



Link response to Survey to the Joint Post Implementation Review (PIR) of the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitat Species Regulations 2017

3 July 2024

Section 1: The extent to which the regulations have met their original objectives

7 To what extent do you believe the regulations have succeeded in their objectives?

Have surpassed objectives/Have met objectives/**Have partially met objectives**/Have not met objectives at all/Don't know

Please explain your answer, including outlining the reasons you consider the regulations have or have not met the objectives (optional).

Existing nature protections in the UK, including the regulations, are not yet sufficient to restore nature. The Habitats Regulations (including the Habitats Regulations Assessment or HRA) are elegant and nuanced pieces of legislation with evidenced benefits for habitats and species. However, they have not been enough to stem nature's overall decline (<https://stateofnature.org.uk/>).

In our view, the primary reason that the regulations have not fully met their objectives is not due to the regulations themselves, but down to their implementation. The implementation of the Habitats Regulations could be improved to support the effective application of these regulations.

The regulations provide vital benefits for habitats and species. The Habitats Regulations designations (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)) give a higher level of legal protection than other environmental protections, such as Sites of

Special Scientific Interest (SSSIs), including through a legal requirement to assess potential impacts on protected sites (Habitats Regulations Assessment or HRA). Species listed for strict protection under the Habitats Regulations are also afforded a higher level of protection compared with other wildlife laws.

The evidence is clear that the Habitats Regulations are the most effective UK nature conservation laws and boost habitats and species. A recent British Trust for Ornithology (BTO) study found that study sites with a greater proportion of protected land are home to higher numbers and more species of birds (<https://www.nature.com/articles/s41559-022-01927-4>). The regulations also boost biodiversity outside protected sites: another study found that numbers of threatened birds are higher both within and in a 5km buffer zone around a protected area (<https://zslpublications.onlinelibrary.wiley.com/doi/10.1111/acv.12832>).

At a macro level, the regulations also have a positive impact on the recovery of species populations across countries. Researchers have found that bird species strictly protected by the Habitats Regulations fared significantly better than species that were not listed. These species have done better in those countries where the Birds Directive (from which the Habitats Regulations in the UK partly derives) has been implemented for longer (<https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12196>). European bat populations are recovering, which researchers suggest reflects the impact of conservation legislation and species and site protections such as the Habitats Directives (EU), from which the UK Habitats Regulations derive (<https://www.eea.europa.eu/highlights/bat-population-recovering>).

Onshore:

However, the regulations are not always being implemented to full effect, which prevents them from achieving their objectives (<https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>). For example, the Office for Environmental Protection (OEP) recently announced an investigation into the Defra Secretary of State and Natural England over possible failures to comply with the regulations relating to Special Protection Areas (SPAs), including possible failures to implement recommendations given by the Joint Nature Conservation Committee (JNCC) and other conservation public bodies on the classification and adaptation of SPAs and in respect of their general duties to protect and maintain wild birds populations (<https://www.theoep.org.uk/news/oep-launches-investigations-special-protection-areas-wild-birds>). The OEP also found that implementation barriers were preventing HRA from being effective (<https://www.theoep.org.uk/report/environmental-assessments-are-not->



[effective-they-should-be-due-practical-barriers](https://publications.parliament.uk/pa/ld5803/ldselect/ldenvcl/234/23406.htm)). In addition, lack of monitoring of protected sites (well-summarised in this report: <https://publications.parliament.uk/pa/ld5803/ldselect/ldenvcl/234/23406.htm>) prevents understanding of the efficacy of the regulations. Lack of resourcing and expertise throughout the sector, including in Natural England and in local authorities, is a factor preventing total effectiveness of the regulations.

Offshore:

Similarly, in the offshore environment the current Habitat Regulations and HRA are not only badly designed but also poorly implemented.

For example, it is illegal to injure, kill or disturb cetaceans as they are also classed as European Protected Species (EPS) under Annex IV of the Habitats Directive. However rather than being a rare occurrence, applying for EPS licences for underwater noise impacts when carrying out human activities has become standard practice among offshore industries, even when mitigation has not been applied.

In March 2024, the Link responded to a Defra consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments which include alterations to the current interpretations of aspects of the offshore Habitat Regulations. Some of this proposed reinterpretation has the potential to directly contradict the current objectives of the Habitat Regulations which is a significant cause for concern. This includes:

- The compensation hierarchy
- The definition of coherence of the network
- The definition of compensatory measures, and the timing of delivery
- The definition of additionality
- The definition of adaptive management

While the Government considers responses provided to its consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments, there is evidence to suggest that the Habitat Regulations in the offshore environment will no longer meet their objectives if the new interpretations of the legal definitions noted above are adopted as currently proposed.

It is important to note that some SACs are in unfavourable condition due to infrastructure pressure which is hindering recovery. This was identified in pilot conservation advice by Natural England for Inner Dowsing, Race Bank and North Ridge SAC, The Wash and North



Norfolk Coast SAC and Haisborough, Hammond and Winterton SAC. This evidence supports that the Regulations are not adequately implemented.

Specifically, this can be seen in the introduction of the Critical National Priority policy. This new policy, introduced under the National Policy Statement for Renewable Energy EN-3, seeks to supersede the alternative solutions and Imperative Reasons of Overriding Public Interest (IROPI) testing, under Habitat Regulations derogations. Although the CNP presumption is only going to be applied by the Planning Inspectorate and the DESNZ Secretary of State (SoS) during the examination and decision stages of an application, it is not clear how the Government is going to prevent applicants completing vital environmental assessments without taking it into consideration. If environmental assessments are undertaken with presumption that derogations will almost certainly be made by the DESNZ SoS, any avoidance, reduction, mitigation and compensation measures cannot be identified 'without prejudice'. Further clarification on how the Planning Inspectorate and the DESNZ SoS expect applicants and other interested parties to interpret the approach is necessary, if the objectives of the Habitat Regulations are going to continue to be met.

8 Do you consider the original objectives of the regulations remain appropriate?

Yes/No/Don't know

Please explain your answer.

Yes, the original objectives of the regulations are appropriate and proportionate to the scale of the challenge to protect and restore nature on land and at sea.

Wildlife on land and at sea continues to decline in the UK, and so the focus of the onshore and offshore regulations on restoring or re-establishing, in addition to preserving and maintaining, favourable conservation status of habitats and species, is vital.

The regulations are also necessary for the UK to meet its international commitments. They have been particularly relevant in ensuring the UK meets its obligations under the Kunming-Montreal Global Biodiversity Framework – to halt and reverse nature loss by 2030 and to protect 30% of land and sea by 2030.



9 To what extent do you consider the regulations are still appropriate to address those objectives?

Very appropriate/**Appropriate**/Neither appropriate nor inappropriate/Not at all appropriate/Don't know

Please explain your answer, and give examples of what you feel would be more appropriate where possible (optional).

Existing nature protections in the UK, including the regulations, have not yet been sufficient to restore nature. The Habitats Regulations (including HRA) are elegant and nuanced pieces of legislation, which offer the strictest protection for nature in the UK and have evidenced benefits for habitats and species (as outlined in response to Question 7).

The Habitats Regulations designations (SAC and SPA) give a higher level of legal protection than other environmental protections, such as Sites of Special Scientific Interest (SSSIs), including through a legal requirement to assess potential impacts on protected sites (HRA).

Species listed for strict protection under the Habitats Regulations are also afforded a higher level of protection compared with other wildlife laws. Favourable Conservation Status (FCS) is an important legal concept in the regulations, as well as the goal of protection and management measures for species and sites.

The HRA framework includes the ability to identify less damaging solutions and to drive strategic solutions to pressure on environmental limits. For example, more strategic approaches to compensation are starting to be developed for the marine environment.

The Regulation 9 duty for relevant authorities to establish conservation measures, including to avoid deterioration of nature sites and to avoid disturbance to listed species, is another essential part of the regulations.

However, the regulations have only partially achieved their objectives of maintaining and restoring wildlife populations and have not been enough to stem nature's decline.

In our view, the primary reason that the regulations have only partially met their objectives is not due to the regulations themselves but down to their implementation. This is also the view of the OEP (<https://www.theoep.org.uk/report/environmental-assessments-are-not-effective-they-should-be-due-practical-barriers>). The implementation of HRA could be improved to support the effective application of these regulations.

For example, the recommendations in the recent reviews of SPAs in order to protect and maintain wild birds populations have not been implemented by Defra and Natural England – this lack of action and poor implementation of the regulations is now being investigated by the OEP (<https://www.theoep.org.uk/news/oep-launches-investigations-special-protection-areas-wild-birds>). The Government should publish and implement the recommendations from the UK SPA Review in 2016 and the recommendations from the previous 2011 review, to help plug the critical gaps in England’s protected sites network for vulnerable species. The Government must also undertake a full SPA Sufficiency Review across the marine environment to ensure all mobile species and the ecological systems they rely on are fully protected.

Onshore:

Another example is that species protected by the Habitats Regulations, while required to be considered in planning applications, are often overlooked by local planning authorities. A Bat Conservation Trust study from 2014 which fed into a CIEEM and ALGE Advice Note on Permitted Development Rights (PDRs) and European Protected Species (EPS) found that approximately half of local planning authorities did not know that EPS legislation had to be taken into account as part of the PDR process (https://cieem.net/wp-content/uploads/2019/02/PD_ADVICE_NOTE_March_2017.pdf).

Lack of resourcing and expertise throughout the sector, including in Natural England and in local authorities, is a factor preventing total effectiveness of the regulations in achieving their objectives. For example, only 26% of local planning authorities have an in-house ecologist, experts who have experience and knowledge of biodiversity, conservation law and the planning system (<https://www.endsreport.com/article/1586149/one-four-councils-employ-in-house-ecological-experts>).

We have several recommendations to improve the implementation of the regulations, to enable them to fully meet their objectives – please see our response to Question 14.

Offshore:

With regards to the extent that Link considers the offshore elements of the Habitats Regulations are still appropriate to address the outlined objectives, we refer to the Link response to a Defra consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments. It includes an assessment of proposed alterations to the current interpretations of aspects of the offshore Habitat Regulations. If the Government adopts the alterations outlined in the consultation, the Habitat Regulations will no longer be appropriate to address their objectives.



Specifically, this can be seen in the introduction of the Critical National Priority policy. This new policy, introduced under the National Policy Statement for Renewable Energy EN-3, seeks to supersede the alternative solutions and IROPI testing, under Habitat Regulations derogations. Although the CNP presumption is only going to be applied by the Planning Inspectorate and the DESNZ SoS during the examination and decision stages of an application, it is not clear how the Government is going to prevent applicants completing vital environmental assessments without taking it into consideration. If environmental assessments are undertaken with presumption that derogations will almost certainly be made by the DESNZ SoS, any avoidance, reduction, mitigation and compensation measures cannot be identified 'without prejudice.' Further clarification on how the Planning Inspectorate and the DESNZ SoS expects applicants and other interested parties to interpret the approach is necessary, if the objectives of the Habitat Regulations are going to continue to be met.

As they currently stand, the HRA framework includes the ability to identify less damaging solutions and to drive strategic solutions to reduce pressure on environmental limits. For example, more strategic approaches to compensation are starting to be developed for the marine environment. However, it is essential that any streamlining of environmental assessments meet current legal requirements. For example, currently planned updates to the definition and application of compensation requirements (as part of Defra's consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments), could mean the coherence of the network is undermined. This can be seen particularly in reference to:

- The compensation hierarchy
- The definition of coherence of the network
- The definition of compensatory measures, and the timing of their delivery
- The definition of additionality
- The definition of adaptive management

10 Based on your experiences, have there been any unintended effects caused by the regulations?

Yes/No/Don't know

Please explain your answer and give examples where possible (optional).

No Link response.

11 What are the costs that you/your organisation incurs in relation to the implementation of the regulations, if any? Please quantify these where possible, considering costs such as staff time/wages, fees, consultants etc. If this is not possible, please provide a qualitative description of the costs. Please describe the aspect of the regulations this cost relates to.

Text box provided

No Link response.

12 What do you view as the key benefits of the regulations? Please quantify these where possible or provide a qualitative description of the benefits to you / your organisation.

Text box provided.

The regulations provide key benefits for habitats and species. The Habitats Regulations designations (SAC and SPA) give a higher level of legal protection than other environmental protections, such as Sites of Special Scientific Interest (SSSIs), including through a legal requirement to assess potential impacts on protected sites (Habitats Regulations Assessment or HRA). Species listed for strict protection under the Habitats Regulations are also afforded a higher level of protection compared with other wildlife laws.

The evidence is clear that the Habitats Regulations are the most effective UK nature conservation laws and boost habitats and species. A recent British Trust for Ornithology (BTO) study found that study sites with a greater proportion of protected land are home to higher numbers and more species of birds (<https://www.nature.com/articles/s41559-022-01927-4>). The regulations also boost biodiversity outside protected sites: another study found that numbers of threatened birds are higher both within and in a 5km buffer zone around a protected area (<https://zslpublications.onlinelibrary.wiley.com/doi/10.1111/acv.12832>).

At a macro level, the regulations also have a positive impact on the recovery of species populations across countries. Researchers have found that bird species strictly protected by the Habitats Regulations fared significantly better than species that were not listed. These species have done better in those countries where the Birds Directive (from which the Habitats Regulations in the UK partly derives) has been implemented for longer (<https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12196>). European bat populations are recovering, which researchers suggest reflects the impact of conservation legislation and species and site protections such as the Habitats Directives (EU), from which



the UK Habitats Regulations derive (<https://www.eea.europa.eu/highlights/bat-population-recovering>).

The regulations also provide certainty and consistency for the private sector, as recognised in the Defra 2012 report (<https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>). This finding was echoed by The Red Tape Initiative report in 2018, which highlighted the importance of these regulations for business (<https://www.biodiversityinplanning.org/wp-content/uploads/2018/12/RTI-November-2018-Report-FINAL.pdf>). Finally, the regulations also represent the UK's compliance with international environmental treaties, obligations and commitments.

Offshore:

Where the mitigation hierarchy is properly followed, the Habitats Regulation Assessment are invaluable for ensuring ecological coherence is maintained across the Marine Protected Area network. However, where it is not properly followed development applications often result in compensation requirements. Greater emphasis on the mitigation hierarchy is required to ensure impacts from development in Marine Protected Areas is avoided and reduced.

13 Based on your experiences, how has the impact of the regulations on small and micro-organisations differed to the impact on larger organisations?

Much bigger impact/Slightly bigger impact/The same impact or no difference/Slightly smaller impact/Much smaller impact/Don't know

No Link response.

Section 2: The effectiveness of implementation of the regulations

14 In your opinion, how effectively have the regulations been applied and implemented in practice?

Very well/Well/Fairly/**Poorly**/Very poorly/Don't know

Please explain your answer and give examples where possible (optional).



While the regulations are fit-for-purpose, the regulations are not always applied and implemented in practice to full effect, resulting in reduced benefit to the environment.

For example, the OEP recently announced an investigation into the Defra Secretary of State and Natural England over possible failures to comply with the regulations relating to Special Protection Areas (SPAs), including possible failures to implement recommendations given by the Joint Nature Conservation Committee (JNCC) and other conservation public bodies on the classification and adaptation of SPAs and in respect of their general duties to protect and maintain wild birds populations (<https://www.theoep.org.uk/news/oep-launches-investigations-special-protection-areas-wild-birds>). The Government should publish and implement the recommendations from the UK SPA Review in 2016 and the recommendations from the previous 2011 review, to help plug the critical gaps in England’s protected sites network for vulnerable species. The Government must also undertake a full SPA Sufficiency Review across the marine environment to ensure all mobile species and the ecological systems they rely on are fully protected.

Another example is that species protected by the Habitats Regulations, while required to be considered in planning applications, are often overlooked by local planning authorities. A Bat Conservation Trust study from 2014 which fed into a CIEEM and ALGE Advice Note on Permitted Development Rights (PDRs) and European Protected Species (EPS) found that approximately half of local planning authorities did not know that EPS legislation had to be taken into account as part of the PDR process (https://cieem.net/wp-content/uploads/2019/02/PD_ADVICE_NOTE_March_2017.pdf).

The OEP also found that implementation barriers were preventing the Habitats Regulations Assessment (HRA) from being effective (<https://www.theoep.org.uk/report/environmental-assessments-are-not-effective-they-should-be-due-practical-barriers>).

Lack of resourcing and expertise throughout the sector, including in Natural England and in local authorities, is a significant factor reducing the effectiveness of the regulations. For example, anecdotal evidence from Link members suggests that the judgment by competent authorities about whether or not HRAs are appropriate is inconsistent and this is often due to lack of resources or expertise within regulatory bodies.

To improve implementation of the regulations, we recommend:

1. Increased funding and ecological expertise is urgently needed for all permission-granting competent authorities (e.g., Local Planning Authorities) and statutory nature conservation bodies in order to properly and confidently review and conclude environmental assessments and decisions. The Regulation 9 duty for relevant

authorities to establish conservation measures to avoid deterioration of nature sites and to avoid disturbance to listed species must be fully funded and supported.

2. The Government should improve implementation and enforcement of existing specific thresholds for risks of environmental harm that must not be exceeded in or around a protected site, such as levels of nutrient pollution on land, as a result of new developments (e.g., Water Framework Directive thresholds). In some cases, due to the amount of additional infrastructure needed to reach climate targets, thresholds may need to be raised or additions made. For example, noise thresholds in the Southern North Sea SAC will be breached this summer unless a decibel limit for turbine piling is put in place. This would help to limit the number of inappropriate proposals that come forward and help reduce the need for costly assessment of plans that are clearly damaging.
3. The mitigation hierarchy should be reinforced in law to support its early consideration and the highest standard of implementation to ensure nature's recovery. Currently the mitigation hierarchy is present in guidance on appropriate assessment and in policy in the National Planning Policy Framework (NPPF) and the National Policy Statements for Renewable Energy EN-3, but it should be strengthened by being made a legal requirement.
4. Improving the effectiveness and monitoring of mitigation options, including for species protected under the Habitats Regulations and for HRA, by analysing existing data to assess the effectiveness of previous mitigation measures, and where there is no data, supporting research to determine which mitigation measures are appropriate. Monitoring of mitigation measures should be carried out to ensure they are implemented as designed and maintained, supported by sufficient resources, and having the intended effect.
5. The quality, availability and comparability of environmental data, including up to date monitoring on the condition of protected sites, necessary to underpin good decision-making, should be improved. Data collected through the environmental assessment process and through licenses issued to ecological consultants under the Habitats Regulations should be shared and made available and usable for other purposes in accordance with the FAIR data principles to improve the existing environmental evidence base, which can then be mobilised for future environment assessments and inform best practice. There is a need for common environmental data standards, and a single platform with easy access for all sectors to Government-held environmental and ecological data, such as a National Environmental Observatory. Existing government-held data and resources, including Defra's Magic Map (containing spatial data on habitats, species and landscapes), could provide a solid foundation for this

data platform to grow. It would also signpost to other useful data sources, such as the species data platform run by the National Biodiversity Network Trust (NBN Atlas), data from Local Environmental Record Centres and information collected by Local Nature Partnerships and Local Nature Recovery Strategies. A cross-government data sharing platform for environmental assessments in which all applicants must place data collected post-consent was also recommended by the National Infrastructure Commission.

To improve the application of the Habitats Regulations Assessment (HRA), we suggest amendments to the HRA guidance:

- Adding more detailed guidance and examples on how to apply (a) check for cumulative effects and transboundary impacts to assess whether combinations of projects or proposals would together have a significant effect on the environmental integrity of the site and surrounding areas, specifically oil and gas and offshore wind developments in the offshore environment; and (b) of the precautionary principle.
- Setting out a structured and critical approach for competent authorities to assess derogation cases, including alternative solutions, ‘imperative reasons of overriding public interest’ (IROPI) and compensatory measures.

Additional recommendations for the offshore regulations:

- Publishing updated guidance for Marine Protected Area assessments which interact with the Habitat Regulations according to the response submitted by [Link in March 2024](#).
- We urge the publication of further guidance on the application of the Critical National Priority (CNP) policy to ensure it is used fairly and legally. This includes further information on how the CNP approach will interact with the Department for Levelling Up, Housing and Communities NSIP enhanced pre-application service and fast track scheme. The Government response to DLUHCs consultation on operational reforms for NSIP consenting processes offers no further information on either policy. It is unclear what information an applicant will have to provide in order to be accepted onto the fast track other than a requirement to use the enhanced pre-application service.
- The Government must strengthen the environmental assessments undertaken by its own agencies e.g., OPRED, who failed to properly consider JNCC Advice for the 33rd Seaward Licensing Round in Autumn 2023.



15 In your opinion, how well understood and interpreted are the regulations among your organisation?

Very well understood/Well understood/Fairly understood/Poorly understood/Very poorly understood/Don't know

Please explain your answer and give examples where possible (optional).

No Link response.

16 Please only answer this question if you are responding to this survey on behalf of a regulator. What is the regulator's assessment of organisations' compliance rates against these regulations? Please provide evidence if possible.

Highly compliant/Fairly compliant/Somewhat compliant/Not at all compliant/Don't Know/Not applicable

Please explain your answer and give evidence of compliance rates where possible.

No Link response.

17 In your opinion, how effective are the enforcement mechanisms for the regulations?

Very effective/Effective/**Neither effective nor ineffective**/Not at all effective/Don't know

Please explain your answer and give examples where possible (optional).

While the regulations are largely fit-for-purpose and contain some enforcement mechanisms, the regulations and enforcement mechanisms for the regulations are not being implemented to full effect. However, as stated in the OEP report, there are recurring concerns over lack of post-decision 'compliance' monitoring to check that required actions have been taken, and of 'effectiveness' monitoring to ensure those actions have secured expected environmental outcomes (<https://www.theoep.org.uk/report/environmental-assessments-are-not-effective-they-should-be-due-practical-barriers>). The OEP also found little evidence of



‘validation’ monitoring, reporting on the accuracy of predictions made by individual assessments or of the results being shared to inform future assessments.

Increased resourcing, training and confidence for statutory agencies, local authority staff, wildlife inspectors, constables, and other authorised persons set out in the regulations is needed to support the effective application of these regulations that protect our finite natural assets and have the potential to drive better environmental outcomes.

18 Based on your experiences, do you think there will be any future unintended effects of the regulations, different from those already mentioned?

Yes/No/Don’t know

Please explain your answer and give examples where possible (optional).

No Link response.

19 What are the likely costs that you/your organisation will incur in relation to the implementation of the regulations moving forwards, if these differ to current costs already mentioned? (Please quantify these where possible, considering costs such as staff time/wages, fees, consultants etc. If this is not possible, please provide a qualitative description of the costs. Please describe the aspect of the regulations this cost relates to.)

Text box provided.

No Link response.

20 As part of the post-implementation review, we will be reviewing how implementation compares to implementation of the Habitats and Wild Birds Directives in EU member states (linked below), and international comparison where relevant. Does your organisation have any views or evidence sources on how implementation compares to implementation in other countries?

Yes/No/Don’t know



Please explain your answer (optional).

No Link response.

Section 3: Your views on potential refinements to the regulations

21 Do you believe that refinements or changes could be made to improve implementation of the regulations and enhance benefits?

Yes/No/Don't know

Please explain your answer and give examples of possible refinements to the regulations in order to enhance the regulations' benefits (optional).

Yes, the implementation of the regulations could be improved to support the effective application of these regulations.

The OEP also found that implementation barriers were preventing the Habitats Regulations Assessment (HRA) from being effective (<https://www.theoep.org.uk/report/environmental-assessments-are-not-effective-they-should-be-due-practical-barriers>).

To improve implementation of the regulations, we recommend:

1. Increased funding and ecological expertise is urgently needed for all permission-granting competent authorities (e.g., Local Planning Authorities) and statutory nature conservation bodies in order to properly and confidently review and conclude environmental assessments and decisions. The Regulation 9 duty for relevant authorities to establish conservation measures to avoid deterioration of nature sites and to avoid disturbance to listed species must be fully funded and supported.
2. The Government should improve implementation and enforcement of existing specific thresholds for risks of environmental harm that must not be exceeded in or around a protected site, such as levels of nutrient pollution on land, as a result of new developments (e.g., Water Framework Directive thresholds). In some cases, due to the amount of additional infrastructure needed to reach climate targets, thresholds may need to be raised or additions made. For example, noise thresholds in the Southern North Sea SAC will be breached this summer unless a decibel limit for turbine piling is put in place. This would help to limit the number of inappropriate

proposals that come forward and help reduce the need for costly assessment of plans that are clearly damaging.

3. The mitigation hierarchy should be reinforced in law to support its early consideration and the highest standard of implementation to ensure nature's recovery. Currently the mitigation hierarchy is present in guidance on appropriate assessment and in policy in the National Planning Policy Framework (NPPF) and the National Policy Statements for Renewable Energy EN-3, but it should be strengthened by being made a legal requirement.
4. Improving the effectiveness and monitoring of mitigation options, including for species protected under the Habitats Regulations and for HRA, by analysing existing data to assess the effectiveness of previous mitigation measures, and where there is no data, supporting research to determine which mitigation measures are appropriate. Monitoring of mitigation measures should be carried out to ensure they are implemented as designed and maintained, supported by sufficient resources, and having the intended effect.
5. The quality, availability and comparability of environmental data, including up to date monitoring on the condition of protected sites, necessary to underpin good decision-making, should be improved. Data collected through the environmental assessment process and through licenses issued to ecological consultants under the Habitats Regulations should be shared and made available and usable for other purposes in accordance with the FAIR data principles to improve the existing environmental evidence base, which can then be mobilised for future environment assessments and inform best practice. There is a need for common environmental data standards, and a single platform with easy access for all sectors to Government-held environmental and ecological data, such as a National Environmental Observatory. Existing government-held data and resources, including Defra's Magic Map (containing spatial data on habitats, species and landscapes), could provide a solid foundation for this data platform to grow. It would also signpost to other useful data sources, such as the species data platform run by the National Biodiversity Network Trust (NBN Atlas), data from Local Environmental Record Centres and information collected by Local Nature Partnerships and Local Nature Recovery Strategies. A cross-government data sharing platform for environmental assessments in which all applicants must place data collected post-consent was also recommended by the National Infrastructure Commission.

To improve the application of the Habitats Regulations Assessment (HRA), we suggest amendments to the HRA guidance:

- Adding more detailed guidance and examples on how to apply (a) check for cumulative effects and transboundary impacts to assess whether combinations of projects or proposals would together have a significant effect on the environmental integrity of the site and surrounding areas, specifically oil and gas and offshore wind developments in the offshore environment; and (b) of the precautionary principle.
- Setting out a structured and critical approach for competent authorities to assess derogation cases, including alternative solutions, ‘imperative reasons of overriding public interest’ (IROPI) and compensatory measures.

Additional recommendations for the offshore regulations:

- Publishing updated guidance for Marine Protected Area assessments which interact with the Habitat Regulations according to the response submitted by [Link in March 2024](#).
- We urge the publication of further guidance on the application of the Critical National Priority (CNP) policy to ensure it is used fairly and legally. This includes further information on how the CNP approach will interact with the Department for Levelling Up, Housing and Communities NSIP enhanced pre-application service and fast track scheme. The Government response to DLUHCs consultation on operational reforms for NSIP consenting processes offers no further information on either policy. It is unclear what information an applicant will have to provide in order to be accepted onto the fast track other than a requirement to use the enhanced pre-application service.
- The Government must strengthen the environmental assessments undertaken by its own agencies e.g., OPRED, who failed to properly consider JNCC Advice for the 33rd Seaward Licensing Round in Autumn 2023.

22 If you believe that the regulations place burdens or costs on organisations, do you consider that refinements could be made to the regulations in order to reduce burden on organisations and reduce costs?

Yes/No/Don't know/I don't believe that the regulations place burdens or costs on organisations

Please explain your answer and give examples of possible refinements (optional).



We do not think that the regulations place undue burdens or costs on organisations.

Businesses recognised the importance the regulations for certainty and consistency for the private sector in the Defra 2012 report (<https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>). This finding was echoed by The Red Tape Initiative report in 2018, which highlighted the importance of these regulations for business and the need to improve implementation of these regulations (<https://www.biodiversityinplanning.org/wp-content/uploads/2018/12/RTI-November-2018-Report-FINAL.pdf>).

There are many instances where the regulations are not being implemented appropriately, resulting in continued harms to the environment and delays or costs to organisations. Lack of resourcing and expertise throughout the sector, including in Natural England and in local authorities, is a serious limiting factor preventing effective implementation of the regulations to protect the environment. Increased resourcing, training and confidence for statutory agency and local authority staff is needed to support the effective application of these regulations in order drive better environmental outcomes and ensure certainty and consistency for businesses and other organisations.

While implementation of the regulations could be improved, we believe that the regulations are fit-for-purpose. Changes to the regulations and the loss of associated case law would cause uncertainty and likely costs to businesses and other organisations.

23 Do you consider that refinements could be made to reduce the scope of the regulations to take organisations out of the regulatory obligations?

Yes/No/Don't know

Please explain your answer and give examples of possible refinements (optional).

No Link response.



24 Please only answer this question if you are responding on behalf of a regulator. Do you consider that refinements could be made to improve the enforcement and / or compliance rates of these regulations?

Yes/No/Don't know/Not applicable

Please explain your answer and give examples.

No Link response.

25 Please only answer this question if you are responding on behalf of an end-user of the regulations. Do you consider that refinements could be made to improve the enforcement of these regulations?

Yes/No/Don't know/Not applicable

Please explain your answer and give examples.

No Link response.

Section 4: Further comments and evidence sources

26 Do you have any further thoughts that you have not expressed in the above answers, including evidence sources from your organisation not previously referred to, that would be helpful for us to consider in this review?

Text box provided (optional).

The effective implementation of the Habitats Regulations as the UK's strict protections for habitats and species is more important than ever, given the consistently declining state of nature and the UK's domestic and international targets and commitments to halt the decline of species abundance and to effectively protect at least 30% of land by 2030.

Onshore:

Unfortunately, many currently have a negative view of the Habitats Regulations, especially around nutrient neutrality rules. This has partly resulted in a 'culture war' around



environmental protections and efforts to apply them without impacting the economy (e.g., growth duty). In our view, this points to a need to more effectively apply the regulations in order to achieve better environmental outcomes and swifter and more certain outcomes for those who might be impacted by the regulations (e.g., businesses).

27 Would you be interested in taking part in further research on this subject?

Yes/No

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 83 organisations to use their joint voice for the protection of the natural world.

For questions or further information please contact:

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The following organisations have inputted into and support this consultation response:

- Amphibian and Reptile Conservation
- Bat Conservation Trust
- Bumblebee Conservation Trust
- Campaign for National Parks
- National Forum for Biological Recording
- ORCA
- People’s Trust for Endangered Species
- RSPB
- Seal Research Trust
- The Wildlife Trusts
- Whale and Dolphin Conservation
- WWT