Levelling Up & Regeneration Bill: Nature recovery
Briefing for Lords committee stage

14.03.23 version

This briefing is on behalf of environmental coalition Wildlife and Countryside Link (Link) and sets out how amendments tabled for discussion at Lords committee stage of the Levelling Up and Regeneration Bill will boost nature's recovery.

The Bill currently represents a missed opportunity to enable the planning system to make a greater contribution to delivering Environment Act targets, including the commitment to halt the decline in species abundance by 2030[1], and to upholding related promises made at the recent UN Biodiversity Conference (COP15).[2] With development being a key factor contributing to the decline of nature[3], with the Bill comprising the only legislation touching on planning before Parliament, with every year counting towards whether or not we will meet these 2030 commitments, a greater environmental focus in the Bill is essential.

The practical amendments set out below will ensure that this Bill delivers gains for nature in the crucial years leading up to the 2030 deadline for nature's recovery. We would be very grateful if peers could speak in support of the below amendments at committee stage.

The amendments are set out below in order of the marshalled list[4], with the expected committee day they are likely to be discussed on. These timings are only estimates and may change. A previous version of the briefing, covering amendments for nature already debated at Lords committee (namely amendment 28, debated on 20.02.23) can be found here.

Amendments we strongly support

Amendment 184ZA: Local Nature Recovery Strategies
Tabled by Baroness Parminter, Baroness Willis of Summertown, Lord Lucas and Baroness Young of Old Scone
Likely committee day: Monday 20 March or Wednesday 22 March

The Environment Act 2021 created Local Nature Recovery Strategies (LNRSs). These documents comprise a statement of biodiversity priorities for a local area, accompanied by a habitat map identifying spaces within the area that could contribute towards enhanced biodiversity. LNRSs have the potential

[1] https://www.gov.uk/government/news/landmark-environment-bill-strengthened-to-halt-biodiversity-loss-by-2030
[2] https://www.gov.uk/government/news/new-deal-to-protect-nature-agreed-at-cop15
[3] See pages 29 to 31 of State of Nature report: https://nbn.org.uk/wp-content/uploads/2019/09/State-of-Nature-2019-UK-full-report.pdf
[4] https://bills.parliament.uk/publications/50270/documents/3123

to drive forward nature's recovery on the ground, enabling local knowledge and expertise to deliver habitat restoration.

However, the duty to apply LNRSs in crucial decisions such as planning is currently weak, blunting their effectiveness. The Government rejected amendments, tabled by members of the House of Lords during the passage of the Environment Act[5], which would have required local authorities to take close account of LNRSs land identifications when making planning decisions. Instead, local authorities are only required to have a general regard to LNRSs, which – even with forthcoming guidance for authorities on the application of LNRSs - will not be strong enough to ensure their proper consideration.

This weak general regard duty means that a LNRS group could map sites essential to nature's recovery in a local area, only for the local authority to allocate these sites for development, without the local authority contravening their legal duty to give a general regard to the LNRS. A lot of time and effort on the part of the LNRS group, and supporting bodies like Natural England, could be wasted and opportunities to recover nature on the ground missed.

The new clause tabled by Baroness Parminter and others would prevent this wasted effort and allow the full potential of LNRSs to be realised, by requiring the development plan of the local planning authority to incorporate such policies and proposals that will deliver the objectives of the local nature recovery strategy. This will ensure that LNRSs do not become weak 'documents on a shelf', wasting considerable time and effort in their development. Instead, they will inform strategic and day-to-day planning decisions at a local level as other local development plan documents do, making a tangible contribution to nature's recovery on the ground. **Amendment 242I** from Baroness Parminter secures the change to the Natural Environment and Rural Communities Act 2006 required to deliver amendment 184ZA

Strong support for greater material planning weight for LNRSs has been expressed by nature groups[6], the Environmental Audit Committee[7] and the Office for Environmental Protection.[8] In February 2023 over 15 Local Nature Partnerships from across England wrote to the Secretary of State for Levelling Up, Housing and Communities to urge him to support amendment 184ZA, to help them recover nature on the ground.

Amendment 387: Purposes and plans of protected landscapes
Tabled by Lord Randall of Uxbridge, Baroness Jones of Whitchurch, Baroness Willis of Summertown and Baroness Bakewell of Hardington Mandeville
Likely committee day: Late March or April

At COP15 negotiations in December, the Government agreed to the Global Biodiversity Framework commitment to effectively protect 30% of land and sea for nature by 2030 (this commitment is known as '30x30'). Protected landscapes are essential to meeting this target. However, outdated protected landscapes legislation, and the management that has to flow from this legislative underpinning, means that the vast majority of sites in National Parks and Areas of Outstanding Natural Beauty (AONBs) cannot

[5] https://www.wcl.org.uk/docs/assets/uploads/LNRS_Amendment_to_Enviroment_Bill_Link_briefing_May_2021.pdf
[6] https://www.wcl.org.uk/docs/assets/uploads/LNRS_Amendment_to_Enviroment_Bill_Link_briefing_May_2021.pdf
[7] https://committees.parliament.uk/publications/6498/documents/70656/default/
[8] https://www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation

currently be considered to be effectively managed for nature[9], as the Government itself stated in its response to the Glover Landscapes Review.[10]

As protected landscapes cover 25% of land in England, this has to be urgently addressed if we are to stand any chance of delivering 30x30.

The new clause tabled by Lord Randall with cross-party support would update the legislation underpinning protected landscapes, enabling more effective management for nature and a greater contribution to 30x30, along with increased benefits for climate and people, whilst also ensuring that cultural heritage and their natural beauty are conserved and enhanced.

The modernising of protected landscapes legislation proposed by the amendment implements key recommendations from the Glover Review of Protected Landscapes (2019)[11]. This includes giving protected landscapes new statutory purposes to recover nature, tackle climate change and improve people's connection to nature, embedding targets to deliver on all statutory purposes in management plans and requiring other public authorities to further those targets. This blueprint for more effective management of protected landscapes for nature, cultural heritage, climate and people, and the need to legislate to deliver it, was accepted by the Government in their response to the Glover Review (2022).[12]

At Lords second reading in January, a number of peers made the case for implementing Glover Review recommendations through amendment of the Levelling Up and Regeneration Bill. A subsequent letter to peers from the Bill Minister, Baroness Scott of Bybrook OBE, suggested that the general biodiversity duty created by the Environment Act 2021 could deliver key Glover recommendations without the need for legislate.[13]

This is not the case – by their very nature, new statutory purposes for nature recovery, climate and access to nature need to be delivered through legislation. In terms of embedding targets in management plans, the general biodiversity duty requires all authorities to give general consideration of biodiversity at a high level every five years or so. It does not provide the sustained focus on targets to deliver protected landscape statutory purposes which the amendment would deliver. The third element of the new clause, a requirement on relevant authorities to further protected landscapes statutory purposes, requires legislative backing in order to have effect.

As accepted by the Government as recently as last year, legislation is needed to implement protected landscape reforms. And yet in the Government's recently published Environmental Improvement Plan,

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[9] See p14 of Link 30x30 report: https://www.wcl.org.uk/docs/WCL_2022_Progress_Report_on_30x30_in_England.pdf

[10] https://www.gov.uk/government/publications/landscapes-review-national-parks-and-aonbs-government-response/landscapes-review-national-parks-and-aonbs-government-response#chapter-2-nature-and-climate

[11] https://www.gov.uk/government/publications/designated-landscapes-national-parks-and-aonbs-2018-review

[12] https://www.gov.uk/government/publications/landscapes-review-national-parks-and-aonbs-government-response/landscapes-review-national-parks-and-aonbs-government-response#chapter-1-a-more-coherent-national-network

[13] Letter to peers from Baroness Scott of Bybrook, entitled 'Levelling Up and Regeneration Bill – Environment', dated 27.01.23.

which states that DEFRA will implement proposals driven by the Landscapes Review, there is no reference to legislation, with specific actions focusing instead on updating non-statutory guidance.[14]

Four years on from the Glover Review, and with only seven years to go before the 30x30 deadline, the time to legislate is now. The Levelling Up & Regeneration Bill, with its planning, heritage and community focus, provides an appropriate and timely legislative vehicle. In February 2023, over over 35 scientists and experts (including Julian Glover and three other panel members from the Glover Review) wrote to the Prime Minister to urge him to support amendment 387.[15]

The amendment represents an opportunity to deliver the Government's own promises, to uphold COP15 commitments and to revitalise National Parks and AONBs for nature, natural beauty, cultural heritage, climate and people. We strongly urge peers to support it.

Amendment 390: Nutrient pollution and nature-based solutions
Tabled by Baroness Willis of Summertown, Baroness Parminter and Baroness Jones of Whitchurch
Likely committee day: Late March or April

Clause 153 puts a duty on water companies to upgrade sewage disposal works to meet new nutrient pollution standards in polluted freshwater habitats. This is a welcome start towards addressing the problem of nutrient pollution, where runoff and wastewater from new development, in addition to agricultural pollution, leaks damaging levels of nitrates and phosphorus into our rivers, lakes, streams and seas. As a result of this pollution, UK freshwater habitats have consistently failed tests of good ecological condition.[16]

As welcome as these measures are, the wording of clause 153 misses an opportunity to go further for nature's recovery.

The clause specifies that upgrades should only take place at sewage disposal works discharging treated effluent into polluted freshwater habitats. This site-specific approach, focussed on wastewater treatment only, closes down an environmentally effective alternative – restoring habitats across the entire catchment of a freshwater habitat. Restored habitats can act as nutrient sponges, reducing the pollution reaching the freshwater whilst also increasing the quantity and quality of the habitats wildlife species depend on, contributing to the delivery of the Environment Act species abundance target, along with other 2030 nature goals. Such restored habitats can also store more carbon and increase public access to nature-rich spaces, along with other environmental benefits.[17]

Pioneering collaborations between water companies and nature groups have shown that habitat restoration across catchments, often referred to as catchment-based approaches and nature-based

[14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133967/environmental-improvement-plan-2023.pdf p41
[15] https://www.wcl.org.uk/docs/Scientist%20letter%20to%20PM%20-%20%20COP15%20-%2022.02.23.pdf
See coverage of the letter also:
https://www.thetimes.co.uk/article/experts-demand-new-targets-to-improve-rivers-clean-it-up-7m5fn65hg
https://www.wcl.org.uk/is-government-giving-up-on-nature-in-protected-landscapes.asp
[16] https://www.rspb.org.uk/globalassets/downloads/our-work/troubled-waters-report
[17] https://www.britishecologicalsociety.org/policy/nature-based-solutions/read-the-report/

solutions in this context, can be just as effective at reducing nutrient pollution as on-site sewage disposal work upgrades, whilst delivering greater environmental benefits at a lower overall cost.[18] These catchment-based approaches and nature-based solutions have been previously used as mitigation approaches to achieve nutrient neutrality.

The amendment tabled by Baroness Willis and others would enable water companies to meet new nutrient pollution standards through nature-based solutions deployed across a whole catchment, rather than just through on-site works. Plans for meeting the new standards, through catchment-based approaches and nature-based solutions where possible, would be set out in advance in Compliance and Investment Plans, to be monitored by OFWAT.

This change to allow nutrient pollution to be addressed by measures wider than wastewater treatment at sewage disposal works will deliver additional nature and climate benefits.

The amendment to enable this is supported not just by nature eNGOs, including the Wildlife Trusts and Wildlife & Countryside Link, but also by water management professionals, including the Chartered Institute of Water and Environmental Management and by Water UK[19], representing water companies.

Essential amendments to Part 6 of the Bill (Environmental Outcomes Reports)

Likely committee day for all of these amendments: Late March or April

Part 6 of the Bill gives the Secretary of State the power to replace existing systems of environmental assessment with a new Environmental Outcomes Reports (EOR) regime, the details of which are to be set by secondary legislation.

This opens the door to a possible regression in environmental protections. Environmental assessments play an important role in limiting nature and climate harms from planning decisions, directing development away from environmentally important sites and informing environmental mitigation measures for consented developments. It is essential that changes to environmental assessment respond to urgent need for greater nature restoration in the face of an accelerating climate and ecological crisis, rather than opening loopholes to enable more damaging development.

As the detail of the EOR regime has been deferred to secondary legislation, we simply cannot be sure that this harmful scenario will not come to pass. As stated by a CPRE expert witness questioned about this part of the Bill by the Levelling Up, Housing and Communities Committee:

''We do not know what the environmental outcome reporting regulations will look like. The Government keep saying, "Trust us a little bit. It will be fine when you see the details," but that is not appropriate.''[20]

[18] See the Petteril project for an example https://getnaturepositive.com/gnp-case-studies/united-utilities-petteril-project/
[19] https://www.water.org.uk/blog-post/unblocking-housebuilding/
[20] https://committees.parliament.uk/oralevidence/10617/html/

These concerns about a lack of policy detail have been repeatedly stated by Public Bill Committee witnesses[21], by MPs during Commons stages[22], by nature and climate groups in their written evidence[23] and by the Office for Environmental Protection[24].

In the absence of any Government response of substance, it is necessary for the House of Lords to build safeguards into the face of the Bill, to ensure that the EOR regime lifts rather than lowers environmental standards.

The following amendments would deliver these safeguards:

Amendment 372: EOR & climate
Tabled by Baroness Hayman of Ullock

The lack of detail about EORs is such that there currently no assurance in the Bill that that the EOR regime will include consideration of a development on climate change. As Friends of the Earth and the RSPB written evidence on the Bill states, this means that *"we (and Parliament) are left to hope that Government will, at some later stage, include the protection of the climate as an environmental outcome, and do so in a way that reflects the scale and urgency of the action needed."*[25]

The amendment to clause 138 tabled by Baroness Hayman will replace 'hope' that the EOR regime will cover climate with legal certainty that it will. The amendment confirms, on the face of the Bill, that the mitigation of the impact of climate change will be a core EOR consideration. **Amendment 378**, tabled by Baroness Hayman, will also assist with this, by requiring secondary legalisation setting out the detail of the EOR regime to comply with UN Sustainable Development Goals, which includes climate action.[26] **Amendment 371**, also tabled Baroness Hayman, will also add helpful assurances on EOR scope, requiring consideration of the need to improve the condition of protected sites.

Amendments 375 & 376: EOR & mitigation hierarchy
Tabled by Baroness Taylor of Stevenage
See also Government amendments 373A-373F

As currently drafted, clause 141 undermines the mitigation hierarchy that drives environmental assessment. The mitigation hierarchy states that development should first seek to avoid causing environmental harm, and if avoidance is not possible, to then seek to mitigate that harm, moving to compensate for harm if mitigation is not possible.[27] Clause 141 interferes with this well-established environmental principle, by placing contribution to an environmental outcome ahead of avoidance, mitigation and compensation.

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[21] https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p115-116
[22] https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p687
[23] https://bills.parliament.uk/publications/47703/documents/2238
[24] https://publications.parliament.uk/pa/cm5803/cmpublic/LevellingUpRegeneration/memo/LRB53.htm
[25] https://bills.parliament.uk/publications/47703/documents/2238
[26] https://sdgs.un.org/goals
[27] https://www.somersetwildlife.org/mitigation-heirarchy

The amendments tabled by Baroness Taylor to clause 141 would address this, by removing the contribution to an environmental outcome section of the clause, preserving the mitigation hierarchy as it currently stands. **Amendment 369**, tabled Baroness Hayman of Ullock, would also help to achieve this.

We are grateful to the Government for tabling a series of amendments in late February to seek to correct the drafting of this part of the Bill to preserve the mitigation hierarchy. **Government amendments 373A, 373B, 373C, 373D, 373E and 373F** should all be supported.

Amendment 377: EOR & non-regression
Tabled by Baroness Hayman of Ullock

As drafted, clause 142 fails to provide a robust safeguard against EOR regulations being used to weaken environmental protections. The clause gives the Secretary of State the power to change individual existing protections when making regulations, as long they are satisfied that the *''overall level of environmental protection''* will not be less than before. This wording allows the Secretary of State to weaken individual existing protections, as long they consider this to be balanced out elsewhere to maintain overall levels. Giving the Secretary of State power to make subjective judgements on the balance of environmental protections opens the door to regression.

The amendment to clause 142 tabled by Baroness Hayman will address this by removing the phrase *''overall level''* and replacing it with a stricter non-regression test. This stricter test would be based on objective criteria, requiring the Secretary of State to demonstrate that EOR regulations would not diminish any environmental protection applying at the time the Bill passes.

Amendments 379, 380 and 381: EOR & devolved administrations
Tabled by Baroness Taylor of Stevenage

Clause 143 requires UK Government Ministers to consult with Ministers of devolved administrations, should EOR regulations fall within a devolved administration's competence. This is a weak requirement, which could see EOR regulations imposed on devolved nations without the consent of their administrations. This provides a further risk of environmental regression, should EOR regulations impose weaker requirements than requirements put in place by the devolved Government.

In August 2022 the Environmental Links UK (ELUK) network, representing the UK's largest environmental coalitions, wrote to the UK Government to express their concern at the regression risk posed by Part 6 of the Bill, and its threat to the competence of devolved administrations.[28] The Scottish Government has expressed its opposition to the Bill on these grounds.[29]

The amendments tabled by Baroness Taylor to clause 143 would address these threats by requiring Ministers to secure the consent of a devolved administration before setting an EOR regulations within the competence of that administration, rather than merely consulting with them.

[28] https://www.nienvironmentlink.org/site/wp-content/uploads/2022/07/LUR-Bill-ELUK-letter.pdf
[29] https://www.scotlink.org/wp-content/uploads/2022/08/Response-202200316151.pdf

Amendment 384: EOR & Habitat Regulations
Tabled by Lord Randall of Uxbridge, Baroness Jones of Whitchurch, Baroness Willis of Summertown and Baroness Bakewell of Hardington Mandeville

The current drafting of clause 149 would appear to appear to make provision for requirements carried out under an EOR to satisfy Habitats Regulations requirements. This is a problem, as Habitats Regulations requirements are the strongest in our planning system, precluding nearly all development that could harm a site protected by the Habitats Regulations.[30] EOR requirements, the details of which will only be set by secondary legislation, could be weaker.

This opens the door to strong Habitats Regulations requirements being swapped out for weaker EOR actions, permitting more damage to be done to protected sites. This concern has been raised by the Office for Environmental Protection, whose Commons committee stage evidence stated: *''On our reading, the Bill does provide for HRA to be replaced for 'relevant consents' and 'relevant plans' by the EOR process.''*[31]

The amendment tabled by Lord Randall and others would address this by only allowing EOR requirements to satisfy Habitats Regulations requirements if they are functionally the same. This would prevent any weakening of the requirements that protect sites covered by the Habitats Regulations.

Amendment 388: Super-affirmative procedure for EOR regulations
Tabled by Baroness Hayman of Ullock

The Bill currently only requires regulations that will set out the detail of the EOR regime to go through the affirmative procedure, which only gives Parliamentarians the chance to accept or reject a regulation. This scrutiny-light process is not appropriate for regulations which set a whole new system of environmental assessment for development, during a climate and ecological emergency.

The new clause[32] tabled by Baroness Hayman would address this by requiring EOR regulations to subject to the super-affirmative procedure.[33] This would provide an additional 60-day period for parliamentarians to meaningfully shape the detail of the new system of environmental assessment, and to work with Ministers on content changes to ensure the regulations lift rather than lower environmental standards.

Other amendments we support

Likely committee day for all of these amendments: Monday 20 March or Wednesday 22 March for amendment 179, late March or April for others

[30] https://www.wcl.org.uk/docs/Link%20briefing%20on%20Habs%20Regs%20risks%20and%20opportunities%20Jan%202023.pdf
[31] https://publications.parliament.uk/pa/cm5803/cmpublic/LevellingUpRegeneration/memo/LRB53.htm
[32] See new clause here: https://bills.parliament.uk/publications/49837/documents/2946
[33] https://erskinemay.parliament.uk/section/5626/the-superaffirmative-procedure/

Amendment 179: Purpose of planning
Tabled by Lord Ravensdale, Baroness Hayman, Lord Hunt of Kings Heath and Baroness Boycott

This new clause requires planning authorities to have special regard to the need contribute towards climate targets (set out in the Climate Change Act 2008) and nature targets (set out in the Environment Act 2021) when making planning policy and taking planning decisions. By enshrining environmental targets in our planning system, the new clause would help ensure they are met.

Amendment 289: Wildbelt
Tabled by Lord Randall of Uxbridge, Baroness Jones of Whitchurch, Baroness Willis of Summertown and Baroness Bakewell of Hardington Mandeville

This new clause would create a new planning designation to support land for nature's recovery – 'Wildbelt' status. This designation, first proposed by the Wildlife Trusts[34], would enable land that is being restored or has the potential for habitat restoration to be protected for nature's recovery.

Wildbelt sites would be identified by Local Nature Recovery Strategies and recognised in local development plans. They would be protected through the planning system by a presumption against land use change that would hinder the recovery of nature on these sites. Existing sustainable land uses, such as nature friendly farming or habitat restoration for carbon offsetting, could continue on these sites.

This new designation would secure more sites for wild animal and plant species to recover in and allow Wildbelt designations to connect up other sites that are important for the natural world, creating lifelines for nature across the country.

Amendment 386 tabled by Baroness Hayman of Ullock, requiring the Secretary of State to publish draft legislation to allow local authorities to propose wild belt designations, is also welcome. **Amendment 312E**, requiring the Secretary of State to publish a report on possible future legislation to improve greenbelts for nature (including potential use of wild belts to achieve this), could also contribute to nature's recovery.

Amendments 296, 297, 298 and 299: Tree preservation orders
Tabled by Baroness Young of Old Scone

These four new clauses extend the scope and strength of Tree Preservation Orders. Tree Preservation Orders are an important tool to support tree protection, these clauses would enable greater use of them by local authorities.

We also support amendment 300 on ancient woodland tabled by Baroness Young, which would require greater public consultation when developments affect ancient woodland.

[34] https://www.wildlifetrusts.org/blog/sue-young/planning-changes-england-needs-wildbelt-protect-land-recovery

Amendment 293: Ecological surveys prior to planning application & mitigation
Tabled by Baroness Jones of Moulsecoomb and Baroness Bakewell of Hardington Mandeville

This new clause would make ecological surveys mandatory in all planning applications. More ecological surveys will lead to more accurate and comprehensive ecological data, helping to ensure that environmentally damaging projects are flagged up from the outset. This will aid the planning decision process, inform the local planning authority and provide clarity for the developer. Improved baseline data will also enable more effective avoidance, mitigation and compensation measures, so that consented developments can ensure that these are incorporated in the early stages of the design to minimise impacts on biodiversity.

This new clause is strongly supported by People's Trust for Endangered Species and other environmental organisations as a practical step forward for nature's recovery.

Amendment 356: Section 106
Tabled by Lord Teverson and Baroness Bakewell of Hardington Mandeville

Schedule 11 of the Bill gives the Secretary of State the power to set regulations ending the use of agreements made under section 106 of the Town & Country Planning Act 1990 (known as section 106 agreements).

This could set back nature's recovery. Section 106 agreements are a form of developer contribution that bind environmental mitigation measures to development sites themselves, rather than the person or organisation that develops the land. This legal tie to the land allows mitigation measures to be delivered over long time periods. This extended timeframe aligns with the timeframe nature needs for recovery, which is usually measured in decades rather than years.

The amendment tabled by Lord Teverson would allow local authorities to continue to choose to use Section 106 agreements to secure strategic biodiversity mitigation measures. This will enable their continued use in cases where an assurance that environmental mitigation will apply in the long term is required.

Better Planning Coalition amendments

Link is a partner to the Better Planning Coalition (BPC), a group of over 30 organisations working to deliver a planning system fit for people, nature and the climate. The above amendments are support by BPC's nature group.

Link supports other amendments developed by BPC members, including:

- **Amendment 241** on health inequalities and well-being, tabled by Lord Young of Cookham and others: This would create a requirement for local planning authorities to incorporate policies in their development plans which improve health and wellbeing, including policies to increase access to nature.
- **Amendment 309** on planning and climate change, tabled by Lord Teverson: This would ensure that national planning policies, local plan-making and development decisions are all consistent with the 'net zero' target and carbon budgets set under the Climate Change Act.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 68 organisations to use their joint voice for the protection of the natural world.

For questions or further information please contact:
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