoring reviews on priority marine sectors** such as offshore wind, ports, oil and gas and aggregates. Looking to address issues of consistency and quality, the results of these reviews will be shared with the new Habitats and Wild Birds Directives Marine Evidence Group to enable recommendations to be acted on jointly.

²⁶ The Marine Environmental Data and Information Network (MEDIN) is a partnership of UK organisations committed to improving access to marine data. MEDIN promotes sharing of, and improved access to, marine data (www.oceannet.org).

Joint survey work to reduce costs – the East Irish Sea Developers Group

In response to a number of offshore wind farm applications in the east Irish Sea, the East Irish Sea Developers Group was formed to assist with the co-ordination of these projects. The group is made up of developers, Government agencies and the Crown Estate. It provides a forum to discuss issues of common interest, plan potential collaborative work and share data and knowledge. For example, the Group facilitated the commissioning of joint aerial and boat based marine mammal surveys covering all the prospective projects. This enabled more comprehensive data to be acquired whilst reducing overall survey costs.

Improving terrestrial data sharing and surveillance and monitoring programmes

72. While marine data is a priority, better data for land based projects is also essential. Evidence from this Review suggests that improved mechanisms for sharing data, combined with better information on the status and trends of European Protected Species and habitats, will help flag issues earlier, increase transparency and support more evidence-based decision making.
73. Government has already committed to join up its environmental monitoring to enhance our understanding of the state of ecosystem services. In line with wider Government commitments to open up access to public datasets on transport, weather and health, Defra will also encourage the sharing of data held by both the public and private sectors. These actions will help increase the evidence base, reduce the cost of sourcing and gathering data and help improve evidence based decision making.

Data sharing – the Netherlands

The Netherlands has a National Data Authority; this holds data from NGOs and assessments. Local authorities contribute to this data bank, in return for the use of the data. Businesses and others can also pay to use the data service via subscription.

74. Defra committed in the Natural Environment White Paper to spend £1.2 million, in addition to the planned £5 million expenditure by its arms length bodies, to:
- Invest in the maintenance and development of a more efficient infrastructure for biodiversity data capture and management through the National Biodiversity Network involving local and national groups and initiatives; and
 - Work with the voluntary sector to increase data collection by volunteers, especially for species and habitats protected by European legislation or targeted by national policy.

The value of sharing data – the South Humber Gateway

The South Humber Gateway has been identified for many years as a development priority. Before decisions on individual developments can be made, information is needed on likely impacts on roosting/feeding areas on the Humber Estuary SPA/SAC.

In 2007, North Lincolnshire Council decided to fund surveys of how waders and wildfowl used the land within the protected area allocated for development. The data collection project was managed by the Humber Industry Nature Conservation Association and the data collected stored by the Humber Environmental Data Centre

The data is therefore available to all developers, statutory agencies and decision makers allowing them to use consistent data and avoiding the same data being collected by different applicants, saving them time and money.

75. Building on these commitments and the strategy for increasing the sharing of data through the National Biodiversity Network²⁷, a number of new actions will be taken:

- Statutory agencies will **identify priority data and set out their programmes for sharing that which is not yet publicly accessible** (through the National Biodiversity Network or other public access websites) by December 2012.
- The **Environment Agency will make available their information about the risks posed to protected sites by activities they regulate by December 2012.**
- **Natural England will review the effectiveness of mitigation measures for species licences through evaluating post licence monitoring data.** The results will be used to inform future development proposals, mitigation measures and licence conditions. Natural England will identify the priority species and situations to investigate by December 2012 and begin a programme of reviews.
- Natural England, JNCC and Defra will continue to **work with NGOs to agree actions to improve** the coverage, relevance and consistency of existing surveillance and monitoring schemes for species of European importance and will publish these by March 2013.

²⁷ The National Biodiversity Network is a charitable trust established to promote wide access to data about biodiversity in the UK (www.nbn.org.uk).

- Defra, Natural England and JNCC will work with NGOs such as the Wildlife Trusts, Amphibian and Reptile Conservation Trust and the Bat Conservation Trust, **to develop local pilot studies and initiatives by April 2013**, linked to Nature Improvement Areas where appropriate, which will explore and develop new ways to improve monitoring of European Protected Species and support better decision making concerning them.

Improving the customer experience

76. Central to this Review has been a focus on the ability of developers to comply with the important environmental provisions of the Directives in the least burdensome way. Their experience as customers of the advisory and regulatory bodies involved in this process needs to be a positive one, so that the business sees itself as a champion of environmental protection not in conflict with it. Many businesses, large and small, already do, but more needs to be done. This is an issue of particular importance for marine developers and those developing projects of significant national importance.

The benefits of early collaboration – Abberton Reservoir, Essex

In 2005, Essex and Suffolk Water indicated its intention to upgrade the Abberton Reservoir in Essex. This had the potential to affect a number of nearby SPAs. The developer and its consultants engaged fully with English Nature (since absorbed into Natural England) and the RSPB in advance of the planning application being submitted. This enabled the proposals to be designed to avoid any impacts on the SPAs. As well as ensuring that the necessary water supply infrastructure for people in Essex was delivered, the scheme actually led to enhancements in the environment through the creation of new habitats around the reservoir.

77. Measures in the Report to streamline and simplify guidance will support a better customer experience, but there is more that can be done. Access to high quality expert advice is also important in helping a developer's application progress smoothly. The Review has therefore looked in detail at the cultural approach that organisations take towards carrying out their responsibilities and their capacity to make high quality contributions to the decision making process. Evidence presented to the Review showed that in many cases things are working well, but it also revealed variations in customer experience, with differences sometimes occurring as a result of location, the type of project, or the level of knowledge and understanding of regulators and customers themselves. The demands of the process on Small and Medium-sized Enterprises (SMEs), who have much less capacity than larger businesses, also need to be carefully borne in mind by statutory bodies.

78. The Review found that all stakeholder groups wanted to work within a culture founded on partnership working and focussed on efficient delivery. It found good examples of collaborative working via private sector-led Industry Nature Conservation Association (INCA) partnerships in the Tees Valley and the Humber Estuary. These were cited as a useful model for others.

Tees Valley Industry Nature Conservation Association (INCA)

Established by ICI plc 1989, the INCA approach demonstrates the value of a neutral and independent organisation in achieving sustainable development outcomes. It is a not-for-profit organisation and works with the public, private and voluntary sectors to build consensus about the integration of business development and nature conservation. It provides confidential advice and support to help businesses to meet regulatory requirements in development and operation. Activities include:

- Advising on minimising the ecological impact of developments;
- Building biodiversity gains into new developments;
- Co-ordinating many projects and plans (including Tees Estuary Management plan and European Marine Site scheme).

79. However, the Review also found evidence of a number of issues which need to be tackled:

- A perception of a sometimes over-precautionary culture among statutory advisers that could at times lead to an early assessment of “likely significant effect” and lengthen the process unnecessarily. Reasons for this culture could, it was suggested, depend on the experience and approach of staff assigned to cases, or the state of local partnership working or the amount of resource available in a particular location.
- The capacity of competent authorities to deal with habitats and species issues. According to the Association of Local Government Ecologists, only 35% of local authorities now have any in-house ecological expertise. This has implications for the speed at which applications can be processed (with corresponding economic costs falling to the developer as a result of the delay); and the quality of the decisions being made, due to a lack of professional expertise. It was also noted that volunteer networks were under-used by competent authorities as a resource on which to draw.
- Inconsistent quality of advice from professional ecologists providing advice to developers; a lack of clear professional standards for consultants was cited as part of the problem here in a recent report by the Institute for Ecology and Environmental Management²⁸;
- Inconsistent levels of understanding and awareness of the responsibilities of different organisations involved. This could lead to misunderstandings or a breakdown of trust.

²⁸ IEEM: *In Practice*, No 2, June 2011, Roger Morris “The Habitats Directive – A Different Environmental Assessment Language”.

80. Work is already underway in statutory bodies to address these issues. For example the Natural England Development Industry Group, comprising a range of stakeholder interests, was established in 2011 and has plans to explore the issues highlighted above, and others around customer service, risk, collaboration and evidence.
81. To address the issues cited in paragraph 79 above, **Defra will work, with its delivery bodies (NE, EA, MMO, and JNCC) to promote vigorously a culture of co-operation, transparency, openness and customer focus.** We will ensure that the corporate plans for the period starting 2012, for NE, EA, MMO and JNCC, reflect commitments to follow up the recommendations from the Review. For example, Natural England has a commitment to 'Deliver on the commitments in the Habitats Directive Implementation Review to foster a strong culture of collaborative working with developers and other organisations' and a Key Performance Indicator measuring customer satisfaction. Progress in taking these forward will now be incorporated into the normal annual performance management processes for delivery bodies.
82. Both Natural England and the Environment Agency have published improvement plans to meet the commitment in the Autumn Statement. The plans, to help improve the delivery of their regulatory functions, will evolve as the National Planning Policy Framework is published, and progress is made on the Penfold Review commitments; and the plans will take into account the recommendations from this Report.
83. Natural England, the Environment Agency and JNCC are also expected to be subject to triennial reviews in 2012/13, which will provide an opportunity to look at wider issues around their various roles. Triennial reviews consider the ongoing justification for the functions and form of NDPBs and review their control and governance arrangements. Stakeholders have the opportunity to input into the reviews. We are also looking at options for charging by NDPBs where suitable powers are not available.
84. **Defra Ministers will host a stakeholder roundtable discussion in autumn 2012** to explore how far progress is being made in making the shift in culture to which we are committed.

Benefits of a culture of transparency and openness – Marine Management Organisation (MMO)

In MMO, a culture of transparency and commitment to sharing information has led to resource savings with reduced FOI requests. MMO publishes the detail of all major cases on its website. This includes data and evidence summaries, all correspondence and key documents. This approach has also delivered improvements to the quality of submissions as applicants, consultees and developers are conscious of information being shared publicly.

85. The Government will encourage statutory bodies or competent authorities and business to establish interchange arrangements to improve partnership working. In particular, the Natural England Industry Development Group has agreed to look at what training places might be provided. The MMO is already discussing with the marine industry what would be most effective.

Dealing with problems in partnership – Distance workshops

Distance workshops at the Centre for Research into Ecological and Environmental Modelling (CREEM) have been particularly successful in enabling the SNCBs and industry to come together to discuss and resolve the gap between our seabird and marine mammal monitoring requirements in relation to the Habitats Regulations.

86. The Government welcomes the industry-led development of professional standards to create a recognised standard of advice and ecological professional expertise that will reassure all stakeholders that advice and guidance provided by accredited professionals is sufficient to meet the requirements of the Habitats Directive. As part of this Defra, Natural England and other delivery bodies will work with the Institute of Ecology and Environmental Management to support them in the development of the Charter Mark for Ecologists, which we hope will be in use by 2013.

Dealing with skills gap – Institute of Ecology and Environmental Management (IEEM)

The IEEM's Ecological Skills Project arose out of concern amongst IEEM members and stakeholders about a potential skills gap in the profession. Anecdotal evidence suggested a gap in the availability and competence of qualified ecologists and environmental managers able to undertake a wide range of relevant employment roles both now and in the future. The report following the project concluded, amongst other recommendations that the following were needed:

- Assessment and certification of knowledge and skills as part of continuing professional development;
- Recognition and accreditation of the specialist knowledge and skill requirements of the profession in order to raise standards and drive self-improvement.

87. Defra will host a workshop with Institute of Ecology and Environmental Management and the Association of Local Government Ecologists by September 2012 to explore new ways to manage ecological expertise with professional bodies and local authorities.

Essex County Council's 'Place Services': developing a "centre of excellence"

Over the next few years, Essex County Council's 'Place Services' will develop a free standing, not-for-profit specialist planning and sustainable development enterprise. The Council will offer a multi disciplinary team, which includes ecologists, thereby providing other local authorities with access to expert advice and years of local experience.

Few local authorities are in a position to be able to invest heavily in ecological and biodiversity functions and may not have adequate capacity and support to meet their biodiversity duty of care. At the same time, the appetite to collaborate is growing, with organisations developing and offering 'centres of excellence' to deliver services to others.

4. Next steps

Delivering commitments

88. The package of policy measures which the Government has announced in this report (see summary table on page 4) demonstrates how economic and environmental objectives are both compatible and central to long-term sustainable development. It opens the door for delivering meaningful changes to way that the Habitats and Wild Birds Directives are implemented on the ground in England, benefitting both businesses and the environment.
89. Defra will now develop a robust implementation plan for the measures, working with key departments and agencies, and will report on the implementation of progress on each measure in March 2013. This action to report progress on measures in the Review will be included in Defra's business plan, where a monthly update is available on the No. 10 website.
90. In addition, Defra will host a stakeholder roundtable discussion in autumn 2012 to look at how the Review is being followed up.

Looking to the longer term

Working in Europe

91. Government will continue to work with European partners, Devolved Administrations and the European Commission to build on insights we have gained about implementation elsewhere through the process of the Review. This includes, on the invitation of the Commission, presenting the findings of the Review to representatives of other Member States at a seminar in Brussels.

Taking an ecosystems approach

92. The Government's Natural Environment White Paper (2011) described the role healthy ecosystems can play in improving environmental resilience and their contribution to sustainable development, forming a vital part of our country's "natural capital". It concluded that "like any financial asset, it needs to be properly defined, managed and protected in order to continue to provide benefits". Taking an ecosystems approach will result in better informed and integrated decisions about such management by incorporating consideration of what our natural capital does for us – as individuals and collectively. By considering the full range of benefits that the natural environment provides, such as clean water, biodiversity and food we can better enable it to continue to contribute to our natural, social and economic wellbeing today and in the future.
93. The Natural Environment White Paper reinforces the crucial role that protected areas play in creating a resilient, fully functioning ecological network. Further

research likewise demonstrates the important range of social and economic benefits that these areas also provide.

Valuing natural capital

- The National Ecosystem Assessment (UNEP-WCMC 2011) reports the value for the UK population of the “non-use benefits” of domestic terrestrial biodiversity as being worth between £540million and £1.26 billion every year.
- A study funded by Defra in 2011 looks at a range of ecosystem services to help understand the value of protected areas to our economy and wellbeing. Using the current condition of ecosystems in England as a starting point (i.e. 37% of SSSIs in England in favourable and 59% in unfavourable recovering condition) the study estimated that these sites delivered ecosystems services worth at least £956 million per year to society. This equates to a benefit to cost ratio of 8.6:1 on public investment. If all sites were in ‘favourable’ condition, they could deliver a further £769 million worth of benefits through ecosystems services.

This value is apparent even at a very local scale: a single hectare of coastal wetland can be worth over £2,600 in water quality and £3,700 in flood protection benefits, as well as supporting a range of wildlife.

94. An ecosystems approach offers a long-term opportunity to improve our understanding of economic and environmental impacts and risk. It has the potential to deliver significant steps forward in terms of smarter implementation as both developers and competent authorities are able to work together to develop solutions with greater confidence that these will deliver the ecological outcomes required by the Directive.

95. As part of this commitment to a longer-term smarter approach to implementation, the Government will examine:

- How an ecosystems approach can help evaluate any specific choices over mitigation – or compensation. Looking at where they are needed, while ensuring that additional socio-economic benefits are only considered after ecological impacts are secured;
- The extent to which an ecosystems approach could help to identify suitable Article 10 measures to help deliver Favourable Conservation Status (FCS); this would increase confidence in decision making where FCS is the goal, for example around the impacts of development on local populations of European Protected Species;
- The wider role an ecosystem approach can play in helping to make strategic choices about mitigation/compensation where a number of projects are impacting on the same area. Such an approach is already in operation in a few areas, such as Thames Basin Heaths.

96. Given the importance of this topic, **the Government will invite the newly established Natural Capital Committee to give these issues early consideration as it develops its work programme.**

Annexes

Annex A - Terms of Reference of the Review

The Review will consider:

Where implementation gives rise to the greatest compliance costs and potential for delays, including how judgments are reached on the following key decision points and the impact of the precautionary principle, and relevant case law:

- i. risk of a significant effect;
- ii. risk of an adverse effect on integrity;
- iii. mitigation solutions;
- iv. alternative solutions, or (in relation to species licensing) satisfactory alternatives;
- v. IROPI (imperative reasons of overriding public interest);
- vi. compensatory measures;
- vii. in relation to species licensing, detrimental effect on the maintenance of the population at a favourable conservation status in its natural range;
- viii. the approach taken in UK guidance and its application.

Whether the approach taken by competent authorities is appropriate, particularly in relation to risk, or whether the requirements of the legislation are applied too or insufficiently rigorously; and whether competent authorities and statutory conservation advisers could explore more creative solutions;

Whether Natural England and JNCC's approach to the provision of advice to competent authorities is appropriate, or takes an excessively or insufficiently precautionary approach;

What is working well in terms of meeting the objectives of the legislation, and what scope there is to learn from good practice by all those involved – developers, competent authorities and statutory advisors – and to share it more widely;

The scope for further streamlining of processes, for example where a number of different consents for operations affecting protected sites are required or where more than one competent authority is involved;

The scope for Natural England and JNCC to build on their work to date to improve their dealings with customers, including early engagement with the competent authorities and their role in identifying constructive solutions;

Experience of implementing the Directives in other Member States, to see whether there is good practice elsewhere which could be applied in England;

The scope for further improving the guidance available to businesses;

While focusing mainly on the authorisation process for proposed development, the review could also examine other areas of the legislation, for example in relation to site designations, management agreements or specific issues raised by interested parties.

Where appropriate, the Review will make recommendations for further action, including identifying any areas which could be raised with the European Commission.

Annex B - The Review process

The Habitats Directive Review of Implementation was launched on 30 November 2011 in the Government's Autumn Statement and ran until 22 March 2012, when the Review's findings were published.

It was led by a small project team in Defra reporting directly to Ministers.

Strategic advice to the team was provided by a Project Board consisting of Government Departments with relevant interests in the Habitats and Wild Birds Directive and members of the Defra Delivery Network with responsibilities in relation to the Directives.

A comprehensive programme of stakeholder engagement was put in place to provide the Review team with expert opinion, challenge and evidence; it included:

- Stakeholder meetings, both one to one and on a larger scale
- An open call to all for evidence on the website
- The establishment of a High Level Advisory Group
- A series of five policy focussed Challenge Panels.

Stakeholder workshop

A workshop was held on 18 January 2012 for a wide variety of stakeholders with interests in the Review. It was designed to capture early stage thoughts on scope of the Review and to highlight any areas that needed further consideration.

Submissions of evidence

A general call for evidence was made. By 4 March 2012, 56 submissions from 45 different sources had been received, including individuals.

Association of Electricity Producers	Amphibian and Reptile Conservation	Arup
Bath Spa University	Bat Conservation Trust	British Ports Association
Bright Angel Coastal Consultants	Buglife	Centrica Energy
Environment Agency	EDF	English National Park Authorities Association
Forestry Commission	Institute of Ecology and Environmental Management	Infrastructure Planning Commission

Joint Nature Conservation Committee	Marine Conservation Society	Mineral Products Association
National Farmers Union	National Trust	Redwaters
RenewableUK	Royal Society for the Protection of Birds	Suffolk Coastal District Council
Seabed User and Developer Group	Tidex Ltd	Union of European Developers and House Builders (Home Builders Federation)
UK Environmental Law Association	UK Business Council for Sustainable Energy	UK Major Ports Group
Verderers of the New Forest	Whale and Dolphin Conservation Society	Wild Law UK
Wildlife and Countryside Link	The Wildlife Trusts	World Wildlife Fund (UK)
Wildfowl and Wetlands Trust	Wye & Usk Foundation	

Table 1: Organisations that have made submissions to the Review

High Level Advisory Group

The purpose of the Group was to help steer the development of the Review. It consisted of twelve members, with environmental and developer/landowner interests equally represented, plus representatives of the legal profession and local government.

High Level Advisory Group		
BAM Nuttall	Country Land & Business Association	Home Builders Federation
Local Government Association/Essex CC	Marine Conservation Society	National Trust
RenewableUK	Royal Society for the Protection of Birds	Seabed User and Developer Group
The Wildlife Trusts	World Wildlife Fund(UK)	Independent Counsel

Table 2: Organisations represented on the High Level Advisory Group

The Group first met on 16 January and focussed on the key issues covered by the Review. A second meeting on the 20 February looked at emerging thinking on how to address the issues. A further meeting is planned, post-publication, to look at implementation

Challenge Panels

We have held Challenge Panels on Capacity Building, Culture and Communications; Ecosystems; Data and Evidence and two on Implementation.

The Panels brought together expert stakeholders from the High Level Advisory Group and a broader range of key stakeholders to review and challenge emerging proposals; advise on their potential impact; highlight if key aspects are being missed; and advise on feasibility, as well as relative importance, of the measures.

The five Challenge Panel sessions were:

8th February 2012 – Implementation

9th February 2012 – Capacity Building, Culture and Communications

13th February 2012 – Exploring an Ecosystems approach

14th February 2012 – Data and Evidence – data collection, monitoring and sharing

21st February 2012 – Implementation 2

Organisations represented at the Challenge Panels		
British Ports Association	Marine Management Organisation	The Crown Estate
The Wildlife Trusts	Sea Bed User and Developer Group	JNCC
Associated British Ports	Environment Agency	BAM-Nuttall
Bat Conservation Trust	EDF	Forestry Commission
Institute of Ecology and Environmental Management	UK Environmental Law Association	RenewableUK
Marine Conservation Society	RSPB	World Wildlife Fund (UK)
Natural England	Amphibian and Reptile Conservation Trust	Atkins
Association of Local Government Ecologists	RWE nPower	UK Business Council for Sustainable Energy

Table 3: Organisations represented during the Challenge Panels

Annex C - Penfold Review

The Penfold Review was set up to identify whether non-planning consents delay or discourage investment. Its final report was published in July 2010.

The Government's initial response to the Review was published in November 2010. A final implementation report was published in November 2011, setting out a programme to:

- Scrap unnecessary development consents and simplify others;
- Reform the remits and working practices of the public bodies granting or advising on development consents;
- Set a clear timescale for deciding development consent applications; and
- Make it easier to apply for development consents

Considerable progress is being made on implementing the proposals emerging from the Penfold Review. Those proposals directly relevant to this Review are in the table below.

Penfold action	Owner	Update
Explore the scope for developing a system of chartered or accredited consultants, beginning 2012/13	Natural England	Underway with partner organisations
Expand class licensing for species to further low risk activities and species, and introduce organisational licensing.	Natural England	Underway - Natural England is continuing to roll-out Class Licensing for survey activities. Launched class licences for Newts Launch of dormice and white-clawed crayfish surveying class licences expected May 2012 Stakeholder consultation on draft bat survey licences is underway. Scoping of new organisational licences will commence in May 2012
Pilot a system of prior-approval for Natural England's species licences by September 2012	Natural England	On track
Consult on the introduction of Environmental Account Managers by April 2012	Environment Agency, Natural England, Forestry Commission	On track

Determine development consent applications in a maximum of 13 weeks, and less when other timetables are agreed	Natural England, Environment Agency	The 13 week timescale was introduced by Natural England and Environment Agency last November. In the past 3 months NE responded to 95% European Protected Species applications within 6 weeks, and all within 13 weeks. The Environment Agency has worked hard to achieve this, by making changes their ways of working and to date has achieved 100% compliance with the 13-week deadline
The Government will ensure that there is a more effective mechanism for applicants to obtain an award of costs, if there is an appeal against refusal of planning permission where a statutory consultee has acted unreasonably (commencing summer 2012)	DCLG	On track
Strengthen relationship management by the bodies with major developers. The Government will consider proposals to provide a named relationship manager at board level for the largest 25 developers that statutory consultees interact with	Natural England, Environment Agency	Underway. Natural England has set up a Development Industry Group and Customer Panels. Designed to enable formal, regular engagement to identify and discuss issues at a strategic and operational level respectively, these were launched in Autumn 2011 and have been convened twice.
Strengthen statutory guidance to clarify how courts should interpret harm from Disturbance of species offences	Defra	Defra consulted on draft guidance on 'disturbance' in 2011. This draft guidance will now be reviewed as part of the stocktake (Para x). A decision on whether to publish as it is or make further amendments will be made early on in the stocktake.

Table 4. Progress on implementation of Penfold Recommendations relevant to the Habitats Directive Implementation Review

Annex D – European Protected Species (EPS) occurring in Great Britain

Animals:

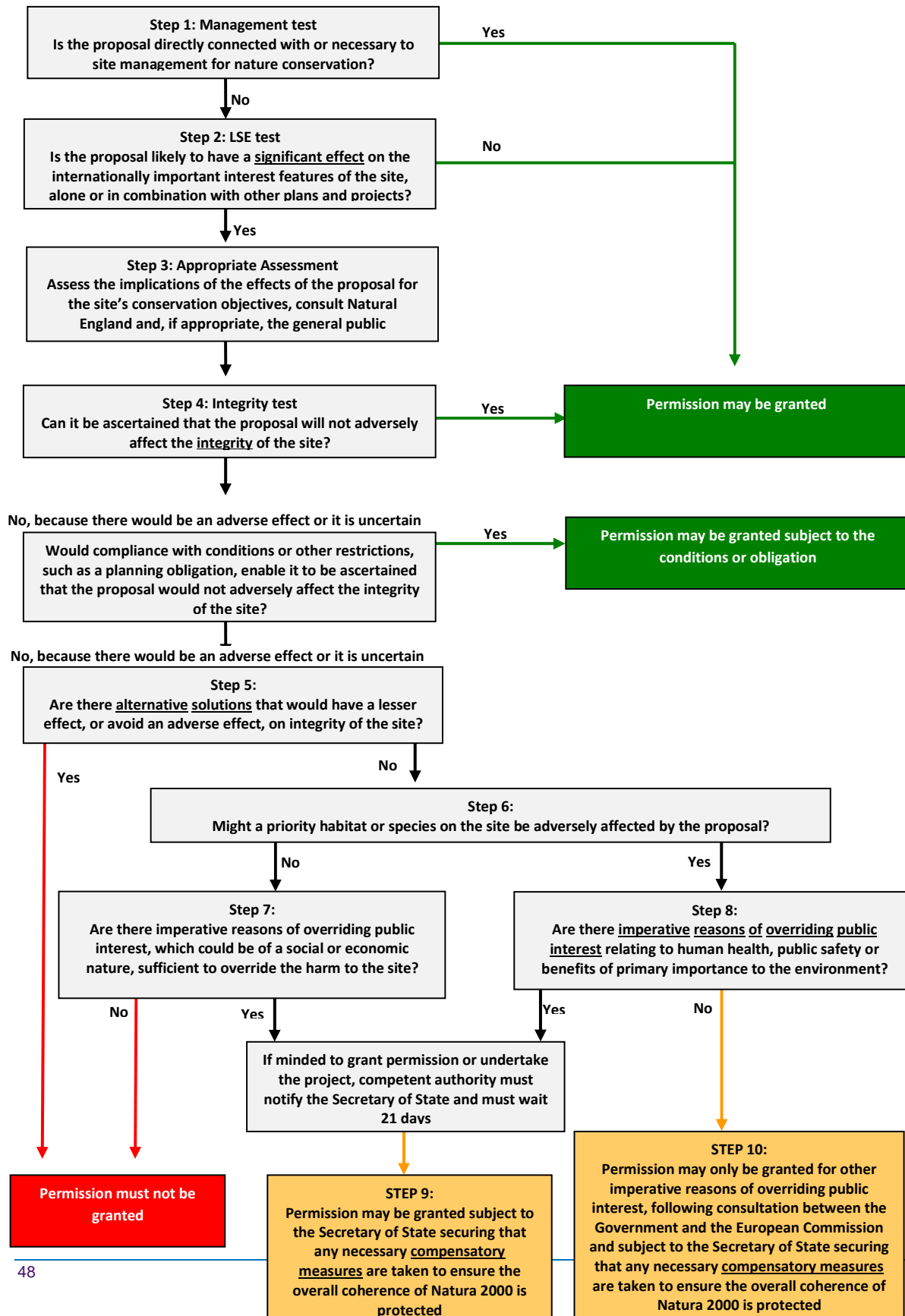
Horseshoe Bats (all species)
Typical Bats (all species)
Common Otter
Dolphins, Porpoises and Whales (all species)
Dormouse
Great Crested (or warty) Newt
Large Blue Butterfly
Marine Turtles
Natterjack Toad
Sand Lizard
Smooth Snake
Sturgeon
Wild Cat
Pool Frog
Fisher's Estuarine Moth
Lesser Whirlpool Rams-horn Snail

Plants:

Creeping Marshwort
Early Gentian
Fen Orchid
Floating Leaved Water Plantain
Killarney Fern
Shore Dock
Lady's Slipper Orchid
Slender Naiad
Yellow Marsh Saxifrage

Annex E - Consideration of plans/projects affecting European Sites

(Source: Tyldesley & Hoskin, 2008)



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