

Response to Natural England public consultation on proposed new policies for European Protected Species licensing¹

7 April 2016

Wildlife and Countryside Link (Link) brings together 46 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

This consultation response is supported by the following organisations:

- Amphibian and Reptile Conservation Trust
- Bat Conservation Trust
- Born Free Foundation
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Client Earth
- Environmental Investigation Agency
- Friends of the Earth
- The Mammal Society
- National Trust
- Royal Society for the Prevention of Cruelty to Animals
- Wildfowl and Wetlands Trust
- The Woodland Trust
- WWF-UK

1. Summary

1.1 Wildlife and Countryside Link (Link) is pleased to respond to this important consultation which is of interest to many of our members.

1.2 Our response is confined to Policies 1 and 2 and we have focused mainly on factors that need to be considered in any offsetting-type proposal. Biodiversity offsetting is largely unproven and should not be deployed as a mainstay of conservation policy. At best it is a last resort to be used only after other policies and efforts have been exhausted. Overall, Link feels that, theoretically, an approach similar to offsetting could have merit, however, considerable work is needed to develop such a policy and how it would be applied in practice. Also, further consultation would be needed on a species-by-species basis.

1.3 We would like to point out that any new European Protected Species (EPS) licensing policy must comply with existing legal requirements for the issuing of licences under the Habitats Directive. Also we would be surprised if these policies were implemented without waiting for the outcome of the Woking Great Crested Newt (GCN) Pilot project².

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504824/eps-consultation-document.pdf

² <https://www.gov.uk/government/consultations/great-crested-newt-pilot-scheme-in-woking-opportunity-to-comment>



1.4 Please note that we do not provide comment on the proposals as they relate to individual species as several of our member organisations will be submitting detailed responses on these lines. Instead, we have distilled some of the over-arching concerns expressed by members and we ask that you give due weight to these as the policies are developed.

2. Comments on proposed policies.

Policy 1

Defra considers that compensation for EPS impacts can be delivered without the need to relocate or exclude populations, where: exclusion or relocation measures are not necessary to maintain the conservation status of the local population; the NPPF avoid-mitigate-compensate hierarchy is followed; and compensation provides additional benefits to the local population.

Policy 2

If the licensing tests are met and the NPPF avoid-mitigate-compensate hierarchy is followed, off-site compensation measures may be preferred to on-site compensation measures, where there are good reasons for maximising development on the site of EPS impacts, and where an off-site solution provides additional benefit to the local population than an on-site solution. The licensing tests must be satisfied.

2.1 The proposed policies involve creating new (or improved) habitat to compensate for harm to EPS by providing ‘additional benefits’ to the local population. In both cases a number of safeguards need to be in place, including:

- a) **Effective metrics to measure ‘additional benefits’.** In order to provide an effective measure of whether a compensation habitat provides benefits to the population that are additional to the pre-development habitat, the current DEFRA metric would need to be more nuanced³. A range of species-specific metrics may be needed that are also sensitive to local characteristics. Another important consideration is the risk that allowing the effective removal of a species from a development area, or improving habitat for one species in an off-site compensation area, might reduce overall biodiversity across these areas as a whole by reducing their suitability for other species. Metrics would therefore also need to include indicators at the ecosystem-level, eg connectivity, biodiversity, nutrient cycling and the effects of cumulative impacts, noting that these impacts are often extremely hard to predict, and a precautionary approach should be adopted in any cases of uncertainty.

- b) **Future security of compensatory habitats.** The policies need to set out clearly how compensatory habitats would be legally secured in the future, how long the period of security would be, who would be responsible for their management and how this would be funded and monitored. Compensatory habitats could be set up and monitored via the Section 106 process, but given the much reduced ecological expertise within local councils we are concerned that options to avoid-mitigate-compensate and proposals for off-site compensation may not be fully understood. There is therefore a risk that proposed off-site compensation will not be adequate to protect local populations of EPS. Design of any development must, as much as technically possible, minimise its impact. It needs to be made clear that the option of compensatory habitat does not reduce this requirement. See also ‘general comment’ below.

³ 89% of respondents to Defra’s consultation on biodiversity offsetting thought that the metric used in Defra’s biodiversity pilots was not suitable in its current form.



- c) Double counting.** Compensatory habitat is not an ‘additional’ resource, but a replacement. Therefore, it must not be counted towards international, European, national or local policy targets for habitat creation or establishment of protected areas (such as the Aichi Biodiversity targets and targets contained in *Biodiversity 2020*). Also, there would need to be safeguards to ensure private funding for an offset site is not used to replace public funding for protected areas.
- d) Limits of applicability to EPS.** An offsetting-type approach is not appropriate for all EPS. Accordingly, unique, complex, endangered or irreplaceable habitats and species populations, or those that take many years to fully develop, need to be excluded from these policies. In view of these considerations we recommend the policies are extended only on a species-by-species basis, on the assumption that offsetting-type policies are inappropriate unless it can be shown otherwise. This would require further consultation for each species. In addition the size of some developments and the populations at risk may make off-site compensation inappropriate. We therefore recommend that a risk analysis process is developed and trialled for the species to be covered under these proposed policies.
- e) Social context.** Biodiversity and green spaces are vital to human wellbeing and this is location sensitive. This important factor needs to be considered when moving green space away from human populated areas (as envisaged by these policies).
- f) Definitions of ‘Local Population’ and ‘Conservation Status’.** A definition of ‘local’ is needed in order to be able to make any assessment of ‘additional benefits for a local population’. This would need to be based on ecological considerations. ‘Local’ in this context could refer to being within the same National Character Area, although a smaller (or indeed wider) range may be suitable for some species, depending, for example, on the range of individuals and populations. Similarly, the definition of ‘Conservation Status’, and how to assess impacts on it, will need to be clearly explained. This is crucial since one of the licensing test rests on effect on Conservation Status.
- g) Robust surveys.** Surveys can underestimate the number of individuals at a site. One example given is at the Steart Peninsula. The survey indicated a population of 30-40 GCNs but in the end over 4000 were collected. Robust surveys are needed to ensure that populations are properly estimated and compensatory habitats are appropriate.
- h) Animal Welfare.** The proposed policies carry a high risk of harm to or death of protected animals and any animal welfare implications cannot be ‘offset’. As such, we advocate that if they are adopted the ‘least harm’ approach should be maintained.

2.2 Alternative proposal – creating additional habitat before development. As the consultation document acknowledges, and as we have indicated in 1.2 above, an offsetting-type approach is a high risk, unproven policy to be deployed only as a last resort. An alternative could be the creation of additional habitat *before* development, as we understand is the case with the Woking Great Crested newt Pilot Project. Provided it incorporated the above safeguards, this could remove some uncertainty, allowing the development of more coherent, species-specific metrics and encouraging strategic improvement of EPS habitats. In addition we recommend that a number of individuals could be collected on site and moved to the compensatory habitat therefore adding additional security that at least a proportion of the local population is safe-guarded.



2.3 Lawton Review. Link supports actions taken to create habitats that are “more, bigger, better and joined”⁴ in line with the Lawton Review. An offsetting-type approach, with appropriate safeguards such as those outlined above, might aid this, but this is not the only means. The conservation focus of developers, land owners and users, led by the Government, should be on proven measures to restore, improve and conserve nature. Improving habitat should not be solely dependent on reacting to when it is damaged. Therefore, strategies to improve the local area for EPS must be in place regardless of licensing policies, as these are only relevant when damage to EPS is taking place.

3. General Comment - deficiencies in framework for planning and licensing decisions.

3.1 The effectiveness of these policies will depend on the broader framework within which planning and licensing decisions are made, and we believe there are a number of important deficiencies that need addressing here.

3.2 Currently, the infrastructure that surrounds licensing decisions suffers from an inadequate evidence base and reduced ecological capacity to interpret data. This is largely an issue at the planning stage but it also applies at the licensing decision stage. We note in particular the poor state of ecological advice in local planning authorities, and the recent withdrawal of Natural England funding for Local Environmental Records Centres. This lack of data and capability increases the risk of poor regulatory decisions.

3.3 Stream-lining licensing, as is the intention with the current proposed licensing policies, may well make the demand for data less transparent. It will become less clear who is responsible for ensuring biodiversity is protected and conserved. Strengthening the Section 40 Biodiversity Duty⁵ may assist with progressing these areas; we believe that decisions at the forward planning stage would be more effective at addressing EPS land use conflicts (and building in enhancements, as promoted in the NPPF) than leaving decisions until the licensing stage.

⁴ Lawton Review

<http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>

⁵ <http://www.legislation.gov.uk/ukpga/2006/16/section/40>

