

**EXPLANATORY MEMORANDUM TO
THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &c.)
REGULATIONS 2007**

2007 No. 1842

**THE CONSERVATION (NATURAL HABITATS, &c.) (AMENDMENT)
REGULATIONS 2007**

2007 No. 1843

**THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) (AMENDMENT) (ENGLAND) ORDER 2007**

2007 No. 1844

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007 (SI 2007/1842)(the “Offshore Marine Regulations”) seek to ensure that activities in marine areas where the United Kingdom has jurisdiction beyond its territorial sea - broadly from 12 nautical miles to 200 nautical miles from the United Kingdom’s coastal baseline - are carried out in a manner that is consistent with Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) and Council Directive 79/409/EEC on the conservation of wild birds (the “Wild Birds Directive”). The Regulations make provision in relation to the offshore marine area, offshore marine installations and certain ships and aircraft. The transposition of the Habitats and Wild Birds Directives beyond territorial waters will afford protection to marine species and wild birds listed by the respective Directives, as well as requiring habitats to be identified and protected as “European offshore marine sites” (see paragraph 2.4 below). The Offshore Marine Regulations also include provisions to deal with the requirements of Directive 2006/105/EC, which amended the Habitats and Wild Birds Directives as a result of the enlargement of the European Union to include two new member States (Bulgaria and Romania) in 2007. A transposition note at Appendix I sets out the transposition of the Directives in respect of the offshore marine area.

2.2 The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (SI 2007/1843) (the “Amendment Regulations”) amend the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716) (the “Habitats Regulations”) in order to address current gaps and inconsistencies and to create greater legal certainty in a number of areas. The Amendment Regulations also include amendments to deal with the requirements of Directive 2006/105/EC. A transposition note at Appendix II sets out the provisions of the Directives in respect of which the Amendment Regulations make changes to our transposition.

2.3 The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2007 (SI 2007/1844) (the “Amendment Order”) revokes the requirement in article 2B(15)(c) of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) (the “General Development Procedure Order”) prohibiting the making of a local development order which would grant planning permission for development that is likely to have a significant effect on a “European site”, as defined in regulation 10 of the Habitats Regulations. The Amendment Regulations insert into the Habitats Regulations a similar provision to the one revoked by the Amendment Order, though the new provision applies in respect of effects on “European offshore marine sites” as well as other “European sites”.

2.4 In broad terms, “European sites” are Special Areas of Conservation designated pursuant to the Habitats Directive and Special Protection Areas classified pursuant to the Wild Birds Directive. In this memorandum, the term “European offshore marine site” is used to describe a “European site” located in the offshore marine area.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The JCSI should be aware that “intention” and “recklessness” (in some cases “intention” alone) have been used as the *mens rea* for the offences in regulation 32 of the Offshore Marine Regulations, while “deliberate” has been used in respect of the offences in regulations 34(1) and 39(1) of the Offshore Marine Regulations (and in new regulation 39(1) of the Habitats Regulations, as substituted by regulation 5(13) of the Amendment Regulations).

3.2 This distinction is deliberate, and results from the fact that the provisions implement different Articles of the Habitats and Wild Birds Directives.

3.3 Regulation 39(1) (of both sets of Regulations identified above) implements Article 12(1), which uses the term “deliberate” to define certain of the actions that must be prohibited in respect of protected species. The European Court of Justice (ECJ) has given two decisions relevant to the meaning of the word “deliberate” in this context.

3.4 In the first case, C-103/00 *Commission v. the Hellenic Republic*, of 30th January 2002, the ECJ held, in the context of Article 12(1)(b) of the Habitats Directive, which concerns the deliberate disturbance of a protected species, that:

35. It is apparent from the documents before the Court that at the time the facts were ascertained by the Commission's officials, the use of mopeds on the breeding beaches was prohibited and notices indicating the presence of turtle nests on the beaches had been erected. As regards the sea area around Gerakas and Dafni, it had been classified as an absolute protection area and special notices had been erected there...

36. *It follows that the use of mopeds on the sand beach to the east of Laganas and the presence of pedalos and small boats in the sea area around Gerakas and Dafni constitute the deliberate disturbance of the species in question during its breeding period for the purposes of Article 12(1)(b) of the Directive.*”

This clearly extends the terms “deliberate” beyond its literal scope.

3.5 In the second case, C-221/04 *Commission v. the Kingdom of Spain*, of 18 May 2006, the ECJ held, in the context of Article 12(1)(a) of the Habitats Directive, which concerns deliberate capture or killing of a protected species, that:

71. *For the condition as to ‘deliberate’ action in Article 12(1)(a) of the directive to be met, it must be proven that the author of the act intended the capture or killing of a specimen belonging to a protected animal species or, at the very least, accepted the possibility of such capture or killing.*

Again, this clearly goes beyond the literal meaning of the word “deliberate”.

3.6 The extent of the term “deliberate” for the purposes of each of the sub-paragraphs of Article 12(1) of the Habitats Directive is not clear at present. For example, it is unknown whether a broad interpretation of “deliberate” would also apply to Article 12(1)(c), which concerns the deliberate destruction or taking of eggs. Additionally, it may be the case that the ECJ will further refine its definition(s) of this concept in future decisions. In the circumstances, Defra did not feel it would be appropriate, in transposing Article 12(1), to adopt anything other than a copy-out approach. Hence, the word “deliberate” has been used in regulation 39(1). The implications of the ECJ’s decision have, however, been fully explained in guidance.

3.7 It is considered that the ECJ would be likely to apply a similar interpretation to the term “deliberate” in Article 5 of the Wild Birds Directive, which is transposed by regulation 34 of the Offshore Marine Regulations, where again “deliberately” has been used in paragraph (1).

3.8 The extended meaning given by the ECJ to the word “deliberate” also explains why regulations 34(4) to (6) and 39(9) to (11) of the Offshore Marine Regulations (and the equivalent paragraphs of new regulation 39 of the Habitats Regulations, as substituted by the Amendment Regulations) contemplate that the offence of deliberate capture, killing, injury or disturbance might be committed where the defendant did not intend that his action would result in a capture, killing, injury or disturbance.

3.9 In contrast to the above position, regulation 32, which creates a number of offences in respect of European offshore marine sites, relies on the *mens rea* “intention” and “recklessness”. This is because the difficulties identified above do not exist in the context of this provision, which implements Article 6(2) of the Habitats Directive.

3.10 Article 6(2) requires Member States to take appropriate steps to avoid, in European sites (including European offshore marine sites), the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive. In terms of “appropriate steps”, Defra has chosen to implement Article 6(2) in the offshore marine area by, amongst other things, offences of “intention” and “recklessness” in regulation 32.

4. Legislative Background

4.1 The Habitats Regulations are the principal means by which the Habitats Directive is transposed for Great Britain and its territorial seas. Similar Regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (SR (NI)1995/380), transpose the Habitats Directive in relation to Northern Ireland.

4.2 The Offshore Marine Regulations and the Amendment Regulations are being made to comply with two recent ECJ judgments against the United Kingdom, C-6/04 *Commission v United Kingdom* and C-131/05 *Commission v United Kingdom*, concerning the failure of the United Kingdom of Great Britain and Northern Ireland to fulfil its obligations under Articles 6(2), 6(3), 6(4), 11, 12(1), 12(2), 12(4), 13(1), 14(2), 15 and 16 of the Habitats Directive, as well as the whole Directive beyond the United Kingdom’s territorial waters.

4.3 The Scottish Ministers have made (SSI 2007/80) and the Department of the Environment for Northern Ireland are making regulations, similar to the Amendment Regulations, for Scotland and Northern Ireland, respectively.

4.4 The Offshore Marine Regulations will ensure that activities in marine areas where the United Kingdom has jurisdiction beyond its territorial sea are carried out in a manner that is consistent with the Habitats and Wild Birds Directives. Two sets of legislation are already in place which transpose parts of the Habitats Directive in respect of the offshore marine area in relation to specific activities, namely:

- the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (SI 2001/1754) with respect to oil and gas activities.
- the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (SI 2007/1067) (hereafter referred to as the “Marine Dredging Regulations”) with respect to marine minerals dredging.

The new Regulations will not duplicate the effect of these instruments.

4.5 The Amendment Regulations will:

- amend the species protection regime to better reflect the requirements of the Habitats Directive;
- provide a clear legal basis for surveillance and monitoring of European protected species (EPS);
- extend trade controls so the regime applies to all wild Annex IV and II(b) species (other than bryophytes) and not just those whose natural range includes Great Britain;
- ensure that the requirement to carry out “appropriate assessments” (under Article 6(3) of the Habitats Directive) of water abstraction consents and land use plans is explicit.

4.6 In addition, the Amendment Regulations will:

- amend Section 10 of the Conservation of Seals Act 1970 to ensure that any licence issued under the Act does not authorise the use of methods for killing or taking seals which are prohibited under regulation 41 of the Habitats Regulations.
- amend the Wildlife and Countryside Act 1981 (WCA) so that EPS are removed from the scope of certain WCA offences. This ensures that there is no conflict between the two pieces of legislation.

4.7 The Offshore Marine Regulations and the Amendment Regulations were agreed by the Ministerial Committee on European Policy on 16th March 2007.

4.8 Part IV of the Habitats Regulations transposes the requirements of Article 6(2), (3) and (4) of the Habitats Directive, which requires, amongst other things, “appropriate assessments” to be carried out where proposed development is likely to have a significant effect on a European site. As stated in paragraph 4.2 above, part of the ECJ’s judgment in case C-6/04 was that the United Kingdom had failed adequately to transpose the Directive in that the obligations imposed by the Directive extend to the offshore marine area and hence, amongst other matters, impose obligations in respect of European offshore marine sites.

4.9 The Amendment Order is made in conjunction with the Amendment Regulations which, amongst other matters, amend the Habitats Regulations to provide for appropriate assessments to extend, in respect of European offshore marine sites, to those planning consents set out in Part IV of the Habitats Regulations. A new regulation 64A is inserted into the Habitats Regulations by the Amendment Regulations to prohibit the making of a local development order which would grant planning permission for development that is likely to have a significant effect on a European offshore marine site or other European site (e.g. sites located in terrestrial areas, internal waters or the territorial sea). Consequently, the Amendment Order revokes article 2B(15)(c) of the General Development Procedure Order, which was to similar effect as new regulation 64A of the Habitats Regulations, though it did not, of course, extend to European offshore marine sites (since this category of sites has just been introduced by the Offshore Marine Regulations).

5. Territorial Extent and Application

5.1 The Offshore Marine Regulations apply to the United Kingdom’s offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

5.2 The Amendment Regulations principally extend only to England and Wales, and, in so far as they amend the Habitats Regulations in relation to England and Wales, similar amendments to the Habitats Regulations have been made in respect of Scotland by SSI 2007/80. However, certain amendments contained in the Amendment Regulations also extend to Scotland, and certain other amendments only extend to Scotland. In terms of territorial application, the Amendment Regulations and the Habitats Regulations apply to terrestrial areas, internal waters and the territorial sea (i.e. out to 12 nautical miles).

5.3 The Amendment Order applies in relation to England only

6. European Convention on Human Rights

6.1 As the Offshore Marine Regulations and the Amendment Order are subject to negative resolution procedure and do not amend primary legislation, no statement is required with regard to those instruments.

6.2 In respect of the Amendment Regulations, the Minister for Biodiversity, Landscape and Rural Affairs, Mr Barry Gardiner, has made the following statement regarding Human Rights:

“In my view the provisions of the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 are compatible with the Convention rights.”

7. Policy background

7.1 The objective of the Habitats Directive is to protect biodiversity through conservation of natural habitats and species of wild fauna and flora. The objective of the Wild Birds Directive is to conserve wild bird populations. Both lay down rules for the protection, management and exploitation of such species. The Offshore Marine Regulations fulfil these objectives in the United Kingdom’s offshore marine area (broadly, beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles) by ensuring that activities beyond territorial waters are carried out in a manner that is consistent with each Directive. The Habitats Regulations aim to fulfil the objectives of the Habitats Directive in respect of terrestrial areas, internal waters and the territorial sea.

7.2 Apart from the United Kingdom’s legal obligations to protect European marine species and habitats, the Government is committed to a vision of ‘*clean, healthy, safe and productive and biologically diverse oceans and seas*’. Development and exploitative human activity in the marine environment has been found to degrade the environment and negatively impact on marine biodiversity, as set out in the Government report *Charting Progress – An Integrated Assessment of the State of UK Seas*.

7.3 Current legislation does not fully implement the Habitats and Wild Birds Directives in the offshore marine area, and without statutory protection, there would be a decline in species and habitats of European importance. Hence the need for the Offshore Marine Regulations. Lack of protection of these species and habitats could also contribute to a reduction in the resilience of marine ecosystems which could affect the value of marine biodiversity. In turn this could have an effect on fisheries, recreational use as well as the role the sea plays in climate change regulation.

7.4 With regards to the Amendment Regulations and the changes introduced to the species protection provisions in the Habitats Regulations, the objective is to improve species protection by toughening up and extending the trade rules and creating stronger laws for the protection of such species (animals and plants). The latter objective will be achieved by removing many of the defences available in respect of the offences against EPS. For example, it will no longer be a defence to show that the capturing, killing, destruction or disturbance of wild EPS animals was an incidental and unavoidable result of an otherwise lawful activity. The same applies to the picking, cutting or destruction of wild EPS plants. If an activity is likely to result in an offence being committed, those involved will have to

consider alternative options or look to avoid impacts. If this is not possible a licence may be required before the activity can lawfully be undertaken. Tougher, wider ranging trade rules which prohibit the possession and sale of all species listed on Annex IV and Annex II(b) (other than bryophytes) of the Habitats Directive will act as a deterrent to the capturing, killing or taking of wild protected species throughout Europe.

7.5 Changes to Part IV of the Habitats Regulations, which transposes the requirements of Article 6 of the Habitats Directive, ensure that water abstraction plans and projects are now expressly subject, through regulations 48 to 51 of the Habitats Regulations, to the obligations of Article 6(3) and (4) of the Habitats Directive. These provisions cover “appropriate assessment” of implications on European sites, considerations of overriding public interest and reviews of existing decisions and consents. Land use plans are now also expressly subject to the obligations under Article 6(3) and (4) through a new Part IVA of the Habitats Regulations.

7.6 Previously these obligations had been applied via the general duty under regulation 3(4) of the Habitats Regulations, which compels every competent authority in the exercise of any of their functions to have regard to the requirements of the Habitats Directive (including Article 6(3) and (4)), so far as they may be affected by the exercise of those functions. Whilst the general duty under regulation 3(4) compels every competent authority to have regard to the requirements of the Habitats Directive, it is for the competent authority to interpret how it should apply those requirements. This can lead to inconsistencies of application. Parts IV and IVA of the Habitats Regulations set out how the obligations of Article 6(3) and (4) – the consideration of effects on European sites and considerations of overriding public interest – are to be applied in practice. This will lead to a consistent approach to such issues with regards to land use plans, water abstraction plans and projects, and other plans and projects currently covered by Part IV.

7.7 The Amendment Regulations will also ensure that plans and projects in terrestrial areas, internal waters and the territorial sea will not adversely affect the integrity of European offshore marine sites. This is achieved by amendments to regulations 47 to 85 (adaptation of planning and other controls provisions) so that the effects of such plans and projects on European offshore marine sites will in future have to be considered.

7.8 The Amendment Order is made as a consequence of the Amendment Regulations (see paragraph 4.9 above).

Consultation

7.9 Two consultations were carried out on the draft Offshore Marine Regulations: one in August 2003 (ending in October 2003) and one in May 2006 (ending on 30 June 2006). The second consultation took into account a number of new issues including the two ECJ judgments referred to in paragraph 4.2 above.

7.10 For the first consultation, 179 organisations were consulted and 38 responses were received. Over half of the responses indicated broad support for the proposed implementation of the Habitats and Wild Birds Directives beyond 12 nautical miles, to include the offshore marine area, recognising that the proposed Regulations would provide a foundation to ensure the requirements of both Directives are met in the offshore marine area.

7.11 For the second consultation in 2006, of the 254 organisations consulted, 37 responses were received. Most responses focussed on the specific areas of the Regulations that directly related to the organisations' operations. The majority of respondents (between 70 – 99%) indicated broad support for the Regulations.

7.12 From a breakdown of the responses by stakeholder; the largest number of responses (36 %) were received from organisations representing industry; 32 % were from non government organisations (NGOs), 24 % of responses were received from Government Agencies and advisory bodies; and a small percentage (4 % each) from individuals and other organisations. The Regulatory Impact Assessment (Appendix III) provides a summary of each consultation exercise (section 3) and the key issues that were raised by stakeholders.

7.13 In terms of the Amendment Regulations, consultation on draft amendments to the Habitats Regulations in England originally took place concurrently with the consultation on draft Offshore Marine Regulations between August and October 2003. A consultation on the principles of amendments in Wales, had already taken place in 2002. A second consultation on draft amendments, this time for both England and Wales, again took place concurrently with the consultation on the draft Offshore Marine Regulations in May 2006 ending on 30 June 2006. As per the Offshore Marine Regulations, the second consultation took into account a number of new issues including the two ECJ judgments mentioned in paragraph 4.2 above. Scotland undertook similar consultations for amendments in Scotland in March 2003, and again in June 2006 ending on 28 July 2006.

7.14 The first consultation exercise, launched on 6 August 2003, consulted 120 organisations. 49 individuals and organisations replied before the closing date of 29 October 2003. Responses were received from a broad range of stakeholders and interested parties including Local Authorities, Non Government Organisations (NGOs) and Government advisors on conservation matters.

7.15 For the second consultation in 2006, of the 1387 organisations consulted, 97 responses were received. Most responses focussed on the specific areas of the regulations that directly related to the respondent's operations.

7.16 The largest number of responses was received from Government Agencies and advisory bodies (47 %). 19% of responses were received from organisations representing industry, 25% were from non government organisations (NGOs), with 8% and 1% respectively from individuals and other organisations. In addition, five organisations offered no opinion.

7.17 Overall, respondees were supportive of the proposed amendments. 100% of the responses supported the amendments to: extend the definitions within the Habitats Regulations to include new Member States and to extend the definition of European Marine Site to include offshore marine sites. The proposed amendments to the Conservation of Seals Act 1970 were also fully supported.

7.18 Broad support (ranging from 70-92%) was given for all other amendments. However, four key issues were identified where concerns were raised, specifically relating to the species protection provisions and extending the scope of the “appropriate assessment” provisions of the Regulations to include other plans and projects. The Regulatory Impact Assessment for the Amendment Regulations (Appendix IV) provides a summary of the responses and how the Department has sought to find solutions to the concerns that were raised by stakeholders.

7.19 No consultation was carried out with regards to the Amendment Order. This was because the provision being revoked by the Order is replicated in the Amendment Regulations (see paragraph 4.9 above).

Guidance

7.20 Prior to the Offshore Marine Conservation Regulations coming into force, the Government is informing all key stakeholders of the legislative changes that will be made by this instrument. A letter of guidance will be available from the Defra website; <http://www.defra.gov.uk/marine/biodiversity/index.htm>. The Joint Nature Conservation Committee will play a key role in identifying SACs and SPAs in the offshore marine area and will provide ongoing guidance and advice to marine stakeholders on conservation matters relating to the Offshore Marine Regulations.

7.21 Guidance is being provided on the amendments to the species protection provisions of the Habitats Regulations. This includes a simplified guide to the amended Regulations setting out the key changes and an associated guide on how these changes will impact on protected species licensing. Further practical guidance will be developed, focussing on specific species and sectors of activity. This will include, in the first instance, the possession of Annex IV specimens, exclusion of bats from dwelling houses and generic guidance on managing woodland in relation to EPS. Guidance will also be provided for the species protection provisions in the marine environment. This guidance will be available from the Defra website <http://www.defra.gov.uk/wildlife-countryside/ewd/ewd09.htm>.

7.22 In terms of assessing and reviewing water abstraction licences, the Environment Agency is, through the general duty under regulation 3(4) of the Habitats Regulations, already fulfilling obligations under Article 6(3) and (4) by assessing effects on European sites. The Environment Agency has produced extensive guidance for water abstractors which can be accessed via:

http://environment-agency.gov.uk/subjects/waterres/564321/?version=1&lang=_e

7.23 Draft departmental guidance for regional planning bodies and local planning authorities has already been published by the Department for Communities and Local Government (DCLG) regarding compliance with the requirement to undertake appropriate assessments in connection with regional special strategies and local development documents. This guidance can be found at:

<http://communities.gov.uk/index.asp?id=1502244> and;
<http://communities.gov.uk/index.asp?id=1165623>

Consolidation

7.24 The Amendment Regulations amend the Habitats Regulations, the Conservation of Seals Act 1970 and the Wildlife and Countryside Act 1981. Defra has primarily looked to address the findings of the two ECJ judgments referred to in paragraph 4.2. above. Extending the remit of the amendments to include an element of consolidation would have added to the complexity of the exercise and therefore led to further delays, when the Department was subject to stringent infraction deadlines.

7.25 It is intended that once the above Regulations are made, a review and consolidation of the UK's transposition of the Habitats Directive will take place.

7.26 In order that we may quantify the potential size of the task and resources required, we will review and analyse the scope for consolidation, including further harmonisation between the Habitats Regulations and Offshore Marine Regulations and interface with habitats related provisions in other legislation such as the Environmental Liability Directive and the Marine Dredging Regulations (SI 2007/1067).

7.27 This scoping study started in April 2007 and should take two or three months. Defra will then consider the best way forward.

8. Impact

8.1 Regulatory Impact Assessments for the Offshore Marine Regulations and the Amendment Regulations are appended to this memorandum (Appendices III and IV respectively) and are also available at: <http://www.defra.gov.uk/marine/biodiversity/index.htm> and <http://www.defra.gov.uk/wildlife-countryside/ewd/ewd09.htm> respectively. The Assessments include consideration of the impact of the Regulations on the business and public sectors.

8.2 A Regulatory Impact Assessment has not been prepared for the Amendment Order as it has no impact on business, charities or voluntary bodies.

8.3 The impact on the public sector is nil, as the Order repeals provisions that are similarly provided for in the Amendment Regulations.

9. Contacts

9.1 Emily Musson at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8523 or e-mail: Emily.Musson@eden.defra.gsi.gov.uk can answer queries regarding the Offshore Marine Regulations.

9.2 Simon Liebert at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8341 or e-mail: Simon.Liebert@eden.defra.gsi.gov.uk can answer queries regarding the Amendment Regulations.

9.3 Linda Rawlings at the Department for Communities and Local Government Tel: 020 7944 3982 or e-mail: Linda.Rawlings@communities.gsi.gov.uk can answer any queries regarding the Amendment Order.

Transposition Note

Relating to Council Directive (92/43/EEC) on the conservation of natural habitats and wild fauna and flora (“the Habitats Directive”), Council Directive (79/409/EEC) on the conservation of wild birds (“the Wild Birds Directive”) and Council Directive 2006/105/EC adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

The above Regulations do what is necessary to implement the above Directives in relation to the United Kingdom’s jurisdiction over its continental shelf and the sea out to 200 nautical miles (excluding the territorial sea). They include consequential changes to existing legislation that implements the Directives in relation to offshore oil and gas activities¹.

Council Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora			
Articles	Objectives	Implementation	Responsibility
1	Definitions are provided for the purposes of the Directive.	Regulation 2(3) provides for expressions used in these Regulations to have the same meaning as those in the Directive.	
3(2)	Member States are required to contribute to the creation of the Natura 2000 network and, to that end, to designate special areas of conservation, in accordance with Article 4.	Regulation 11 provides for the designation of special areas of conservation in the offshore marine area. See also implementation of Article 4.	Secretary of State

¹ The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (SI 2001/1754, amended by SI 2007/77).

4(1)	<p>Each member State is required to propose a list of those sites it considers are eligible for selection as sites of Community importance. The list should indicate which Annex I natural habitat types and which Annex II species the sites host and be accompanied by certain information relating to each site.</p> <p>An additional obligation requires member states to propose adaptations to the list in the light of surveillance carried out pursuant to Article 11.</p>	<p>Regulation 7(1) requires the Secretary of State to transmit a list of such sites in the offshore marine area to the Commission. Regulations 7(2) to (4) prescribe the criteria for site selection, whilst regulations 7(5) and (6) set out the information which the list must contain and the format that must be used in supplying such information to the Commission.</p> <p>Regulation 9(1) makes provision for the Secretary of State to propose modifications of the list of sites which has been transmitted to the Commission in the light of such surveillance.</p>	Secretary of State
4(4)	<p>Once a site has been adopted by the Commission as a site of Community importance, the member State in question is required to designate it as a special area of conservation as soon as possible and within six years at the most. Member States must, in addition, establish priorities for designated sites relating, for example, to the threats of degradation or destruction they face.</p>	<p>Regulation 11(1) requires the Secretary of State to designate sites as special areas of conservation in accordance with the timeframe in the Directive. In addition, an obligation is imposed on him by regulation 11(2) to establish priorities for special areas of conservation.</p>	Secretary of State
4(5)	<p>As soon as a site is adopted as a site of Community importance by the Commission, it is to be made subject to the site protection provisions in Articles 6(2) to 6(4).</p>	<p>Regulations 15 and 24 include in the definitions of “European offshore marine site” and “European site”, respectively, the type of site referred to in Article 4(5). Such sites will therefore be protected under regulations 25 to 31.</p> <p>In addition, regulation 23 ensures that competent authorities exercise their functions in a way that protects these sites, and regulation 32 creates</p>	Competent authorities (see definition in regulation 5)

		offences in respect of such sites (see transposition of Article 6 of the Habitats Directive and Article 4 of the Wild Birds Directive, in the below table, for further details).	
5	<p>The Commission may find that a site (hosting a priority natural habitat type or priority species) should have been included in the list of sites submitted by a member State. In these circumstances, a bilateral consultation procedure may be initiated between the member State and the Commission for the purpose of comparing the scientific data used by each. If, on expiry of a consultation period not exceeding 6 months, the dispute remains unresolved, the Commission must forward to the Council a proposal relating to the selection of the site as a site of Community importance. The Council must take a decision within 3 months of the date of the referral.</p> <p>Whilst such a site is under consideration by the member State and the Commission, or pending a decision by the Council, it must be protected under Article 6(2).</p>	<p>Regulations 10, 15 and 24 make provision for the type of site referred to in Article 5(1).</p> <p>Regulation 23 makes provision applying Article 6(2) to such sites (amongst others).</p> <p>Regulation 23 requires competent authorities, when exercising their functions, in so far as their functions may be so exercised, to secure that appropriate steps are taken to avoid, in any site under consideration via Article 5(1): (a) the disturbance of any priority species, in so far as such disturbance could be significant in relation to the objectives of the Directive, and (b) the deterioration of the habitat of any such species, or the deterioration of any priority natural habitat type.</p>	<p>Competent authorities</p> <p>Competent authorities</p>

6(1)	<p>Member States are required to establish, for special areas of conservation, the necessary conservation measures involving, if need be, appropriate management plans and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the Annex II species present on the sites.</p>	<p>Regulation 18 imposes a duty on the Joint Nature Conservation Committee to establish conservation objectives for such sites and to notify these to such competent authorities as it considers appropriate. The JNCC must also advise such competent authorities as it considers appropriate of any operations which in its opinion may adversely affect the integrity of a site.</p> <p>Regulation 19 provides that competent authorities may establish a management scheme for a site and sets out the requirements for such a scheme. Where a management scheme relates to a site which has been designated as a special area of conservation it will set out how, for the purpose of securing compliance with Article 6(1) of the Habitats Directive, the authorities propose to exercise their functions in order to maintain or restore at a favourable conservation status (a) the Annex I natural habitat types which are found at the site, and (b) the Annex II species which are found at the site.</p> <p>Regulation 20 imposes a duty on competent authorities which have established a management scheme to take reasonable steps to exercise their functions in accordance with the scheme.</p> <p>Regulation 21 provides for consultation on the co-ordinated management of European offshore marine sites and other member States' special areas of conservation and special protection areas, where such sites and areas adjoin one another.</p> <p>Regulation 22 requires competent authorities,(in so far as their functions may be so exercised) to exercise such of their functions as they consider appropriate for the purpose of giving effect to Article 6(1) by taking</p>	<p>Joint Nature Conservation Committee</p> <p>Competent authorities</p> <p>Competent authorities</p> <p>Secretary of State</p> <p>Competent authorities</p>
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		<p>conservation measures. These measures must correspond to the ecological requirements of the Annex I natural habitat types present on the site and the Annex II species which are present on the site. In considering what measures may be necessary, competent authorities must have regard, amongst other things, to any management scheme which has been established for the site.</p>	
6(2)	<p>Member States are required to take appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.</p> <p>Also see the entries relating to Articles 4(5), 5 and 7.</p>	<p>Regulation 23 provides that in so far as a competent authority's functions may be so exercised, that they are exercised so to secure that appropriate steps are taken to avoid the disturbance of species specified in regulation 23(3) or the deterioration of habitat or habitat types specified in regulation 23(4).</p> <p>Regulation 23 applies to (a) special areas of conservation in the offshore marine area (as required by Article 6(2) itself), (b) sites in the offshore marine area that have been placed on the list referred to in the third paragraph of Article 4(2) (as required by Article 4(5)), (c) sites in the offshore marine area in respect of which consultation has been initiated under Article 5(1), during the consultation period or until such time as the Council makes a decision under Article 5(3) in relation to the site (as required by Article 5(4)), and (d) special protection areas in the offshore marine area (as required by Article 7).</p> <p>Regulation 27 makes provision for competent authorities to review, and thereafter affirm, modify or revoke, existing decisions or consents in respect of plans or projects that could affect a European offshore marine site. For the purposes of the review the competent authority must make an appropriate assessment of the implications for the site in view of its conservation objectives.</p>	<p>Competent authorities</p> <p>Competent authorities</p> <p>Competent authorities</p>

		In respect of certain categories of offshore marine site, regulation 32 makes it an offence (subject to certain exceptions) to intentionally or recklessly damage or destroy the habitat found in such sites or to intentionally disturb animals of certain species (at a level of disturbance set out in the Regulations) whilst such animals are in such sites.	
6(3)	Member States are required to ensure that certain plans or projects likely to have a significant effect on a special area of conservation are subject to an appropriate assessment. This assessment considers the implications of a plan or project in view of a site's conservation objectives. Subject to Article 6(4), competent authorities may not agree to a plan or project unless it is ascertained that the plan or project will not have an adverse effect on the integrity of the site concerned.	<p>Regulation 25 ensures that appropriate assessments are carried out for new plans or projects in the offshore marine area where they are likely to have a significant effect on a European site (i.e. a protected site in a terrestrial area or in inshore waters) or a European offshore marine site.</p> <p>Subject to regulation 26, regulation 25(4) ensures that a plan or project cannot be agreed to where, in light of the conclusions of the appropriate assessment, it is not possible to conclude that the plan or project will not adversely affect the integrity of the site concerned.</p>	<p>Competent authorities</p> <p>Competent authorities</p>
6(4)	Article 6(4) allows a plan or project to be carried out despite a negative assessment under Article 6(3). However, this is only where there is no alternative solution, where the plan or project must be carried out for imperative reasons of overriding public interest, and, where compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.	<p>Regulation 26 allows for plans or projects to be agreed to by a competent authority for imperative reasons of overriding public interest and where there is no satisfactory alternative. It contains detailed provisions to deal with the devolution arrangements in Scotland.</p> <p>Regulation 30 requires compensatory measures to be secured when a plan or project has been permitted to proceed in such circumstances.</p>	<p>Competent authorities</p> <p>Secretary of State, Scottish Ministers and Northern Ireland Ministers or Departments</p>

7	<p>Obligations under Articles 6(2), 6(3) and 6(4) of the Directive shall replace obligations under Article 4(4) of the Wild Birds Directive in respect of special protection areas classified under the Wild Birds Directive (see below table for details of the transposition of the Wild Birds Directive).</p>	<p>Regulations 23 and 27, as described above in respect of Article 6(2), apply to special protection areas classified under the Wild Birds Directive. Further protection is provided under regulation 32(6), which creates an offence relating to special protection areas for birds. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(2) of the Habitats Directive to special protection areas for birds.</p> <p>The definition of “European offshore marine site” in regulation 15(c) covers sites classified as special protection areas. Consequently, protection is provided to these sites under regulation 25, as described above in respect of Article 6(3). This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(3) of the Habitats Directive to special protection areas for birds.</p> <p>Regulations 26 and 30, as described above in respect of Article 6(4), apply to sites classified as special protection areas. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(4) of the Habitats Directive to special protection areas for birds.</p>	<p>Competent authorities</p> <p>Competent authorities</p> <p>Competent authorities</p>
11	<p>Member States are required to undertake surveillance of the conservation status of habitats and species of wild fauna and flora of Community interest with particular regard to priority habitat types and priority species.</p>	<p>Regulation 44 requires the Secretary of State to make arrangements for the surveillance required by Article 11. It also ensures that information relating to such surveillance is shared with devolved administrations. This ensures that a co-ordinated approach is taken to surveillance measures across the UK.</p>	<p>Secretary of State</p>

12(1)	<p>Member States must establish a system of strict protection for those animal species listed in Annex IV(a) to the Directive in their natural range.</p>	<p>Regulation 39(1) provides the necessary protection through the creation of a number of criminal offences which relate to Annex IV(a) species whose natural range includes the offshore marine area. These species are listed in Schedule 1 to the Regulations and are known as European protected species (of animals).</p> <p>It is an offence to deliberately capture, injure, kill, or disturb (in a way set out in the Regulations) any of these animals, to deliberately take or destroy their eggs, or to damage, destroy or do anything to cause the deterioration of a breeding site or resting place of such an animal.</p>	
12(2)	<p>Member States are required to prohibit the keeping, transport and sale or exchange and offering for sale or exchange of specimens of all the animal species listed in Annex IV(a) to the Directive.</p> <p>The requirement does not apply in relation to specimens legally taken from the wild before the Directive is implemented.</p>	<p>Regulation 39(2) makes it an offence to keep, transport, sell or exchange, or offer for sale or exchange any live or dead wild animal of any the species or subspecies listed in Annex IV(a) (or any part of or anything derived from such an animal).</p> <p>Paragraphs (4) and (8) of regulation 40 provide a defence to deal with the exception regarding specimens taken before the implementation of the Directive.</p>	
12(4)	<p>Member States are required to establish a system to monitor the incidental capture and killing of animals of the species listed in Annex IV(a).</p>	<p>Regulation 46 requires the Secretary of State to make arrangements to establish a system for monitoring the capture or killing of Annex IV(a) animal species in the offshore marine area. From time to time the Secretary of State must (a) consult the devolved administrations about monitoring arrangements, (b) provide devolved administrations with information considered appropriate from the monitoring and (c) review the monitoring arrangements, and revise them as appropriate.</p>	Secretary of State

	Member States are also required to take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.	Regulation 47 requires the Secretary of State to make arrangements for further research or to ensure that conservation measures are taken with respect to the incidental capture or killing of Annex IV(a) animal species in circumstances where he considers it necessary in the light of monitoring under regulation 46 or otherwise for the purposes of Article 12(4).	Secretary of State
13(1)(b)	Member States are required to establish a system of strict protection for wild plants of the species listed in Annex IV(b) to the Habitats Directive. The system must prohibit the keeping, transportation, sale, exchange and offering for sale or exchange of the protected species. The requirement does not apply to specimens taken in the wild before the Directive was implemented.	Regulation 43(1) makes it an offence to keep, transport, sell or exchange, or offer for sale or exchange any live or dead wild plant of any the species or subspecies listed in Annex II(b) or Annex IV(b) (or any part of or anything derived from such a plant). Paragraphs (4) and (6) of regulation 43 provide a defence relating to the exception in Article 13(1)(b) for specimens taken before the Directive was implemented.	
14	In light of surveillance carried out under Article 11, Member States are required to take measures they deem necessary to ensure that the taking in the wild, and exploitation, of plants and animals of species listed in Annex V to the Directive is compatible with them being maintained at a favourable conservation status.	Regulation 45 imposes a duty on the Secretary of State to take measures, where considered necessary, in the light of surveillance carried out pursuant to regulation 44 or otherwise carried out for the purposes of Article 11, to ensure that the taking and exploitation in the wild of specimens of Annex V species is compatible with them being maintained at favourable conservation status, Where the Secretary of State considers that measures are necessary, he must make arrangements for surveillance to establish whether the taking in the wild or exploitation of specimens of the species concerned are compatible with its maintenance at favourable conservation status.	Secretary of State Secretary of State

15	Member States are to prohibit the use of certain means or forms of taking or killing of wild animals of the species listed in Annexes IV(a) and V to the Directive. Member States also have to prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of species listed in Annexes IV(a) to V to the Directive.	Regulation 41 makes it an offence to use for the purpose of capturing or killing European protected species of animals (i.e. Annex IV(a) species) and animals listed in Schedule 3 to the Regulations (Annex V animal species), any of the means that are specified in regulations 41(2)(c) and (d) (3) and (4). In addition, in regulation 41(2)(b), it generally prohibits the use of indiscriminate means of killing or capturing that are capable of causing the local disappearance of, or serious disturbance to, a population of European Protected Species of animals or animals listed in Schedule 3 to the Regulations.	
16(1)	This Article allows for derogations to be made against the protection provided for under Articles 12, 13, 14 and 15. This is on the basis that there is no satisfactory alternative, the derogation is made for one of the purposes specified in Article 16, and provided that the derogation is not detrimental to the maintenance of favourable conservation status of the species concerned.	Paragraphs (6), (8) and (10) of regulation 49 allow for the granting of licences legalising what would otherwise be offences under regulations 39, 41 and 43. No licence can be granted unless this is consistent with the conditions set out for making a derogation under Article 16 – regulations 49(7) and (9)	Secretary of State
16(2)	Member States are required to report to the Commission every 2 years on derogations under Article 16.1.	Regulation 72 makes provision for the Secretary of State to send derogation reports to the Commission every two years.	Secretary of State
17	Every six years member States are required to send progress reports to the Commission on the implementation of the Habitats Directive.	Regulation 72 makes provision for the Secretary of State to send reports on the implementation of measures under the Directive to the Commission for every six year period.	Secretary of State

18	<p>Member States and the Commission are required to encourage necessary research and scientific work having regard to the Directive's objectives set out in Article 2 and the surveillance obligations in Article 11. There is a requirement for such research and work to be exchanged for the purpose of ensuring co-ordination of research at the member State and Community level.</p>	<p>Regulation 67 requires the Secretary of State to take such steps to encourage research and scientific work as he considers necessary, having regard to the objectives in Article 2 of the Directive.</p> <p>There is an obligation in regulation 67(2) for this research and scientific work to be exchanged, as appropriate, as required by Article 18.</p>	<p>Secretary of State</p> <p>Secretary of State</p>
22(a)	<p>Member States are required to study the desirability of re-introducing native Annex IV species where this may contribute to their conservation. Such a species can only be re-introduced if an investigation has been carried out establishing that such re-introduction would contribute effectively to re-establishing the species at a favourable conservation status. The investigation must include a public consultation and take account of other member States' experience.</p>	<p>Regulation 69 requires the Secretary of State to make arrangements for a study into the desirability of re-introducing native Annex IV species where he considers that such re-introduction might contribute to that species' conservation. It also contains provisions setting out the pre-conditions for re-introduction, as required by Article 22(a).</p>	<p>Secretary of State</p>

22(b)	Member States are required to ensure that the deliberate introduction of non-native species is regulated so that it doesn't prejudice natural habitats or species in their natural range.	<p>Regulation 48 makes it an offence to introduce into any relevant part of the waters in the offshore marine area any live animal or plant whose natural range does not include the offshore area. A 'relevant part of the waters' is a part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora and fauna.</p> <p>This offence does not apply where:</p> <ul style="list-style-type: none"> - introduction is needed to carry out ballast water operations to secure the safety of a person or ship; and - all reasonably practicable steps were taken to avoid discharging the water in an area which will have a negative impact on our native flora or fauna and to minimise any such negative impact. 	
22(c)	Member States are required to promote education and general information on the need to protect wild species of wild fauna and flora and to conserve their habitats and natural habitats.	Regulation 68 makes provision for the Joint Nature Conservation Committee to take such steps as it considers appropriate to promote public awareness of, and disseminate information on, the need to protect species and conserve habitats found in the offshore marine area.	Joint Nature Conservation Committee

Council Directive (79/409/EEC) on the conservation of wild birds

Articles	Objectives	Implementation	Responsibility
4(1)	Member States are required to take special conservation measures for the habitats of certain bird species (listed in Annex I to the Directive), including the classification of special protection areas.	Regulation 12(2)(a) requires the Secretary of State to classify as special protection areas those sites across the United Kingdom's territory (in the offshore marine area) which are most suitable in number and size for the conservation of the species listed in Annex I to the Wild Birds Directive.	Secretary of State
4(2)	Member States are also required to take special conservation measures and classify special protection areas for regularly occurring migratory species not listed in Annex I to the Directive.	Regulation 12(2)(b) requires the Secretary of State to classify as special protection areas those sites across the United Kingdom's territory (in the offshore marine area) which are most suitable in number and size for the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory.	Secretary of State
4(3)	Member States are required to send the Commission relevant information about special protection areas so that it can take appropriate initiatives to co-ordinate and make sure that the areas form a coherent whole which meet the protection requirements of the Directive.	Regulation 12(3) sets out the criteria for the selection of special protection areas, regulation 12(4) sets out the information that must be provided to the Commission, and regulation 12(5) prescribes the format that must be used in supplying such information to the Commission.	Secretary of State
4(4)	In respect of special protection areas, Member States are required by Article 4.4 to take appropriate steps to avoid the pollution or deterioration of habitats or disturbance of birds that would be	As noted in the table above, in respect of special protection areas classified under Article 4(1) or 4(2) of the Wild Birds Directive, Article 7 of the Habitats Directive replaces obligations under Article 4(4) of the Wild Birds Directive with obligations under Articles 6(2), 6(3) and 6(4) of the Habitats Directive (see above table for details of the transposition of the Habitats Directive).	Competent authorities

	<p>significant with regard to the objectives of the Directive. However, note that this obligation has been superseded by Article 7 of the Habitats Directive.</p>		
5	<p>Member States are required to establish a general system of protection for all species of naturally occurring birds in the wild state in the European territory of the member States to which the Treaty applies.</p>	<p>Regulations 34 provides the necessary protection through the creation of a number of criminal offences which relate to wild birds as defined in regulation 2(1), in the offshore marine area.</p> <p>It is an offence to deliberately keep, capture, injure, kill, a wild bird; take, damage or destroy the nest (while it is in use or being built); keep, take or destroy an egg of any wild bird.</p>	
6	<p>Member States are required to prohibit the sale, transport for sale, keeping for sale and offering for sale or exchange of specimens of naturally occurring birds in the wild state in the European territory of the member States to which the Treaty applies.</p> <p>The requirement does not apply to those species referred to in Annex III/1 provided that the birds have been legally killed or captured or otherwise legally acquired.</p>	<p>Regulation 37 makes it an offence to sell or offer or expose for sale, or have in possession or transport for the purposes of sale, any live wild bird (as defined in regulation 2(1)) or an egg of a wild bird (or any part of or anything derived from such a bird).</p> <p>Regulation 37(2) provides an exemption for specimens belonging to a species referred to in Annex III/1 to the Wild Birds Directive, where the egg, bird or derivative was lawfully killed, taken, sold or acquired.</p>	

8	<p>Member States are required to prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species (in particular those in Annex IV(a))</p> <p>They are also to prohibit hunting from modes of transport and under conditions listed in Annex IV(b).</p>	<p>Regulation 36 makes it an offence to use for the purpose of capturing or killing any wild bird any of the means or forms that are specified in regulations 36(1) and (2).</p> <p>In addition, it generally prohibits the use of indiscriminate means of killing or taking that are capable of causing the local disappearance of any species of wild bird.</p>	
9	<p>This Article allows for derogations to be made against the protection provided for under Articles 5, 6, 7 and 8. This is on the basis that there is no satisfactory solution and the derogation is made for one of the purposes specified in Article 9.</p>	<p>Regulation 49(1) to (5) allow for the granting of licences legalising what would otherwise be offences under regulations 34, 36 and 37. No licence can be granted unless this is consistent with the conditions set out for making a derogation under Article 9 – regulations 49(1) to (4).</p>	Secretary of State

Council Directive 2006/105/EC adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania

Article	Purpose of Provision	Implementation	Responsibility
1	<p>This Article provides, amongst other things, for amendments to the Annexes to the Habitats and Wild Birds Directives, and to certain Articles of the Habitats Directive, arising from the accession of Bulgaria and Romania to the EC.</p>	<p>The Regulations ensure that the amendments to the Habitats and Wild Bird Directives are properly reflected and that up-to-date versions of the Directives are referred to.</p> <p>Regulation 2 of the Offshore Marine Regulations defines both the Habitats Directive and Wild Birds Directive.</p> <p>These definitions, read in accordance with section 20A of the Interpretation Act 1978, mean that references to the Directives are to them as they have effect on the day the Regulations are made (i.e. including amendments made by Council Directive 2006/105/EC).</p> <p>Under section 20A of the 1978 Act, references in legislation to a Community instrument which has been amended, extended or applied are taken as references to that instrument as so amended, extended or applied. This means that prior amendments to the Wild Birds Directive and the Habitats Directive, including those made by Directive 2006/105/EC, are automatically included in the references to those Directives in the Regulations. References to the Annexes are also ambulatory.</p> <p>Regulation 40(5) refers to Schedule 2 of the Regulations which expressly lists those populations of Annex IV species excluded from trade and possession protection under the Habitats Directive. This includes the Bulgarian population of <i>Canis lupus</i> (the Grey Wolf).</p>	

Transposition Note

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007

Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora

Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”) provides a framework for the conservation and management of habitats listed in Annex I of the Directive and the species listed in Annex II and Annex IV. Each Member State is required to prepare and propose a national list of sites, which will be evaluated in order to form a European network of Sites of Community Importance (SCIs). These will eventually be designated by Member States as Special Areas of Conservation (SACs) and, along with Special Protection Areas (SPAs) classified under the EC Wild Birds Directive, form a network of protected areas known as Natura 2000.

In Great Britain, the Directive is principally implemented by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”).² In January 2004, the European Commission made an application to the European Court of Justice (ECJ) alleging a number of failings in the UK’s transposition of the Habitats Directive. The ECJ subsequently ruled against the UK for failing to correctly and completely implement the Habitats Directive in a number of areas (case C-6/04)³. In a separate decision against the UK (case C-131/05)⁴, the ECJ ruled that Articles 12(2) and 13(1)(b) of the Habitats Directive were not correctly transposed since the Habitats Regulations only prohibited the keeping, transportation and sale etc of Annex IV species native to Great Britain, as opposed to all Annex IV species.

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (“the 2007 Regulations”), which primarily extend to England and Wales⁵, make changes to the Habitats Regulations, the Wildlife and Countryside Act 1981 and the Conservation of Seals Act 1970 to take into account changes required to meet these judgments. In addition, we have also taken the opportunity to make other amendments to the Habitats Regulations to improve the transposition of the Directive. Scotland, Northern Ireland and Gibraltar have consulted upon and drafted similar provisions which will or have already come into force in their territories.

² Similar regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (SR (NI)1995/380), transpose the Habitats Directive in relation to Northern Ireland

³ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62004J0006:EN:HTML>

⁴ <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?lang=en&num=79948882C19050131&doc=T&ouvert=T&seance=ARRET>

⁵ Certain provisions also extend to Scotland, and certain provisions extend only to Scotland.

Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania

The enlargement of the European Union to include two new member States (Bulgaria and Romania) in 2007 has brought amendments of the EU nature conservation legislation – the Habitats Directive and Council Directive 79/409/EEC on the conservation of wild birds (“the Wild Birds Directive”).

Most of the changes of substance concern the Annexes to the Habitats Directive, which essentially list protected habitats and species, with certain Articles of the Directive containing obligations in respect of the habitats and species listed on the Annexes. Directive 2006/105/EC adds certain species and habitats native to the new member States to the Annexes, with a limited number of geographic exceptions granted (e.g. *Canis lupus* – the Grey Wolf - is protected by Annex IV to the Habitats Directive, but there is an exception in respect of certain populations of the species, including, now, the Bulgarian population).

In respect of the Habitats Directive, two new biogeographic regions have been added to the existing seven (Continental, Mediterranean, Alpine, Atlantic, Macaronesian, Boreal, Pannonian): the Black Sea and the Steppic Regions.

The 2007 Regulations include amendments to deal with the requirements of Directive 2006/105/EC, in so far as it relates to the Habitats and Wild Birds Directives, in respect of England and Wales. Scotland and Northern Ireland have also included amendments to deal with the requirements of Directive 2006/105/EC within their own amendment regulations⁶ which will or have already come into force in their territories. In respect of Gibraltar no legislative amendments were required as a result of Directive 2006/105/EC.

⁶ The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 and the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 respectively

6(3) and (4)	To ensure that effects on European offshore marine sites - a new category of site created by the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 - are considered and assessed in relation to the granting of those licences, consents and other forms of authorisation captured by Part IV of the Habitats Regulations.	Regulations 47 to 85E of the Habitats Regulations are amended by regulations 5(22) to 5(54) of the 2007 Regulations so that the effects on European offshore marine sites of plans and projects in terrestrial areas, internal waters and the territorial sea will in future have to be considered.	Competent Authority
11	To transpose the surveillance obligations.	<p>In paragraphs 68 and 69 of judgment C-6/04, the ECJ found that UK domestic law failed to contain any statutory duty requiring the national authorities to undertake surveillance of the conservation status of natural habitats and species, thereby guaranteeing that surveillance is undertaken systematically and on a permanent basis. As a result, it ruled that Article 11 of the Habitats Directive had not been completely, clearly and precisely transposed into United Kingdom law.</p> <p>New regulation 37A of the Habitats Regulations (inserted by regulation 5(12)) transposes Article 11 by imposing, a duty on the Secretary of State and the Welsh Ministers to make arrangements for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest.</p>	Secretary of State and Welsh Ministers

12, 13 and 15	To ensure that the protection of European Protected Species through effective enforcement is equivalent to such protection provided to species under the Wildlife and Countryside Act 1981	New regulations 101A – I, inserted by regulation 5(58), provide equivalent enforcement powers for constables and wildlife inspectors to those that were inserted into the Wildlife and Countryside Act 1981 by the Natural Environment and Rural Communities Act 2006. Penalties for offences under regulations 39, 41, 43 and 46 have also been raised to be equivalent to corresponding offences in the Wildlife and Countryside Act 1981.	
12, 13 and 16	To prevent a defence which is no longer available under the Habitats Regulations 1994 being available under the Wildlife and Countryside Act 1981. This is achieved by removing overlapping protection of EPS under the two pieces of legislation.	<p>Regulations 7(7) and 7(8) respectively amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 to remove native Annex IV species (known as European Protected Species) from the protection given by sections 9(1), (2) and 13(1), and part of the protection provided under section 9(4), of that Act.</p> <p>Sections 9(1) and (2) of the Wildlife and Countryside Act 1981 prohibit the killing, injuring, taking, possession and control of those animals listed on Schedule 5. Section 9(4) prohibits disturbance of Schedule 5 animals (in certain circumstances) and also the damage or destruction of, and obstruction of access to, the places they use for shelter or protection. Section 13(1) prohibits the uprooting of protected plants (listed on Schedule 8) and, in some cases, also picking and destruction.</p>	
12(2)	To correctly transpose the obligation to prohibit the keeping, transport, sale or exchange of specimens of animal species listed in Annex IV of the Habitats Directive (extension of prohibition).	In case C-131/05, the ECJ ruled that Article 12(2) of the Habitats Directive was not correctly transposed since regulation 39 of the Habitats Regulations only prohibited the keeping, transportation and sale etc of wild Annex IV animal species native to Great Britain, as opposed to all wild Annex IV animal species.	

		<p>These regulations substitute a new regulation 39_(inserted by regulation 5(13)) which contains an offence covering the keeping, transportation and sale etc. of all animal species listed on Annex IV.</p>	
12(2)	<p>To fully transpose the obligation to prohibit the keeping, transport, sale or exchange of specimens of animal species listed in Annex IV of the Habitats Directive (temporal limitation).</p>	<p>In paragraph 85 of the C-6/04 judgment, the ECJ found that the UK had incompletely transposed Article 12(2) of the Habitats Directive by failing to comply with the temporal limitation laid down in the Article.</p> <p>Article 12(2) requires member States to prohibit the possession ands trade etc of all wild Annex IV animals except those taken legally from the wild before the Directive was implemented. However regulation 39 of the Habitats Regulations exempts those specimens legally taken from the wild regardless of when they were taken (i.e. it doesn't contain the temporal limitation set by the Directive).</p> <p>Regulation 39 is substituted by these Regulations (regulation 5(13)), and the new regulation completely implements Article 12(2) by prohibiting the keeping, transport, sale or exchange of wild sourced specimens of animal species listed in Annex IV of the Habitats Directive, taken from the wild in the EC since the implementation date.</p> <p>'Implementation date' means</p> <ul style="list-style-type: none"> • where the relevant State became a member State before 10th June 1994, the 10th June 1994; and • in any other case, the date on which the relevant State became a member State. <p>'Relevant State' means the State in whose territory the animal, or part of it, was taken from the wild.</p>	

12(4)	To transpose the obligation to monitor the incidental capture and killing of certain animal species.	<p>In paragraph 89 of the C-6/04 judgment, the ECJ noted that the UK's transposing legislation contained no provision requiring the establishment of a monitoring system, as required in Article 12(4), in respect of the incidental capture and killing of animal species listed on Annex IV to the Directive.</p> <p>New regulations 41A and 41B (inserted by regulation 5(16)) implement Article 12(4) by imposing a duty on the Secretary of State and Welsh Ministers to make arrangements to monitor the incidental capture and killing of animals of the species listed in Annex IV(a) of the Habitats Directive and to take conservation measures in the light of that monitoring.</p>	Secretary of State and Welsh Ministers
13(1)	To transpose the obligation to prohibit the keeping, transport, sale or exchange of specimens of plant species listed in Annex IV of the Habitats Directive (extension of prohibition)	<p>In case C-131/05, the ECJ ruled that Article 13(1) of the Habitats Directive was not correctly transposed since regulation 43 of the Habitats Regulations only prohibited the keeping, transportation and sale etc of wild Annex IV plant species native to Great Britain, as opposed to all wild Annex IV plant species.</p> <p>These regulations substitute a new regulation 43 (inserted by regulation 5(17)) which contains an offence covering the keeping, transportation and sale etc. of all plant species listed on Annex IV.</p>	

13(1)	<p>To fully transpose the obligation to prohibit the keeping, transport, sale or exchange of specimens of plant species listed in Annex IV of the Habitats Directive (temporal limitation).</p>	<p>In paragraph 85 of the C-6/04 judgment, the ECJ found that the UK had incompletely transposed Article 13(1) of the Habitats Directive by failing to comply with the temporal limitation laid down in the Article.</p> <p>Article 13(1) requires member States to prohibit the possession and trade etc of all wild Annex IV plants except those taken legally from the wild before the Directive was implemented. However regulation 43 of the Habitats Regulations exempts those specimens legally taken from the wild regardless of when they were taken (i.e. it doesn't contain the temporal limitation set by the Directive).</p> <p>Regulation 43 is substituted by these Regulations (regulation 5(17)), and the new regulation implements Article 13(1) by prohibiting the keeping, transport, sale or exchange of wild sourced specimens of plant species listed in Annex IV of the Habitats Directive, taken from the wild in the EC since the implementation date.</p> <p>'Implementation date' means</p> <ul style="list-style-type: none"> • where the relevant State became a member State before 10th June 1994, the 10th June 1994; and • in any other case, the date on which the relevant State became a member State; and <p>'Relevant State' means the State in whose territory the plant, or part of it, was taken from the wild.</p>	
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14	<p>To transpose conservation measures arising from the surveillance obligations contained in Article 11</p> <p>Where member States consider it necessary, in the light of surveillance under Article 11, they are required to take measures to ensure that taking plants and animals of Community interest (Annex V listed species) is compatible with them being maintained at a favourable conservation status.</p>	<p>New regulation 37B (inserted by regulation 5(12)) implements Article 14 by providing the requirement that the Secretary of State and Welsh Ministers shall, where they consider it necessary and in the light of surveillance carried out pursuant to Article 11, make arrangements for further research to establish whether taking and exploitation of wild Annex V species is compatible with them being maintained at favourable conservation status and to ensure that measures are taken to ensure this is the case.</p>	Secretary of State and Welsh Ministers
15	<p>To fully comply with obligations to impose a general prohibition on the use of indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of Annex V and (where licensed to kill, capture or take) Annex IV species of animals.</p>	<p>In paragraph 98 of the ECJ's C-6/04 judgment, the Court found that the UK's transposing legislation does not guarantee that all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of European protected species of animal are prohibited in the United Kingdom.</p> <p>Regulation 41 (as amended by regulation 5(15)) implements Article 15 by introducing a new offence of using any indiscriminate means of taking or killing native Annex V or IV species of animal, in addition to the existing list of prohibited means of taking or killing set out in regulation 41(3).</p>	
15	<p>To ensure legal certainty and therefore correct transposition of Article 15 with regards to the prohibition of certain methods for the taking or killing of seals under the Conservation of Seals Act 1970.</p>	<p>Paragraph 104 of the ECJ's C-6/04 judgment found that the Conservation of Seals Act 1970 ("the 1970 Act") involves an element of legal uncertainty as to the methods of killing seals which are prohibited in the United Kingdom and it therefore does not ensure that Article 15 of the Habitats Directive is transposed correctly in the UK.</p>	

		<p>This is because the 1970 Act fails to refer to those methods of killing or taking prohibited by regulation 41 of the Habitats Regulations (which transposes Article 15 of the Directive).</p> <p>Regulation 6 of these Regulations provides legal certainty by amending section 10 of the 1970 Act to ensure it is clear that licences issued under that section to allow a person to undertake activities prohibited by that Act, do not authorise the use of any method of killing or taking inconsistent with regulation 41 of the Habitats Regulations.</p>	
16	To better transpose the derogations under the Directive to protect populations of the species concerned.	<p>The ECJ upheld, in paragraph 114 of its C-6/04 judgment, the Commission's complaint that that the specific derogations set out in regulations 40(3)(c) and 43(4) of the 1994 Regulations go beyond the scope of Article 16 of the Habitats Directive.</p> <p>Substitute regulations 40 and 43 (which are inserted by regulations 5(14) and 5(17) respectively) correctly implement Article 16 by not containing the defences which the Court found to go beyond the scope of Article 16 of the Habitats Directive. This includes the 'incidental result of a lawful operation' in regulation 40(3)(c) and 43(4), the 'dwelling house' defences in 40(2) and (4) and the Agriculture Act and Animal Health Act defences in 40(1). The mercy killing and tending wild animals defences in 40(3)(a) and (b) have been redrafted to provide further clarity following discussion with the Commission services and confirmation of advice in their letter of 27th July 2006.</p> <p>Regulation 44 (as amended by 5(18)) better transposes Article 16 by including the derogation in Article 16(1)(e) for taking or keeping of certain specimens under strictly supervised conditions on a selective basis and to a limited extent.</p>	

22(b)	To ensure that the deliberate introduction into the wild of any species which is not native to the territory is regulated within the inshore area (i.e. out to 12 nautical miles from the coastal baseline).	<p>New regulations 37C, D and E inserted by regulation 5(12), introduce a new offence covering the release of non-native specimens from ships.</p> <p>Under 37C, it is an offence for any person on board a ship to deliberately introduce in to any relevant part of the coastal sea any live non-native animal or plant, except where it resulted from a necessary discharge of ballast water and all reasonable steps were taken to avoid its occurring in an area where it would give rise to harm for native Habitats or wild native flora or fauna.</p> <p>These new provisions ensure that the introduction of non-natives from ships within the inshore area (covered by the Habitats Regulations) is regulated in a consistent manner to such introductions in the offshore marine area (covered by the Offshore Marine Regulations).</p>	
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Council Directive 2006/105/EC adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania

Article	Purpose of Provision	Implementation	Responsibility
1	This Article provides, amongst other things, for amendments to the Annexes to the Habitats and Wild Birds Directives, and to certain Articles of the Habitats Directive, arising from the accession of Bulgaria and Romania to the EC.	<p>The Regulations ensure that the amendments to the Habitats and Wild Bird Directives are properly reflected and that up-to-date versions of the Directives are referred to.</p> <p>Regulations 5(2) and (3) of the 2007 Regulations amend the Habitats Regulations and insert a new paragraph 2A which contains new definitions of the Wild Birds and Habitats Directives.</p>	

⁷ There are no references in the Habitats Regulations to any Annex to the Wild Birds Directive, meaning that a similar change in relation to that Directive is not appropriate.

		<p>These new definitions, read in accordance with section 20A of the Interpretation Act 1978, mean that references to the Directives are to them as they have effect on the day the Regulations are made (i.e. including amendments made by Council Directive 2006/105/EC).</p> <p>Under section 20A of the 1978 Act, references in legislation to a Community instrument which has been amended, extended or applied are taken as references to that instrument as so amended, extended or applied. This means that prior amendments to the Wild Birds Directive and the Habitats Directive are automatically included in the references to those Directives in the Regulations.</p> <p>Regulation 5(3) makes references to any Annex of the Habitats Directive ambulatory.⁷ This means that any changes to the Annexes in the future will have immediate effect in the Regulations.</p> <p>Regulation 5(62) inserts new Schedule 2A to the Habitats Regulations, which expressly lists those populations of Annex IV species excluded from trade and possession protection under the Habitats Directive. This includes the Bulgarian population of <i>Canis lupus</i> (the Grey Wolf).</p> <p>Regulation 7 will amend the 1981 Act so that references to the Wild Birds Directive have effect in the same way as explained above (and therefore incorporate prior amendments to that Directive, including those made by Directive 2005/105/EC).</p>	
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Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

Final Regulatory Impact Assessment

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1. Proposal

This Regulatory Impact Assessment covers the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. The Regulations will further transpose Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds. These are commonly known as the Habitats and Wild Birds Directives.

2. Purpose and intended effect

The objective

The purpose of these Regulations is to extend the transposition of the Habitats and Wild Birds Directives into UK legislation beyond territorial waters to cover the offshore marine area (in broad terms, the area beyond 12 nautical miles from the coast).

By transposing the Habitats and Wild Birds Directives beyond territorial waters protection will be given to marine species (listed in the Habitats Directive) and all wild birds as well as providing site protection to certain of these species and important habitats.

Overall the Regulations will help contribute, alongside other measures, to healthy, functioning and resilient marine ecosystems and biodiversity that can absorb and respond to human pressures. This will help to achieve one of Defra's strategic priority objectives of natural resource protection.

Background

The principal instrument for transposing the Habitats Directive into domestic legislation in respect of Great Britain is the Conservation (Natural Habitats &c.) Regulations 1994⁸. These Regulations apply to England, Wales and Scotland and the adjacent territorial seas and enable the establishment of a network of European sites and European marine sites out to the limit of the UK's territorial seas. These sites form part of the EC wide ecological network known as Natura 2000. The Wildlife and Countryside Act 1981⁹ also transposes the Directive out to the limits of the territorial seas of Great Britain by protecting listed marine species, and prohibiting the introduction of non-native plants and animals.

⁸ HMSO SI 1994 No 2716, to which relevant amendments have been made by the Environment Act 1995 (c.25), the Countryside and Rights of Way Act 2000 (c.37), the Land Reform (Scotland) Act 2003 (asp 2), S.I. 1996/525, 1996/973, 1997/3055, 1999/1820, 2000/192, 2000/1973, and S.S.I. 2000/323 and 2004/475. Additional amendments will be made by the Conservation (Natural Habitats &c.) (Amendment) Regulations 2007 (SI 2007/1843). In Northern Ireland, similar measures are provided in the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995.

⁹ In Northern Ireland, similar measures are provided by the Wildlife (Northern Ireland) Order 1985, the Nature Conservation and Amenity Lands (NI) Order 1985, and the Environment (Northern Ireland) Order 2002.

In 1999 the High Court¹⁰ made a declaration that “the Habitats Directive applies to the United Kingdom Continental Shelf (UKCS) and the superjacent waters up to a limit of 200 nautical miles from the baseline from which the territorial sea is measured”. Subsequently, in Case C-6/04 *Commission v United Kingdom*, the European Court of Justice ruled that the UK was obliged to implement the Habitats Directive beyond its territorial waters.

There is currently no comprehensive framework for fully transposing these Directives beyond territorial waters. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001¹¹ have been made in order to transpose parts of the Habitats and Wild Birds Directives in relation to oil and gas activities in the offshore area. The Environmental Impact Assessment and Natural Habitats (Extraction of Mineral by Marine Dredging) (England and Northern Ireland) Regulations 2007, came into force in April 2007¹². The latter regulations establish a statutory procedure for regulating marine minerals dredging and transpose the Habitats Directive in relation to these activities.

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 will transpose the requirements of the Directives to govern activities not already covered by the aforementioned legislation (for oil and gas and minerals dredging). Provisions in the Regulations are applied in relation to the offshore marine area and affect activities (except those for oil and gas and minerals dredging) in any part of the waters within British fishery limits (except territorial seas) and on any part of the seabed on the continental shelf¹³.

In summary the Regulations contain the following provisions:

1. **Part 1** places a duty on competent authorities that have functions relevant to marine conservation to exercise those functions in a way that secures compliance with the Habitats and Wild Birds Directives.
2. **Part 2** contains provisions for the selection, registration, notification and management of European offshore marine sites. Duties are imposed on to competent authorities requiring them, in so far as their functions may be so exercised, to establish conservation measures and to take steps to prevent the deterioration of habitats and disturbance of species where necessary. Provision is made for the appropriate assessment of certain plans and projects in the offshore marine area (and on or in relation to offshore marine installations). Where the integrity of either a European offshore marine site¹⁴ or a European site¹⁵ would be adversely affected by certain plans or projects in the offshore marine area, those plans or projects can only be authorised where there are imperative reasons of overriding public interest, no alternatives and when compensatory measures are taken. This Part also requires, in circumstances where the integrity of a site would be adversely affected, the review of certain

¹⁰ R-v-Secretary of State for Trade and Industry ex parte Greenpeace [2000] 2 CMLR 94.

¹¹ HMSO SI 2001 No 1754

¹² HMSO SI 2007 No 1067

¹³ Any part of the seabed or subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964.

¹⁴ European offshore marine site is defined in regulation 13

¹⁵ European site is defined in regulation 21

authorisations that were granted before a site was designated (as a European offshore marine site or a European site). An offence is created relating to the deliberate or reckless damage or destruction of European offshore marine sites.

3. **Part 3** provides for the protection of wild birds, wild animals and wild plants through the creation of a number of offences (to which a number of defences are available).
4. **Part 4** makes provision for the surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species. This Part also requires the Secretary of State or Scottish Ministers where relevant to make arrangements for monitoring the incidental capture and killing of European protected species, and taking measures where necessary in light of the surveillance information. An offence is made to introduce new species in the offshore marine area (to which certain defences are available)
5. **Part 5** makes provisions for licences to be granted, legalising what would otherwise be offences under Part 3 and Part 4 (introduction of new species) provided certain strict tests are met (which are consistent with the conditions in the Directives).
6. **Part 6** makes arrangements for the enforcement of criminal offences under the Regulations and other supplementary provisions for these offences.
7. **Part 7** deals with, amongst other things, provisions for encouraging scientific research and promotion of public awareness about the conservation and protection aims of the Directives. It makes amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.
8. **Schedules 1 and 3** set out the species in Annex IV and V of the Habitats Directive respectively whose natural range includes the offshore marine area.
9. **Schedule 2** sets out the species of animals and the relevant areas or countries to which the defence in regulation 40(5)(a) relates.

A range of sectors, including marine industries, fishing businesses and public bodies, may be undertaking activities outside territorial waters and could be affected by the introduction of these Regulations. Section 4 (sectors and groups affected) sets this out in more detail.

Rationale for Government Intervention

The UK has a legal obligation to implement the Habitats Directive beyond territorial waters. Failure to do so will put the UK at risk of incurring fines under the current Article 228 proceedings following the recent European Court of Justice judgment in Case C-6/04 *Commission v United Kingdom*. This requires the UK to implement the Habitats Directive beyond territorial waters. Although neither the High Court nor the European Court of Justice judgments relate to the Wild Birds Directive, the

Government believes there is strong justification for treating the Wild Birds Directive in the same way as the Habitats Directive as regards to the scope of application.

Apart from the UK's legal obligations for ensuring that European marine species and habitats are protected, the UK Government is committed to a vision of *'clean, healthy, safe and productive and biologically diverse oceans and seas'*¹⁶. Development and exploitative human activity in the marine environment has been found to degrade the environment and negatively impact on marine biodiversity, as set out in the State of the Seas Report¹⁷. Current legislation does not provide a comprehensive framework for European habitats and species protection in the offshore marine area, and without protection, there would be a decline in these species and habitats. Lack of protection of these species and habitats could contribute to a reduction in the resilience of marine ecosystems.

Rationale for Government intervention can be justified according to the following three main aspects of sustainable development:

Environmental:

Without management, European species and habitats will degrade. The continued degradation of species and habitats of European importance could affect both the completion and resilience of the Natura 2000 network across Member States. This may contribute to wider degradation of ecosystems and less resilience to climate change.

In addition, biodiversity is a public good that gives benefits to society as a whole. There is little or no 'market' for improvements to marine biodiversity as no one individual or organisation can benefit financially when the benefits of such actions will accrue to everybody. Similarly, individuals or organisations who damage marine biodiversity will not themselves suffer the cost of that damage as they do not own the resource. When markets will not in themselves provide outcomes that add value to the common good, but can detract from it, this is known as market failure. Where market failure is affecting the provision of a public good, there is often a case for the Government to intervene to ensure that the common good does not suffer. Marine nature conservation is one such area which includes the protection of biodiversity of European importance.

Social:

The importance that people in the UK place on the existence of marine wildlife is difficult to value, but is evident in a number of ways, including for instance the audiences for marine nature documentaries such as the BBC's Blue Planet series (approaching 10 million), membership of organisations such as the Marine Conservation Society and WWF, and national campaigns such as the 165,000 pledges of support calling for better protection for the seas presented to Government by Wildlife and Countryside Link in June 2005.

¹⁶ Department for Environment, Food and Rural Affairs 2005. Safeguarding Sea Life: The joint UK response to the Review of Marine Nature Conservation. PB 10900. Defra publications, London. www.defra.gov.uk/wildlife-countryside/ewd/rmnc/pdf/rmnc-review-1205.pdf

¹⁷ Department for Environment Food and Rural Affairs 2005. Charting Progress – An Integrated Assessment of the State of UK Seas PB9911. Defra Publications.

Economic:

By not providing protection to marine biodiversity of European importance there could be knock on effects to the economic and social benefits derived from the seas. Examples include reductions in wildlife-related tourism and lost research opportunities and applications as a result of biodiversity loss.

Consultation responses to our April 2006 consultation have shown that there is general support for government intervention.

3. Consultation

In preparing the revised draft of the regulations which accompany this Regulatory Impact Assessment, Defra has consulted:

- a. **Other Government Departments** including the Foreign and Commonwealth Office, Department for Constitutional Affairs, Department for Transport, Department for Trade and Industry, Home Office, Ministry of Defence, Department for Culture, Media and Sport and Communities and Local Government.
- b. **Government Agencies** including the Joint Nature Conservation Committee, Marine Fisheries Agency and the Maritime and Coastguard Agency.
- c. **Devolved administrations** including the Department of the Environment Northern Ireland, National Assembly of Wales and the Scottish Executive.
- d. **Stakeholders and the general public** through two consultation exercises. Annex A lists the organisations invited to comment on the Regulations.

Public consultation was carried out on drafts of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations in August 2003 and April 2006. Copies of the consultations, Regulatory Impact Assessments and summaries of the responses can be viewed at the following webpage:

<http://www.defra.gov.uk/marine/biodiversity/omcr.htm>. Annex B lists the respondents to both consultations.

For each consultation exercise around 250 organisations were invited to comment. 73 responses were received in total to both exercises and included responses from industry and business associations, Government Agencies, Non-Government Agencies and environmental forums and individuals. These views helped us to finalise the regulations by confirming recommendations and suggesting alternative approaches.

The key issues raised during the second consultation were in relation to the following:

- a) Standardisation of the penalty provisions so a person guilty of an offence is liable to fines up to the statutory maximum on summary conviction and an unlimited fine on indictment.

Most consultees were generally in favour of the new approach to penalties but a number of organisations thought that the penalties should be proportionate to the level of environmental damage caused. By creating a framework that allows the courts to decide the severity of the penalty with unlimited fines on indictment we think that the penalty system will achieve this.

- b) Revision of the offences and defences to ensure that they more closely meet the requirements of the Habitats and Wild Birds Directives (and prevent 'gold plating');

There was general support for the suggested changes to the species offences. As a result of concern raised in the consultation about the removal of the defence for the mercy killing of a European Protected Species or a wild bird, we have re-inserted these provisions.

- c) Introduction of new species – whether a defence of “reasonable excuse” should be more clearly defined;

A large number of respondents agreed that this defence should be better defined and some of these expressed deep concern about the impact of the Regulations in relation to ballast water operations. See the competition section for further details about how these concerns were taken into account as much as possible.

- d) New provisions for enforcement of the regulations – that will enable appropriate authorised officers to be appointed by the Secretary of State to carry out a range of enforcement functions such as boarding, entering and inspecting vessels etc;

Of those consultees that offered an opinion, half thought that further powers of enforcement were necessary for a range of reasons. One consultee thought that the proposed powers of boarding, entry and inspection in relation to ships went beyond similar provisions under the Merchant Shipping Act 1995. Another thought that the powers conferred on authorised officers under the regulations differed from those conferred on constables in Regulation 101 of the Habitats Regulations 1994.

The enforcement powers in the Offshore Marine Regulations extend to the level of jurisdiction, therefore enforcement of British ships (with specific provisions) will apply to wherever the ship is located. This is consistent with the Merchant Shipping Act and fisheries enforcement. The Marine Fisheries Agency will carry out the enforcement functions (see section 8) and we have created powers that we feel are appropriate to their remit (which may differ from that carried out by a police constable). In addition a Memorandum of Understanding between the Police and the enforcing agencies will establish clear delineation of functions and involvement of each in enforcing the regulations.

- e) Fuller provisions for surveillance and monitoring of habitats and species to ensure that we meet the requirements of the Habitats and Wild Birds Directives in addition to the terms of case C-06/04.

The majority of respondents welcomed the new provisions for monitoring and surveillance, see sections 8 and 9 for further details of these provisions.

- f) Integration of the regulations for transposing the Habitats Directive

A number of organisations questioned the need for multiple regulations that transpose the Habitats Directive and suggested the integration into a single set of regulations covering all activities in the offshore marine area. As set out in section 10, we intend to carry out a review of the regulations for consolidation.

- g) Responses to the Partial Regulatory Impact Assessment

Only 7 organisations provided responses about the Partial Regulatory Impact Assessments. These comments provided general feedback rather than quantitative data about the effect that the Regulations may have on stakeholders.

4. Options

In consultation with stakeholders, in the 2003 and 2006 consultations, we considered a variety of options of how best to transpose the Habitats Directive outside territorial waters. Options 2, 3 and 4 considered below would transpose the requirements of the Directives without unnecessary over-implementation.

Option 1 - Do nothing.

This is not regarded as a real option as we have a legal obligation to transpose the requirements of the Habitats Directives. In the case *C-6-04 Commission v United Kingdom*, the European Court of Justice ruled against the UK for not having implemented the whole of the Habitats Directive beyond its territorial waters. The UK is under an obligation to meet the terms of the judgment and a failure to do so puts it at risk of further legal proceedings which may result in fines being imposed by the European Court of Justice.

The UK Government has never been fined for a failure to comply with European Union law but the European Court of Justice can impose very heavy fines. For example France was recently fined a lump sum of Euro 20 million, plus Euro 57 million for every six months it failed to comply with a judgment of the European Court of Justice. While we might hope, if fined, to avoid one at that level, the impact of any fine is likely to be very high.

Option 2 - Extend the application of the Conservation (Natural Habitats &c.) Regulations 1994 (SI 1994/2716) and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 to the area beyond territorial seas.

This is not considered practical. The 1994 Regulations are principally designed to deal with the application of the Habitats Directives to the terrestrial environment and territorial seas, particularly in view of the town and country planning system.

Option 3 - Introduce regulations transposing only the Habitats Directive beyond the territorial seas.

This option would provide new regulations that take account of the unique circumstances of the offshore marine environment, and would allow the UK Government to comply with its obligations under the Habitats Directive.

Option 4 - Introduce regulations transposing both the Habitats and the Wild Birds Directives beyond territorial waters.

This is the Government's preferred option. There are strong legal arguments to say that not only the Habitats Directive but also the Wild Birds Directive should be transposed beyond territorial waters. The obligation to implement the Habitats Directive outside territorial seas is derived from Article 2 of the Habitats Directive, which provides that the Directive relates to the UK territory to which the Member State applies. Article 1 of the Wild Birds Directive uses similar wording.

Defra's chosen option – option 4

The comments received from the 2003 consultation of the Regulations and its partial Regulatory Impact Assessment¹⁸ indicated that option 4 was preferred by most respondents. Most organisations thought that the same treatment of both the Habitats Directive and the Wild Birds Directive would assist with the conservation of species and habitats more fully. Support was given to reject option 1, and options 2 and 3 were rejected by most organisations.

Therefore we have discounted options 1, 2 and 3 for the reasons provided above. The regulatory impact of new legislation realising either option 3 or option 4 is estimated to be the similar.

Sectors and groups affected

The sectors that have been identified as being potentially affected by the proposed regulations are set out below. It is not expected that any of the proposals will impact disproportionately on any sector, or grouping of individuals, organisations or interests, or on any devolved administration or region of the UK. The extent to which the regulations might impact on a particular sector will however depend on the level and type of interaction between its activity and the species or habitat to be protected.

¹⁸ Both are available from <http://www.defra.gov.uk/corporate/consult/offshore-marine/index.htm>

Commercial interests:

- cable laying;
- construction;
- diving;
- energy, including wind and tidal;
- extraction and dredging (in respect to species provisions);
- oil and gas (in respect to species provisions)
- fishing (commercial and recreational);
- marine recreation and leisure, including boat tours, wildlife watching;
- pipelines;
- marinas, ports, shipping and navigation;
- telecommunication.

Other sectors and interests:

- recreational and leisure users;
- environmental interest groups;
- maritime trade associations;
- general public.

Government:

- government departments with marine responsibilities;
- statutory agencies and other public bodies.

Equity and Fairness

The proposals apply principally to the offshore marine area and activities that take place there (not to the land or inshore area). They affect the rights of users of the offshore marine area and the wider public interest of protecting the natural environment. The proposals have no undue effect on particular racial groups, income groups, gender groups, age groups, people with disabilities, or people with particular religious views. Nor do they raise any health issues. We do not envisage any Equity and Fairness issues to arise as a result of Regulations.

5. Costs and benefits

The costs and benefits of implementation of the proposed regulations (option 4) will depend upon the European species or habitat to be protected and the activities that could have an effect on them. Costs may be incurred by businesses and will depend on whether or not their activities are causing an adverse effect on the integrity of a European offshore marine site or a European site, and the nature of the measures to be taken to reduce or eliminate such adverse effects. Other Government Departments, devolved administrations and other consultees to the previous two consultation exercises were invited to provide information to inform this final Regulatory Impact Assessment. Very few comments were received and no quantifiable data.

In the absence of information being provided, estimates of the possible valuations of costs and benefits are provided where these are available, along with some unquantified costs and benefits to give an indication of the likely balance of costs, benefits and impacts on which to evaluate the impact of these regulations.

Possible extent of Natura 2000 network in the offshore marine area

We are committed to developing a network of Natura 2000 sites to protect species and habitats of European importance to help support an improvement in marine biodiversity.

Our statutory nature conservation advisers are currently considering the number of sites that are likely to be required to deliver our commitment within the UK offshore marine area and have proposed a list of search areas. They estimate that some 24 sites may be needed in the offshore area to cover the marine habitat types required by the Habitats Directive. They are currently considering whether additional sites might be required for birds or for marine species beyond territorial waters to meet the requirements of both Directives.

When proposals are drawn up for candidate special areas of conservation and potential special protection areas, these will be accompanied by a site-specific assessment of the regulatory impacts. Sites are designated on the basis of the available science meeting the relevant selection criteria. Site-specific assessments will be used to consider whether there is a need to mitigate regulatory impacts.

Costs

Environmental:

- Some deterioration of areas outside protected sites which are not of European significance, particularly if activities are diverted to areas that had been less heavily impacted. Displacement of marine industry activities may, for instance, lead to a greater concentration of impacts elsewhere. For example, closing an area to a particular fishing activity could result in fishermen moving into areas that they may not have fished before and therefore have an impact on the biodiversity of the new fishing area.

Social:

- A very small risk of reductions in public access to European offshore marine sites where this is necessary for the protection of the site. It is unlikely that the offshore area will be greatly used for recreational activities such as scuba diving or sea angling that would be affected by restricted access. A recent report by the Environment Agency¹⁹ (2005) states that 3 million people in England and Wales have been Sea Angling. Whilst the activity is likely to be carried out inshore, restricted access to sites could affect the few that could carry out angling offshore. This would only happen in cases where it has been identified that this activity could have a significant effect on a site. However, the Environment Agency in its report indicates that the majority of anglers recognise and support the closures for the benefits to marine conservation.

Economic - sites:

- Costs to **marine industries** associated with modifications, revocations or refusals of consents for activities affecting European offshore marine sites or European sites (as part of a review of consents or following on from an appropriate assessment by a competent authority by competent authorities). Compliance costs for a typical business are difficult to quantify because although areas of search have been identified for offshore marine sites, these have not yet been nominated to the European Commission. In addition there are a wide variety of businesses which operate in the offshore marine area which will affect sites depending on the site size, type of site and business activity. Costs for compliance will also depend on whether or not the activity is likely to have a significant effect on a European offshore marine site²⁰ or a European site²¹. Detailed assessments of valuing the marine environment are on-going.
- Some possible additional administrative time and cost to **marine industries** include the consideration of impacts on sites when applying for a consent. Any such additional delays regarding the outcome of the consenting process could increase costs for industry. However we expect that costs might be offset by greater certainty about the location of important European habitats and species that should help avoidance and mitigation for industry sectors (information about draft sites is available from JNCC's website²²);
- Costs to **fishing businesses** are associated with restrictions on fishing activities where these are required to protect the integrity of a site, either through opportunity-loss (inability to fish in previously open areas), requirements for changes in fishing gear, or marginal administrative costs associated with complying with fisheries restrictions. We are not however anticipating that controls for European offshore marine sites would generally have a significant effect as most sites are likely to be relatively small in relation to fishing grounds and offshore fishermen could generally maintain the same fishing activities in other areas with only marginal impacts on profitability²³; An example of potential

¹⁹ 'Attitudes to Angling', 2005, Environment Agency.

²⁰ European offshore marine site is defined in regulation 13

²¹ European site is defined in regulation 21

²² http://www.jncc.gov.uk/protectedsites/sacselecion/SAC_list.asp?Country=OF

costs to the fisheries sector is provided by the Royal Commission on Environmental Pollution report '*Turning the Tide*' (RCEP, 2004). Based on the assumption that 30% of the Irish Sea was dedicated to a MPA network and this resulted in the exclusion of the fishing industry, on a *pro rata* basis this could impose a cost of £18m p.a. (at 2002 prices). However, this study is based on inshore fisheries so we would expect a much smaller overall cost for the offshore area. In addition the 24 offshore sites will comprise a much smaller proportion of the whole marine area, certainly not as much as 30%, and we would not expect exclusions or a change of gear to be needed in every instance.

Economic – species:

- Costs to **marine industries** will be associated with the application of a wildlife licence, in order to allow an industry to continue to carry out an activity that would otherwise result in an offence being committed (for example, if a cetacean has been disturbed or killed). The costs involved in applying for a wildlife licence will depend on the complexity of the case and detail of information required for the licence. An estimate of the cost of a straightforward wildlife licence, such as an application for scientific research on a cetacean (where all the scientific information about favourable conservation status had been provided) could be in the region of £100, but a more complex licence application could potentially cost up to £1000. Industries will be required to provide supporting information for wildlife licences, however in most cases we would expect that this information to have been provided as part of the industry consent or licence (part of the Environmental Impact Assessment process). We therefore do not expect a high cost of licensing on marine industries.
- There will be costs to **marine industries** in order to protect species of European importance (whales, dolphins, porpoises, marine turtles and the common sturgeon). Industries may need to change their practices to avoid committing offences, for example by carrying out activities at a time that is less likely to affect the species or in a way that is known to reduce the effect. Guidance will be provided to the industries in order to help inform them how they can take preventive measures, for example best practice guidance for seismic surveys.
- Without taking measures to prevent committing an offence or applying for a wildlife licence, **Marine industries** may be at risk from a prosecution if for example they disturb a European protected species (such as a cetacean) at the level specified in the Regulations (disturbance to a group of animals, in a way that affects their ability to survive, breed and look after their young). If found guilty of an offence a fine of £5,000 is payable on summary conviction, or a higher fine will be payable for more serious crimes that are taken to the Crown Court.

²³ 'Investigations into closed area management of North Sea cod' (CEFAS); 'Economic impact of area closures and effort reduction measures in the North Sea' (CEMARE). 'Marine protected areas for management of temperate North Atlantic fisheries: Lessons Learned' (Newcastle University) - the main issue when assessing the potential economic impact of closed areas on the fishing industry seems to be whether the displaced fishery effort continues elsewhere, or if the effort is removed. The CEMARE study indicated that if effort is not removed the economic impact was negligible for the beam trawl fleet because beamers are relatively mobile. For the otter trawl fleet relocation can result in a small reduction in revenue.

- Costs to **fishing businesses** are associated with restrictions on fishing activities where these are required to protect a European Protected Species (such as dolphins) in a particular area. Costs may include complying with new restrictions such as restricted or modified access to an area, or updating fishing gear to one that is more environmentally friendly, (this could include a dolphin escape hatch²⁴ or use of acoustic pingers (when the technology is available).

Economic - species and sites

- Costs to **Government** will be associated with establishing and managing European offshore marine sites, paying a body to enforce the regulatory provisions, paying for the administration of the wildlife licensing provisions, holding hearings (on the basis of representations received about draft sites). Preliminary estimates of these costs are set out in tables 1 and 2. There will also be minimal additional costs for meeting the surveillance and monitoring requirements set out in Part 5 of the draft Regulations (see section 8);
- Costs to **competent authorities** will result from implementation of the regulations, for example, carrying out appropriate assessments, reviews of consents and running management schemes, applying duties as necessary (e.g. providing sector specific best practice advice in relation to the nature conservation duty).
- Costs for the **conservation agencies** will mainly be covered by funding from the Government for the activities outlined in Tables 1 and 2. Additional costs to conservation agencies could result from increased engagement with stakeholders to ensure a good rate of compliance, for example working with the enforcement bodies to ensure that education helps to prevent offences from being committed.

Table 1

Summary of indicative costs for establishing network of 24 Natura 2000 Sites		
Activity	Cost per site (£k)	Cost per 24 Natura 2000 sites (£k)
Survey Costs	100-120	£2.4million – £2.9million
Site Selection	20-25	£0.5million - £0.6million
Consultation	38	£0.9million
Management Schemes	10	£0.01million – £0.24million (depending on how many management schemes are required)
Total costs	168k – 193k	£3.81million - £4.64million

Table 2

Summary of indicative costs for implementing in relation to the network of 24 Natura 2000 Sites and species provisions	
Implementation - including enforcement, wildlife licensing and hearings	£0.5 - £2 million p.a.
Monitoring of Conservation status	£0.4million p.a. over 6 years
Total costs	£0.65 - £2.4million p.a.

Benefits:*Environmental:*

- Protection of European habitats such as sandbanks, reefs and submarine structures made by leaking gases;
- Protection of species of European as well as UK importance such as cetacea (whales, dolphins, porpoises), marine turtles and the common sturgeon through site protection mechanisms;
- Wider species protection for threatened species such as seals, shad and sturgeon (apart from the common sturgeon which is protected as above). This will help to reduce the risk of biodiversity loss;
- Healthy sites contributing to wider ecosystem functioning and thereby reducing the risk of significant ecosystem change or collapse and consequent impaired provision of essential ecosystem services;
- Maintenance of key elements of the marine environment, such as European habitats and species, will help us to improve our understanding and will provide a long-term environmental record. Our understanding of marine ecosystems and each part of the food web is continually improving, maintenance of these key aspects will enable us to further this;
- Improvements in ecosystem function can have benefits to goods and services provided by marine biodiversity, which can provide wider benefits to the environment, such as nutrient recycling and gas and climate regulation.
- There are wider benefits associated with the effective application of these regulations from ensuring that nature conservation information is collected and considered in the licensing and authorisation of offshore marine activities and developments.

Social:

- Increased education and improved knowledge of European habitats and species within offshore marine sites and the wider environment through species protection. This will be done through new information and guidance that will be available from Defra and JNCC. Increased social values such as existence, bequest and altruistic values. These values enhance our social wellbeing. For example, Cabinet Office (2004) reports an estimate of £500 to £1150 million per

annum for the existence or non-use value associated with the preservation of UK sea mammals.

- The transposition of the Habitats and Wild Birds Directives outside territorial waters will improve the protection given to marine species and habitats and in doing so, will help to maintain these values;
- Improved goods and services provided by UK marine biodiversity (to which European habitats and species contribute) which can have wider benefits to society, for example by providing genetic biodiversity which can be used for medicinal purposes.

Economic:

- There are a range of studies that highlight the monetary benefits of marine wildlife areas. English Nature (1995) identified the direct and indirect financial flows associated with recreational activities at number of marine sites. In some cases the values were very significant, for example in the case of Morecambe Bay in excess of £150m.²⁵
- In Scotland wildlife tourism is an important source of economic benefits. It has been estimated income generated by whale tourism in the Highlands and Islands is close to £10m per year (GHK, 2004). More generally, it has recently been estimated that the turnover of the marine leisure industry exceeds £19 billion (Pugh and Skinner, 2002)²⁶.
- Drew Associates (2004) estimate that recreational fishing in the form of sea fishing generates a total economic value of between £600m to £1,300m per year²⁷. The same study in a survey of anglers also found that anglers valued most highly fish size and diversity of catch, while significantly less value was attributed to numbers caught. However, it should be noted that recreational fishing is likely to primarily take place inshore.
- Contribution to provision of ecosystem goods and services on which **marine industries** rely and option values on resources such as genetic resources available from the UK marine environment that are not being utilised commercially at present, but may be of significant importance in the future resulting in future revenue opportunities;
- The introduction of legislative provisions would also add legal certainty and better planning for **marine businesses** and sea users, potentially reducing the costs associated with extensive modification of consents;

²⁵ English Nature (2005) Financial values of five important marine/coastal wildlife areas in England. Research Report No 182.

²⁶ Pugh, D. and L. Skinner (2002) A new analysis of marine related activities in the UK economy with supporting science and technology. IACMST Information Document No. 10, August 2002.

²⁷ Drew Associates (2004) Research into the economic contribution of sea angling. Report commissioned by DEFRA.

- It is possible there may be some contribution to improvements in fish stocks for **fishing businesses** associated with improvements protecting European species and habitats which contribute to supporting ecosystems;
- Some opportunities for **leisure businesses** undertaking activities associated with marine wildlife. For example, any steps which help to improve the abundance of cetaceans could have knock-on effects for eco-tourism, such as whale watching.

Table 3:

Summary table of costs and benefits of option 4	
Benefits	Costs
<p>Environmental</p> <ul style="list-style-type: none"> • Protection of European habitats such as sandbanks, reefs and submarine structures made by leaking gases. • Protection of species of European as well as UK importance such as cetacea (whales, dolphins, porpoises), marine turtles and the common sturgeon through site protection mechanisms. • Wider species protection for threatened species such as seals, shad and sturgeon (apart from the common sturgeon which is protected as above). This will help to reduce the risk of biodiversity loss. • Healthy sites contributing to wider ecosystem functioning and thereby reducing the risk of significant ecosystem change or collapse and consequent impaired provision of essential ecosystem services. • Maintenance of key elements of the marine environment, such as European habitats and species, will help us to improve our understanding and will provide a long-term environmental record. • Improvements in ecosystem function leading to benefits to goods and services provided by marine biodiversity. In turn wider benefits to the environment, such as nutrient recycling and gas and climate regulation may be gained. 	<p>Environmental</p> <ul style="list-style-type: none"> • Some deterioration of areas outside protected sites which are not of European significance, particularly if activities are diverted to areas that had been less heavily impacted.

<ul style="list-style-type: none"> Wider benefits from the collation and consideration of nature conservation information in licensing and authorisation of offshore marine activities and developments. 	
<p>Social</p> <ul style="list-style-type: none"> Increased education and improved knowledge of European habitats and species within offshore marine sites and the wider environment through species protection. Increased social values such as existence, bequest and altruistic values. Improved goods and services provided by UK marine biodiversity (to which European habitats and species contribute) which can have wider benefits to society, for example by providing genetic biodiversity which can be used for medicinal purposes. 	<p>Social</p> <ul style="list-style-type: none"> A very small risk of reductions in public access to European offshore marine sites where this is necessary for the protection of the site.
<p>Economic</p> <ul style="list-style-type: none"> Future revenue opportunities for marine industries if present ecosystem goods and services are protected. The introduction of legislative provisions would also add legal certainty and better planning for marine businesses and sea users, potentially reducing the costs associated with extensive modification of consents; It is possible there may be some contribution to improvements in fish stocks for fishing businesses associated with improvements protecting European species and habitats which contribute to supporting ecosystems; Some opportunities for leisure businesses undertaking activities associated with marine wildlife. For example, any steps which help to improve the abundance of cetaceans could have knock-on effects for eco-tourism, such as whale watching. 	<p>Economic – sites</p> <ul style="list-style-type: none"> Costs to marine industries associated with modifications, revocations or refusals of consents for activities affecting European offshore marine sites or European sites. Possible additional administrative time and costs to marine industries including consideration of impacts on sites when applying for a consent. Costs to fishing businesses associated with restrictions on fishing activities where these are required to protect the integrity of a site. <p>Economic – species</p> <ul style="list-style-type: none"> Costs to marine industries will be associated with the application of a wildlife licence. The costs involved in applying for a wildlife licence will depend on the complexity of the case and detail of information required for the licence. Costs to marine industries in order

	<p>to protect species of European importance (whales, dolphins, porpoises, marine turtles and the common sturgeon).</p> <ul style="list-style-type: none"> • Marine industries may be at risk from a prosecution if for example they disturb a European protected species (such as a cetacean) at the level specified in the Regulations. • Costs to the fishing industry may include compliance with any new restrictions to protect species including updating fishing gear to one that is more environmentally friendly. • Costs to Government of establishing and managing European offshore marine sites, putting in place the enforcement provisions and monitoring and surveillance requirements. • Costs to competent authorities will result from implementation of the regulations, for example, carrying out appropriate assessments, reviews of consents and running management schemes. • Additional costs to conservation agencies could result from increased engagement with stakeholders to ensure a good rate of compliance.
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Overall despite the difficulty in quantifying the costs and benefits in further detail, it is evident that there are significant environmental benefits associated with implementation of the Offshore Marine Regulations. In addition, social benefits clearly outweigh any social costs. There may be some marginal economic benefits that are associated with the legislation; however the economic costs (to industry, competent authorities and Government) outweigh these.

Overall whilst it is difficult to value these costs and benefits in further detail, these economic costs are not disproportionate to the benefits of protecting European habitats and species in the offshore marine area.

6. Small Firms Impact Test

The August 2003 consultation document asked consultees to make an assessment of the impacts of policy proposals on small businesses. Small firm representatives

(including Federation of Small Business and Confederation of British Industry), local and national fishing organisations and various marine industry organisations²⁸ have been involved throughout the development of proposals for the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

The Small Business Service were consulted, and confirmed there will be not be a disproportionate impact from the introduction of the Regulations. This was reflected in the responses which highlighted that implementation of the Regulations will not have an impact on their small business or change how they operate.

There are no costs associated with the introduction of these regulations specifically for small businesses. When sites are designated or classified there may be some possible benefits or neutral impacts to small firms operating in the offshore marine area. Benefits from the introduction of the Offshore Marine Regulations may be seen by small firms involved in tourism and recreation (e.g. wildlife tours and diving) by increasing visibility of wildlife at sites and recreational and commercial fishing by providing designated site conditions that can support improvements in fish stocks. However these recreational activities are unlikely to occur often in the offshore area. It is expected that there would be positive knock-on benefits for small businesses supporting these activities.

More generally, the tourism industry as a whole could benefit from the UK's enhanced image as a result of improvements to areas and species of European importance within the marine environment.

It is expected that there could be some short term impacts on small businesses but that these will balance out in the longer term, resulting in overall *de minimis* impact. Consultation responses did not highlight any costs associated with the introduction of new regulation specifically for small businesses. There is only a fairly small possibility that restrictions or alteration of operations of small businesses in certain locations, near to a European Offshore Marine site as species and habitats offences will apply (diving, wildlife watching, commercial or recreational fishing). Also the protection of European Protected Species (such as dolphins) throughout the offshore marine area may result in a modification of the operations of some small business (diving, wildlife watching, commercial or recreational fishing).

Whilst it is expected that site protection will result in some localised restrictions, it is not expected that these will always result in absolute exclusions of activities.

7. Competition assessment

The competition assessment filter test asks whether the policy measures will directly or indirectly limit the number or range of suppliers; limit the ability of suppliers to compete; or reduce suppliers' incentives to compete vigorously.

Such a test was carried out as part of the 2003 consultation and its associated partial Regulatory Impact Assessment. The majority of consultees (over 90%) did not

²⁸ (including navigation, oil and gas development, offshore renewable energy, submarine cables and pipelines, fisheries and mariculture, recreation and tourism)

comment on the assessment provided, and only a very small percentage thought that the Regulations could affect competition.

The 2006 consultation showed a similar result. Out of a total 37 responses to the consultation, 5 responses expressed concern of the impact that the Regulations will have on competition. These responses concerned the issue of ballast water, where the Regulations will prohibit (with certain exceptions) the introduction of non native species in the offshore marine area. Respondees were concerned that this provision will have an unfair effect on vessels flying an EU or UK flag which could have a significant and negative impact on the UK flag. It was felt that this would affect the competitive edge of UK shipping and lead to the transfer to other flags that do not have such controls.

As a result of the 2006 consultation, the provision for preventing the introduction of non native species has been revised. The regulation now effectively requires all reasonably practical steps to be taken to avoid the introduction of non native species in an area where it would give rise to a risk of prejudice, unless the introduction was necessary for the purpose of protecting the safety of any person or the ship. Whilst meeting the aims of the Habitats Directive this amended provision should allow responsible ballast water operations to continue, precluding any an adverse effect on competition.

Overall it is understood that the Regulations (in combination with sector specific Regulations where these apply) should impact equally across all users of the offshore marine area, no one interest being singled out for additional regulation. We therefore believe that the Regulations are unlikely to have a negative competitive impact and will not distort or affect competition in the relevant markets in the offshore marine area.

8. Enforcement, Sanctions and Monitoring

Enforcement

The draft Regulations will require two types of enforcement;

- i) for plans and projects likely to have a significant effect on sites,
- ii) for the offences for habitats and species, the provisions for which are included within Part 3 of the Regulations.

For the former, it is expected that the enforcement activity will be carried out through the licensing or other consenting regimes currently operated by competent authorities.

For enforcement of habitats and species offences we have proposed enforcement functions within Part 6 that can be carried out by a person appointed by the Secretary of State as an authorised officer. We have made a provision that the Secretary of State may make payments to such an officer. It is anticipated that in practice the existing fisheries enforcement agencies will carry out monitoring and enforcement of the Offshore Marine Regulation provisions.

We will aim to streamline enforcement activities with future enforcement of the marine nature conservation aspects of the Marine Bill as much as possible to avoid duplication.

For the site based offences in Part 2, and the species offences within Part 3 of the Regulations the approach to enforcement will be structured around risk based, intelligence led activities that are integrated wherever possible into existing enforcement work undertaken by the delivery bodies identified. Additional costs will arise however where these bodies need to pursue enforcement activities specifically targeted at delivery of nature conservation objectives that are not part of existing fisheries enforcement activities.

Site Based Enforcement

In addition to existing fisheries enforcement measures and costs we have estimated that the additional cost for activities required to enforce controls on potentially damaging unconsented activities in the 24 areas of search for European offshore marine sites, would be in the region of £0.5 million to 1.5 million per year (as set out in Table 2 above).

Species Enforcement

In addition to existing fisheries enforcement measures and costs we have estimated that the additional cost for activities required to enforce the prohibitions in relation to European Protected Species will cost in the region of £200K to 400K per year.

We have also engaged with the police and anticipate only marginal impact on police resources in order to deliver effective enforcement. A Memorandum of Understanding between the Police and the enforcing agencies to establish clear delineation of functions and involvement is being considered. On the whole we expect the police involvement in enforcing the Regulations to be minimal and largely confined to trade offences of EPS which may be beyond the scope of the enforcement agencies and require specialist knowledge and skills.

Sanctions

Offences under the regulations are punishable by fines. Where an offence is tried summarily, the maximum fine will be £5,000 (the current statutory maximum). Where it is tried on indictment, the level of fines is unlimited.

Monitoring

Wildlife Licensing

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in European Protected Species (extended to all Annex IV species and certain Annex II(b) plant species in respect of trade) and wild birds. Actions likely to commit offences may be licensed by the Secretary of State to continue lawfully. Licences may be granted for a number of purposes (such as science and education, conservations, preserving public health or safety), but only after being satisfied that it is consistent with the tests set out for making a derogation under Article 16 of the Habitats Directive and Article 9 of the Wild Birds Directive. The Marine and Fisheries Agency will take forward this licensing work. Information

and application forms will be made available from the following website: <http://www.mfa.gov.uk>.

Enforcement

As set out above the existing fisheries enforcement agencies will carry out enforcement activities for these Regulations in the offshore marine area.

Where human activities are likely to conflict with the regulations or intelligence suggests that this may be the case, enforcement will be targeted in these areas. We expect the JNCC to develop an ongoing advisory relationship with the enforcement agencies in regard to new and existing activities likely to conflict with the regulations in order to better target resources where they are most likely to be required.

Surveillance and monitoring

The new UK Marine Monitoring and Assessment Strategy, due for implementation in 2008, will meet the monitoring and surveillance needs of the Habitats and Wild Birds Directive and will help to establish the current state of our marine ecosystem. Surveillance of conservation status of habitats and species and monitoring incidental capture and killing will form a fundamental part of the Health and Biologically Diverse Seas gathering evidence group of UKMMAS.

Existing species monitoring programmes include monitoring of Small Cetaceans in the European Atlantic and North Sea (SCANS). SCANS II was completed in December 2006, following SCANS I from 1994. This 10 year follow up of cetacean abundance over the European Continental shelf was run by the Sea Mammal Research Unit. Cetacean Offshore Distribution and Abundance in the European Atlantic (CODA) monitoring (if confirmed) will extend the survey area out into the European Atlantic offshore areas (not previously covered by SCANS). By 2012, special area of conservation will be monitored through basic surveys checking for the presence, extent and condition of the features of the habitat for which the site is designated. If any sites are designated for seals using the current seal tracking study data in offshore waters, then they would also require monitoring.

Incidental capture and killing of cetaceans is already widely monitored in UK waters²⁹. The Cetacean Bycatch Observer Monitoring System will monitor all European Protected Species (cetaceans, turtles and sturgeon) and basking sharks. Cetacean Strandings Investigation and Co-ordination is an on-going monitoring programme run by the Institute of Zoology.

9. Implementation and delivery plan

Implementation measures will be in place by the time the regulations come into force in order to inform people of how we intend to implement the Regulations. These consist of the following main elements:

²⁹ Statutory Instrument No 17, 2005, Sea Fisheries, England, Conservation, England. The Incidental Catches of Cetaceans in Fisheries (England) Order 2005; and Scottish Statutory Instrument 2005 No 330 The Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005.

Guidance and information

We have sent a letter to all key stakeholders setting out the main legislative changes brought about by the regulations. This information is also available on the Defra website <http://www.defra.gov.uk/marine/biodiversity>

Site identification and consultation

JNCC has begun to identify draft special area of conservation beyond territorial waters as part of the implementation programme for the Habitats Directive. To date Defra has received proposals for 8 draft special area of conservation (details available from

http://www.jncc.gov.uk/protectedsites/sacselection/SAC_list.asp?Country=OF

Special areas of conservation can only be proposed on the basis of the specific criteria contained in Annex III to the Habitats Directive and relevant scientific information. We expect that JNCC will carry out a public consultation on this first tranche of sites once the regulations are in place with a view to submitting sites to the Commission in 2008.

We are putting in place a Hearing process. This will allow the Secretary of State to decide that a hearing should be held as a result of the representations received during the consultation process.

We expect that the Planning Inspectorate will lead on all Hearing proceedings and guidance will be made available on the Defra website.

10. Post implementation review

In order to build up an evidence base of the implementation of the Regulations, Defra, in consultation with other departments, will conduct a review of the legislation within 3 years of enactment³⁰, and report to Ministers on effectiveness and performance against principles of good regulatory practice. The review will check whether the legislation is delivering value for money, and propose improvements where necessary. It will consider the need to review and consolidate the suite of legislation in England used to transpose the Habitats Directive.

In evaluating the measures introduced through the legislation, the following will be a useful guide to success:

- the tools it introduces are being used successfully in conjunction with existing delivery measures to provide increased certainty and transparency in implementing government's policies for the offshore marine area (e.g. a record of the number of licences issues);
- the net environmental, social and economic benefits of implementing the proposals justify the resource allocated to them – i.e. they are cost

³⁰ In accordance with guidance from the Better Regulation Executive:
http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/post_implementation_review.asp#PostReview

effective – there is no evidence that this resource could have reasonably been used in a different way to produce superior results more efficiently;

- development in the offshore marine area and exploitation of its resources continues without the negative effects on the marine environment that are currently occurring and would continue to occur if changes were not made;
- the proposals are perceived as being implemented fairly and constructively by the majority of those involved in the marine environment.

The review will ascertain whether the legislation is successful in delivering the points above and propose improvements where necessary. However, it will probably take longer than 3 years to make any realistic assessment of the legislation from a biodiversity perspective. This is likely to require of the order of ten years.

11. Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible minister

Ben Bradshaw.....

Date 24th June 2007.....

Further information on the development of Regulatory Impact Assessment's is available from the Cabinet Office's website at <http://www.cabinetoffice.gov.uk/regulation/ria/index.asp>

For enquiries about the Offshore Marine Conservation Regulations please email: marinebiodiversity@defra.gsi.gov.uk

or write to:

**Offshore Marine Conservation Regulations
Marine Biodiversity Team
Department for Environment, Food and Rural Affairs
Zone 1/05
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6EB**

LIST OF CONSULTEES

This consultation package has been sent directly to the following organisations for their views:

Advisory Committee on the Protection of the Sea
Alcatel
Anglo-French Offshore Surveys Ltd
Anglo-North Irish Fish Producers' Organisation Ltd
ARC
Associated British Ports
Association of British Offshore Industries
Association of Chief Police Officers
Association of District Salmon Fishery Boards
Association of Marine Scientific Industries
Association of Scottish Shellfish Growers
Association of Sea Fisheries Committees of England and Wales
Atkins Global
BHP Billiton Plc
Birdlife International
Biscay Dolphin Research Programme
BMT Cordah Ltd
Brett Marine Aggregates Ltd
Bristol Port Company
Britannia Aggregates Limited
British Chamber of Commerce
British Divers Marine Life Rescue
British Geological Survey
British Marine Aggregate Producers Association
British Marine Federation
British Oil Spill Control Association
British Ports Association
British Rig Owners Association
British Shippers Council
British Sub-Aqua Club
British Telecom Subsea Operations
British Trust for Ornithology
British Tugowners Association
British Water Ski Federation
British Wind Energy Association
Cabinet Office
Cabinet Office Legal Advisors (COLA)
CADW
CEMEX Marine Ltd
Central Council for Physical Recreation
Centre for Environment, Fisheries & Aquaculture Science
Chamber of Shipping
Chelonia Limited
Clackmannanshire Council

Clyde Fishermen's Association
Coastal Fisheries Conservation and Management
Coastal Management for Sustainability
CoastNET
Commissioners of Irish Lights
Confederation of British Industry
Confederation of British Industry (Wales)
Convention of Scottish Local Authorities
Cornwall Sea Fisheries Committee
Countryside Council for Wales
Countryside Recreation Network
Crown Estate
Crown Estate Commissioners (Scotland)
Cumbria Sea Fisheries Committee
Cumbria Sea Fisheries Committee
Department for Constitutional Affairs
Department for Culture Media and Sport
Department for Environment, Food and Rural Affairs
Department for International Development
Department for Transport
Department for Work and Pensions
Department of Agriculture and Rural Development (Northern Ireland)
Department of Agriculture, Fisheries and Forestry (Isle of Man)
Department of Environment, Heritage and Local Government (Republic of Ireland)
Department of Health
Department of the Environment (Northern Ireland)
Department of Trade and Industry
Devon and Cornwall Police Constabulary
Devon Sea Fisheries Committee
Dredging International (UK) Ltd
Earthkind
Eastern Sea Fisheries Committee
EMU Environmental
Energy Institute
English Heritage
English Nature
English Tourism Council
Environment Agency
Environment and Heritage Service
Environment and Heritage Service (Northern Ireland)
Environment Conservation & Management - Marine Policy
European Affairs
European Community Shipowners Association
European Federation of Sea Anglers
Europilots
Falkirk Council
Fauna and Flora International
Federation of Highlands & Islands Fishermen
Federation of Scottish Aquaculture Producers
Federation of Small Businesses

Federation of Small Businesses (Wales)
Fisheries Research Services
Foreign and Commonwealth Office
Friends of Cardigan Bay
Friends of the Earth
Glasgow City Council
Greenpeace
HAM Dredging Limited
Hanson Aggregates Marine Ltd
Health and Safety Executive
Hebridean Whale and Dolphin Trust
Herpetological Conservation Trust
HM Customs and Excise
HM Treasury
Home Office
HR Wallingford
Inland Revenue – International
Institute for Outdoor Learning
Institute of Ecology and Environmental Management
Institute of Environmental Assessment
Institute of Leisure and Amenity Management
Institute of Petroleum
International Association of Drilling Contractors
International Association of Geophysical Contractors
International Marine Contractors Association
Isles of Scilly Sea Fisheries Committee
Joint Fishing Communities of South & West Wales
Joint Links Oil and Gas Consortium
Joint Nature Conservation Committee
Kent and Essex Sea Fisheries Committee
Local Government Association
Maldon District Council
Mammal Society
Marathon Oil UK Ltd
Marine Biological Association of the United Kingdom
Marine Connection
Marine Conservation Society
Marine Ecology & Sailing
Marine Fisheries Agency
Marine Forum for Environmental Issues
Marine Laboratory (Aberdeen) Maritime & Coastguard Agency
MARINET
Maritime and Coastguard Agency
Ministry of Defence
Moray Firth Partnership
National Assembly for Wales
National Federation of Charter Skippers
National Federation of Fishermen's Organisations
National Federation of Sea Anglers
National Museums and Galleries of Wales

National Oceanography Centre
National Wind Power
Natural Environmental Research Council
Natural History Museum
Nautical Archaeology Society
Newcastle University
Non Operators' Forum
North Eastern Sea Fisheries Committee
North Sea Regional Advisory Council
North Wales and North Western Sea Fisheries Committee
Northern Ireland Fishermen's Federation
Northern Lighthouse Board
Northumberland Sea Fisheries Committee
Northwood (Farnham) Limited
Norton Rose Solicitors
Npower Renewables
Oakwood Environmental
Office of the Deputy Prime Minister
Office of the Solicitor to the Advocate General for Scotland
Offshore Contractors' Association
Personal Watercraft Partnership
Plantlife
Plymouth Marine Laboratory
Plymouth University
Poole Harbour Commissioners
Port of London Authority
Portsmouth University, CEMARE
Professional Boatman's Association
Proudman Oceanographic Laboratory
RMC Group Services Ltd
Royal Commission on Environmental Pollution
Royal Holloway University of London
Royal Society for the Prevention of Cruelty to Animals
Royal Society for the Protection of Birds
Royal Town Planning Institute
Royal Yachting Association
Salvage Association
Scotland & Northern Ireland Maritime & Coastguard Agency
Scottish Association for Marine Science
Scottish Coastal Forum
Scottish Environment Protection Agency
Scottish Executive
Scottish Fishermen's Federation
Scottish Marine Wildlife Operators Association
Scottish Natural Heritage
Scottish Pelagic Fishermen's Association
Scottish Renewables Forum
Scottish Society for Prevention of Cruelty to Animals
Scottish Water
Sea Fish Industry Authority

Sea Fish Industry Authority
Sea Mammal Research Unit
SeaWatch Foundation
SeaZone
Shark Trust
Shellfish Association of Great Britain
Small Business Service
South Coast Shipping Co Ltd
South Wales Sea Fisheries Committee
South West Interfish Project
Southern Sea Fisheries Committee
Sport England
Sussex Sea Fisheries Committee
The Alistair Hardy Foundation for Oceanographic Science
The Crown Estate
The Marine Laboratory
The Marine Stewardship Council
The Maritime and Coastguard Agency
The Meteorological Office
The National Federation of Sea Schools
The National Trust
The National Trust for Scotland
The Society for Underwater Technology
The Society of Aerospace Companies
The Treasury Solicitor Department
The Wildlife Trusts
Trinity Lighthouse Service
UK Association of Fish Producers Organisation Ltd
UK Cable Protection Committee
UK Hydrographic Office
UK Major Ports Group
UK Offshore Oil and Gas Association
UK Offshore Operators Association
UK Spill Association
United Kingdom Land and Hydrographic Survey Association
United Marine Aggregates
United Marine Dredging Limited
United Utilities
Van Oord UK Ltd
Vegetarian Economy and Green Agriculture
Visit Britain
Visit Scotland
Volker Dredging Ltd.
Wales Coastal and Maritime Partnership
Wales Wildlife and Countryside Link
Water UK
Welsh Assembly Government
Welsh Development Agency
Welsh Federation of Fishermen's Associations
Welsh Federation of Sea Anglers

Welsh Local Government Association
Welsh Tourist Board
West Coast Energy Ltd
Westminster Gravels Limited
Whale and Dolphin Conservation Society
Wildfowl and Wetlands Trust
Wildlife and Countryside Link
Wildlife Trust
Wildlife Trust (Northern Ireland)
Wildlife Trust of South and West Wales
WWF-UK
Yacht Charter Association
York University

List of respondents to the public consultation on the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2003 and 2006

Associated British Ports
British Association for Shooting and Conservation
British Marine Aggregate Producers Association
British Shipping
Countryside Council for Wales
Centre for Environment, Fisheries and Aquaculture Science
Cornwall County Council
Department for Environment, Food and Rural Affairs
Dr J. B. Wilson
E. On UK
English Heritage
Environment Agency
Environmental Industries Commission
Envirowatch
European Cetacean Bycatch campaign
European Community shipowners' Associations
Greenpeace
Hampshire County Council
Health and Safety Executive
Highways Agency
Individual responses (2)
Institute of Civil Engineers
Institute of Ecology and Environmental management
International Cable Protection committee
Joint Nature Conservation Committee
Kent and Essex Sea Fisheries Council
Marathon Oil UK
Marine Biological Association of the United Kingdom
Marine Connection
Marine Conservation Society
Marine Fisheries
Marine Wildlife Enforcement Group
Maritime and Coastguard Agency
Moray Firth Partnership
National Federation of Fishermen's Organisations
National Grid
Natural Environment Research Council
North Eastern Sea Fisheries Committee
North Wales Police
Northern Ireland Environment Link
Port of London Authority
Redcar and Cleveland Borough Council
Royal Society for the Protection of Birds
RWE Innogy Plc
Royal Yachting Association

Scottish Environment Protection Agency
Scottish Fishermen's Federation
Sea Fish Industry Authority
Shell EP Europe
Small Business Service
The United Kingdom Major Ports Group
United Kingdom Cable Protection Committee
United Kingdom Environmental Law Association Nature Conservation Working
Group
UK Hydrographics Office
UK Offshore Operators Association Limited
Vegetarian Economy & Green Agriculture Research
Whale and Dolphin Conservation Society
WWF-UK
Wildfowl and Wetland Trust

Code of Practice on Written Consultations

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007

Final Regulatory Impact Assessment

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1. Proposal

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (the “Amendment Regulations”) – further Regulations for the transposition of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”) into law, principally in England and Wales.

This Regulatory Impact Assessment (RIA) sets out the impacts of amending the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716) (the “Habitats Regulations”) and other related legislation.

A separate RIA is also being undertaken to set out impacts of transposing the Habitats Directive and Council Directive 79/409/EEC on the conservation of wild birds (the “Wild Birds Directive”) beyond territorial waters. This will be achieved through the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

2. Purpose and intended effect

(i) Background

The Habitats Directive was adopted in 1992 with the purpose of establishing common levels of conservation throughout the European Community for those habitats and species perceived to be under threat. Central to the Directive’s objectives is the establishment throughout the EC of a suite of protected sites called Special Areas of Conservation (SACs). These sites, together with Special Protection Areas (SPAs) designated under the Wild Birds Directive, form the EC wide ecological network known as Natura 2000 (N2K). Such sites in terrestrial areas and in territorial waters (i.e. out to 12 nautical miles) are referred to as “European sites” in this RIA; sites in the offshore marine area (beyond 12 nautical miles and out to 200 nautical miles) are referred to as “European offshore marine sites”.

The principal instrument transposing the Habitats Directive in Great Britain (and the adjacent territorial waters) is the Habitats Regulations.

Consultation on draft amendments to the Habitats Regulations in England, and on the principles of amendments in Wales, originally took place in 2003³¹. Following these consultations, the transposition of the Habitats Directive in the United Kingdom was subject to two European Court of Justice judgments.

In January 2004 the European Commission made an application to the European Court of Justice (ECJ) alleging a number of failings in the UK’s transposition of the Habitats Directive. The ECJ subsequently ruled³² that the United Kingdom had not correctly transposed the Habitats Directive in a number of areas (Case C-6/04, Commission v United Kingdom). In a later transposition case (Case C-131/05, Commission v United Kingdom), the ECJ ruled that Articles 12(2) and 13(1)(b) of the Habitats Directive were not correctly transposed since the Habitats Regulations only

³¹ <http://www.defra.gov.uk/corporate/consult/nat-habitats/index.htm>

<http://www.wales.gov.uk/subienvironment/content/consultations/transposition-e.htm>

³² <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62004J0006:EN:HTML>

prohibited the keeping, transportation and sale etc of Annex IV species native to Great Britain, as opposed to all Annex IV species.

A further consultation was published on 8 May 2006 which looked at amending the transposition of the Habitats Directive in England and Wales, in light of the above judgments and the results of the previous consultations.

The Amendment Regulations will make changes, principally in respect of England and Wales (though some amendments extend also to Scotland, and some only to Scotland), to the Habitats Regulations, the Wildlife and Countryside Act 1981 and the Conservation of Seals Act 1970 to reflect the two ECJ judgments and to otherwise improve the UK's transposition of the Habitats Directive by addressing other deficiencies.

This RIA relates only to England and Wales. Scotland, Northern Ireland and Gibraltar have consulted and drafted similar provisions which will or have already come into force in their territories.

(ii) Objective -

The proposal to amend the Habitats Regulations addresses current gaps and inconsistencies and will create greater legal certainty in a number of areas.

The amendments will:

- ensure appropriate assessments are undertaken for water abstraction and land use plans likely to have a significant effect on a European site or a European offshore marine site;
- amend the species protection regime to better reflect the Habitats Directive;
- provide a clear legal basis for surveillance and monitoring of European protected species; and
- toughen the regime on trading protected European species that are not native to the UK.

In summary the Amendment Regulations will:

- 1) Protect non-native species of animals and plants from trade and make it unlawful to trade (subject to certain exceptions) in wild specimens of Annex IV species taken or killed on or after 10th June 1994.

Where the species is an Annex IV or Annex II(b) species (other than any bryophyte) and taken from within the EC, sale or exchange of a specimen of that species will be unlawful if it was taken from the wild after 10th June 1994 from most EC countries. However, the date will be later for the recent accession countries and will be the day they joined the EC. A specimen taken before 10th June 1994 can be sold without a licence so long as it can be shown that it was taken in accordance with the law of the Member State in which it was taken.

- 2) Remove the majority of the defences in regulations 40 and 43.

- 3) Extend the current prohibition on the use of listed indiscriminate means of capture and killing in regulation 41 to include any yet unknown forms.
- 4) Impose a specific statutory duty to make arrangements for surveillance and monitoring.
- 5) Ensure that the requirement to carry out appropriate assessments on water abstraction consents and land use plans is explicit.

(iii) Rationale for government intervention

The UK wants to act in accordance with its stated intention to preserve and enhance biodiversity in line with the Convention of Biological Diversity signed at the Rio Earth Summit.

Failure to fully transpose the Directive may result in:

- The UK being unable to fully achieve its stated intention to preserve and enhance biodiversity.
- The current Article 228 proceedings (brought by the European Commission against the UK for failure to implement the ECJ's two rulings) progressing to judgment. Ultimately if deficiencies identified by the ECJ are not remedied there is a risk that the UK will be subject to substantial financial penalties.

The responses from the consultation supported the rationale for Government intervention.

3. Consultation

In preparing the Amendment Regulations which accompany this RIA, Defra has consulted:

a) **Other Government Departments** including the Ministry of Defence and the Department of Trade and Industry, have been consulted in principle on the proposed changes to the 1994 Regulations.

b) **Delivery bodies** such as Natural England (NE) (formerly Rural Development Service and English Nature), the Countryside Council for Wales (CCW) and the Forestry Commission (FC) have also been consulted. The police have also been consulted on enforcement.

c) **Devolved administrations** in Scotland, Northern Ireland and, particularly in view of the extent of the proposed regulations, the Welsh Assembly Government, have been consulted on the proposed changes.

d) **Stakeholders and the general public** in England and Wales were consulted on 8 May 2006. Annex A lists the organisations that responded to the consultation.

A summary of responses and other relevant documents can be found on the Defra website via: www.defra.gov.uk/wildlife-countryside/ewd/index.htm

4. Options

Two options were identified in the consultation which took place in May 2006.

Option 1: Continue to rely on existing legislation, including the general duties on competent authorities (any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office) to give effect to the Habitats Directive, and administrative procedures currently being practised.

Option 2: Make amending regulations to improve the transposition of the Habitats Directive in England and Wales.

The Habitats Regulations can be amended by Statutory Instrument and thereby improved in accordance with the two ECJ judgments in Cases C-6/04 and C-131/05.

Option 1 is the 'do nothing' option. Until now, many of the obligations of the Habitats Directive have been delivered through policies and guidance without specific legislative transposition and by means of general legal duties. However, the ECJ's judgments in Cases C-6/04 and C-131/05 found that the UK had not accurately and effectively transposed parts of the Habitats Directive into national legislation. If the UK does not amend the relevant pieces of legislation, the European Commission may continue current legal proceedings which could result in substantial financial penalties being imposed on the UK Government.

Option 2 provides better transposition of the Habitats Directive in the UK and will thus improve the protection afforded to wildlife and habitats in the UK. Although many of the changes reflect what is already being done in practice, the UK is required to clearly and precisely transpose the Directive into domestic legislation.

5. Defra's chosen option

Following the consultation, Defra chose to pursue the second option, which involves amending the relevant pieces of legislation. As the UK Government is required by the ECJ judgments to improve the transposition of the Habitats Directive in domestic legislation, non-regulatory options have not been considered.

We have taken on board consultees' comments and sought to find solutions to their concerns as detailed below:

- 1) There was support for protecting non-native species of animals and plants from trade, and making it unlawful to trade (subject to certain exceptions) in specimens of Annex IV or Annex II(b) species taken or killed on or after 10th June 1994. Where the species is an Annex IV or Annex II(b) species (other than any bryophyte) and taken from within the EC, sale or exchange of a specimen of that species will require a licence if it was taken from the wild after 10th June 1994 from most EC countries. However, the date will be later for the recent accession countries and will be the day they joined the EC. A specimen taken before 10th

June 1994 can be sold without a licence so long as it can be shown that it was taken in accordance with the law of the Member State in which it was taken.

However there were concerns that this would result in an increase in the licensing burden with no conservation benefit as most specimens will already be dead.

- We have sought ways of reducing the increased licensing burden by simplifying the relevant licence application forms.
- We have provided additional time (3 months) for those that currently possess Annex IV or Annex II(b) species (other than bryophytes) to obtain a licence.

2) There was general support for the removal of the majority of defences in regulations 40 and 43. However, there were concerns, particularly from the forestry sector, that the removal of the defences would increase the licensing burden and constrain woodland management (noting that the majority of the protected species are associated with woodland). There were particular concerns over the strict liability offence in relation to species such as dormice and bats where the breeding sites are not easy to locate. There were also concerns that the removal of EPS protection from the Wildlife and Countryside Act 1981 (WCA) would reduce protection.

- We have explored ways of reducing the licensing burden by simplifying the licensing regime whilst remaining within the constraints of the strict species protection regime.
- We have also reduced the potential licensing burden by amending the deliberate disturbance offence to allow activities which have low level impact to continue without a licence.
- We will provide practical guidance to help those that carry out activities assess whether they require a licence i.e. whether they will commit an offence. Guidance will encourage practices that avoid an offence being committed, and therefore the need for a licence.
- We have removed protection of EPS from the WCA where possible whilst maintaining the level of protection afforded to those species. We have raised penalties for offences under the Habitats Regulations and added enforcement provisions equivalent to those inserted into the WCA by the Natural Environment and Rural Communities Act 2006 to ensure enforcement consistency.

3) There was support for extending the current prohibition on the use of listed indiscriminate means of capture and killing in regulation 41 to include any yet unknown forms. However there were some concerns that the change would limit legal methods of capture and killing.

- A thorough list of means of indiscriminate capture and killing is already included in regulation 41, and we have not identified any other indiscriminate means not currently listed. It is therefore considered that, for the current time at least, the amendment merely provides clarification and that there will be no changes in practice to legal methods of capture and killing.

- 4) There was support for a specific statutory duty to make arrangements for surveillance and monitoring. There was also support for surveillance of species outside their current natural range to take account of climate change impacts. However, there were concerns about the lack of detail in the amendment to the Habitats Regulations and the lack of consultation to be undertaken outside Government. There were also concerns that supplementary measures were not specifically mentioned. The availability of sufficient resources to carry out these duties was also raised.
- Surveillance and monitoring is already being carried out in England and Wales which is co-ordinated by the Joint Nature Conservation Committee (JNCC). Supplementary measures are already available, to increase protection if necessary such as introducing prohibition on taking and quotas, which will be put into action when necessary. The amendment to the Habitats Regulations merely adds a statutory duty to undertake activities already being carried out.
 - We will explore with JNCC whether there are any gaps in the current monitoring and surveillance systems and, if appropriate, seek to fill gaps according to the availability of resources.
 - We will consult, where appropriate, on the nature of surveillance and monitoring.
- 5) There was broad support for land use and water abstraction plans and projects to be expressly subject to the obligations in regulations 48 and 49 (requirement to consider effect on European sites in Great Britain and European offshore marine sites) and regulations 50 and 51 (requirement to review certain existing decisions and consents, &c). However, many commented that these provisions should have been extended beyond the immediate requirement of the judgment, to include all plans or projects in order to fully reflect the requirements of Article 6(3) of the Habitats Directive.
- Currently the general duty under regulation 3(4) of the Habitats Regulations compels every competent authority in the exercise of any of their functions to have regard to the requirements of the Habitats Directive (including Article 6(3) and (4)), so far as they may be affected by the exercise of those functions. However, following these amendments, we intend to carry out a further review of the Habitats Regulations to, amongst other things, address transposition gaps filled by general duties and look to expressly fill those gaps on the face of the regulations. This will include looking in detail at Part IV (which does not include specific reference to all relevant plan or project regimes) so that all relevant regimes are expressly captured by the Habitats Regulations.

6. Costs and benefits

(i) Sectors and groups affected by option 2

Some business sectors, principally taxidermists and other animal traders, zoos, museums and other animal collections, may be affected by the proposed stricter possession and sale controls concerning species listed in Annex IV to the Habitats Directive. Those that already possess wild sourced Annex IV species and those that

legally acquire them after the Amendment Regulations come into force may be required to obtain a licence to continue to possess the specimens. Those that wish to trade in Annex IV specimens will also require a sale licence. If the species is also protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an Article 10 licence will be required as well. However, we do not believe that there is a significant trade in such species and therefore any impacts will be minimal.

Some business sectors, principally forestry and agriculture, will be significantly affected by the removal of the 'incidental result' defence as currently provided for in regulations 40(3)(c) and 43(4) of the Habitats Regulations. Any action that will result in an offence being committed will now only be lawful if carried out pursuant to a licence granted under regulation 44. There is likely to be an increase, possibly substantial for the forestry sector, in the administrative burden on individuals as they will now have to consider the impact of their activities on EPS i.e. assess the presence of EPS, modify their activities and, if appropriate, apply for a licence.

We are working to reduce this burden by providing guidance to stakeholders on how to ascertain the presence of EPS and assess the risk of committing an offence. This guidance will also provide advice on how to undertake activities so as to avoid committing an offence against EPS where possible, and therefore remove the need for a licence.

Similarly, householders and developers may be affected by the removal of the defence which covers bats in dwelling houses defence, set out in regulation 40(2) and (4). Previously, householders with bats in their loft could rely on the defence to interfere with or exclude bats. This meant that if they notified the appropriate nature conservation body of a proposed action, such as exclusion from a loft, and allow them reasonable time to provide advice, they would have defence against the offences under regulation 39. This means that householders are likely to need a licence before taking action against bats in their homes. Animal EPS (such as bats) will still be protected from obstruction under the Wildlife and Countryside Act 1981. With regards to obstruction the offence applies to activities that obstruct access to a place used for shelter or protection. Obstruction may affect different species in different ways depending on how they use these places. In many cases, the act of obstructing a place of shelter or protection, for example a bat roost, will have the same effect on the animals concerned as destroying that roost. In such cases, we consider the offence under reg. 39(1) (damaging or destroying a breeding site or resting place) to be applicable too and a licence under regulation 44 would be required.

We believe that there will be a limited number of licences (less than 100) required. Bat workers will continue to provide advice on the options available to householders with the view that exclusion is the last resort.

Guidance will be provided for affected sectors and groups to help them understand the changes to the legislation and how it may impact on their activities. Guidance will include a simplified summary of the legislative changes, explanation of changes to the species licensing regime and practical guidance for operators carrying out ongoing activities focusing on how to avoid committing offences against EPS.

It is primarily, but not exclusively, the water utilities which are affected by regulation of water abstraction consents. In terms of assessing and reviewing water abstraction licences, the Environment Agency are, through the general duty under regulation 3(4), already fulfilling obligations under Article 6(3) and (4). Where a Catchment Abstraction Management Strategy (CAMS) area contains a European site, the development of the strategy will take account of the associated water requirements for that site. The Environment Agency have produced extensive guidance for water abstractors which can be accessed via:

<http://environment-agency.gov.uk/subjects/waterres/564321/?version=1&lang=e>

Guidance on the obligations of regulations 48 and 49 (requirement to consider effect on European sites in Great Britain and European offshore marine sites) and regulations 50 and 51 (requirement to review certain existing decisions and consents, &c) will be issued to clarify any procedural or administrative changes that might occur as a result of water abstraction being specifically captured by the Habitats Regulations.

Until the European Court of Justice's judgment in C-6/04, it was not thought appropriate to undertake assessments of effects on European sites at the land use plan stage, but later with regards to specific proposals. However, the ECJ held that plans which are subject to some further future consent can still be said to be capable of having a significant effect on European sites (because, in the case of land use plans, the relevant UK legislation at the time required the future consent to be determined in the light of the relevant land use plan). The Court held that, in line with the precautionary principle, "such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned." If this test cannot be met then an appropriate assessment will be required.

Planning Authorities have always considered impacts on European sites at a certain stage in the process. The burden comes from having to demonstrate no significant adverse effect in respect of the plan even when it does not refer to any sites, and from having to meet the reporting arrangements separately from the Strategic Environmental Assessment process. The new requirement on regional planning bodies and local planning authorities to undertake appropriate assessments of their new spatial plans has already had a considerable impact on both plan costs and speed at a particularly critical time. This is especially true where plans had reached an advanced stage of preparation. However as the period since the ECJ judgment grows longer, it will become easier for planning bodies to take account of their new obligations in drawing up project plans for their work. Delays to plans being adopted ultimately have an impact on the development industry and also on those expecting to be able to occupy premises.

Draft departmental guidance for regional planning bodies and local planning authorities has already been published by Communities and Local Government (CLG) regarding compliance with the requirement to undertake Habitats Assessments in connection with regional special strategies and local development documents. This guidance can be found at:

www.communities.gov.uk/index.asp?id=1502244

and;

www.communities.gov.uk/index.asp?id=1165623

The following table is an outline of the costs and benefits of option 2.

Costs	Benefits
<p>Economic</p> <ul style="list-style-type: none"> It is acknowledged that the changes to the Habitats Regulations, in particular the removal of many of the defences applicable to the species protection regime, will result in a better transposition of Article 12 of the Habitats Directive into domestic legislation. However, there will be increased economic costs to both operators and Government delivery agencies to implement these changes on the ground. However, an increase in these costs is acceptable as the changes improve the transposition of the Habitats Directive and are essential to ensure the species protection regime operates within the Habitats Directive's requirements. As a result of these changes operators will need to review the impact of their management practices on EPS and ascertain whether they are likely to commit offences against EPS. They may choose to either continue as before or modify practices to avoid committing offences or apply for a licence if the offence cannot be avoided. All of the above, may result in extra costs to business. Administrative costs will also fall to stakeholders who apply for licences and also to the licensing authorities. Delays to land use plans being adopted have an impact on the development industry and also on those expecting to be able to occupy premises. However, these delays will lessen with time as it becomes easier for planning bodies to take account of their new obligations in drawing up project plans for their work. Furthermore, these delays are acceptable as the new requirements will ensure that the land use planning system take full account of the existence of protected sites. <p><u>Administrative burden/costs</u></p> <ul style="list-style-type: none"> With regards to species protection, this burden will fall mainly upon those that carry out ongoing activities such as forestry and agriculture - whether they are involved in a Government funded scheme or not. For example, 	<p>Economic</p> <ul style="list-style-type: none"> There will be no economic benefits of amending the legislation.

foresters who apply for a felling licence or a woodland grant scheme will need to consider the impacts on EPS. The same would apply for farmers in Agri-environment schemes and receiving Single Farm Payments.

- Operators will need to review the impact of their management practices on EPS and ascertain whether they are likely to commit offences against EPS. This will involve reading guidance issued by Defra, Natural England and Forestry Commission. Operators may choose to either continue as before or modify practices to avoid committing offences or apply for a licence if the offence(s) cannot be avoided. All of the above, may result in extra costs to business. Throughout this process there will be increased burdens, depending on the course of action, to ascertain the presence of EPS e.g. surveys, modify practices e.g. changing timing and applying for a licence. An increased administrative cost will also fall to NE to administer applications and grant licences. A percentage of successful applicants will also be required to take part in licence compliance monitoring visits.
- It is estimated that the number of additional licences required for EPS in England and Wales could be as few as 3, 400 but could exceed 12,000. The upper figure has been difficult to estimate due to the lack of detailed information on the location of EPS and their breeding sites and resting places. It is envisaged that the majority of operators will follow guidance and take steps to avoid committing offences and will thus substantially reduce the number of licences required.

Regulatory burden/costs

- With regards to species protection, this applies to the licensing authority which in this case is NE in England, National Assembly for Wales (NAW) and CCW in Wales. The changes in the Habitats Regulations will potentially increase the number of licence applications and there will also be additional demands for advice. It is estimated that the number of additional licences for EPS required in England and Wales will range from approximately 3,400 to 12,000 (see above).
- The new requirement on regional planning bodies and local planning authorities to undertake appropriate assessments of their new spatial plans has already had a considerable impact on both plan costs and speed at a

- Whilst the general duty under regulation 3(4) compels every competent authority to have regard to the requirements of the Habitats Directive, it is for the competent authority to interpret how it should apply those requirements. This leads to inconsistencies of application. Parts IV and IVA of the Regulations will set out how the obligations of Article 6(3) and (4) – the consideration of effect on European sites – are to be applied in practice. This will lead to a consistent approach to such assessments with regards to land use and water abstraction plans and projects.

<p>particularly critical time. However as the period since the ECJ judgment grows longer, it will become easier for planning bodies to take account of their new obligations.</p> <ul style="list-style-type: none"> • There are 1500 potential development plan documents, as well as 8 Regional Spatial Strategies and one London Plan. A forward look suggests that around 350 plans are produced a year - although not all will need a full assessment owing to their location in relation to European sites. <p>Further details of the Admin and Regulatory burdens are in Table 1.</p>	
<p>Social</p> <ul style="list-style-type: none"> • There will be some social costs in amending the legislation as stakeholders, such as those carrying out ongoing activities, householders, and those that possess Annex IV species will need to understand the changes made to the legislation and the impact it may have on their property and the activities they undertake. • Delays to plans while planning authorities comply with the requirements will mean delayed implementation of associated social benefits such as meeting housing shortages 	<p>Social</p> <ul style="list-style-type: none"> • There will be some social benefits of amending the legislation as the changes will provide a better transposition of species protection legislation by removing the defences or exceptions to the offences against EPS. • There will be some monetary benefits as people value wildlife. However, as no market exists where these types of values can be ascertained it is difficult to quantify.
<p>Environment</p> <ul style="list-style-type: none"> • There may be some environmental costs as a result of amending the species protection regime's defences. The need to consider the presence of EPS, particularly their breeding sites or resting places, and possibly to change management practices and/or apply for a licence may discourage operators from carrying out habitat management that has conservation benefits for EPS. For example woodland managers may decide that it is too risky to continue coppicing hazel woodland, an activity that benefits the conservation of dormice, in case they commit an offence. It is difficult to predict the extent of this impact, however we hope that operators will follow guidance and obtain further advice from experts if they have concerns so that the negative impact will be minimal. 	<p>Environment</p> <ul style="list-style-type: none"> • The Amendment Regulations will make improvements, although very difficult to quantify, to the species protection regime by removing almost all of the defences or exceptions to the offences against EPS. The removal of many of the defences, particularly the 'incidental result of a lawful operation' defence, will mean that people will need to give further consideration to the impact of their activities on EPS. They will need to assess the presence of EPS, particularly the location of their breeding sites or resting places. The EPS will benefit as those carrying out the activity will be better informed of their presence and, by following guidance, will be able to try to avoid committing an offence. Where this is not possible, a licence must be sought which will only be granted if certain strict conditions are met. This will ensure that the strict species regime set out by the Habitats Directive is fully implemented.

- There will be no other environmental costs.

- The Amendment Regulations will also make improvements to the species protection regime by protecting Annex IV species which are not native to Great Britain as well as EPS (and protecting Annex II(b) plant species (other than bryophytes)). As a licence will now be required to keep, transport and sell specimens of such species (subject to limited exceptions), it will now be possible to closely regulate the trade of these species which will have a knock on effect of discouraging the taking of such species from the wild.
- There will be some monetary benefits as people value wildlife. However, as no market exists where these types of values can be ascertained it is difficult to quantify.
- The above improvements to the species protection regime, although very difficult to quantify, will meet Defra's objectives of protecting and enhancing the natural environment, now and for future generations. It also contributes to the UK's commitment to the Convention on Biological Diversity 2010 target of halting biodiversity loss. The licensing regime ensures a robust framework for future development decisions that respect environmental constraints. This fits closely with the principle of sustainable development to respect the limits of the planet's environment, resources and biodiversity – to improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations.
- The Amended Habitats Regulations will clearly inform responsible planning authorities of their duty to undertake an appropriate assessment for land use plans. This will ensure that the land use planning system takes full account of the existence of protected sites.

(ii) Overview of costs

The costs and benefits of option 2 set out in the Table 1 indicates that there will be additional costs arising from these proposed legislative measures.

With regards to the changes to species protection provisions, there is likely to be an increase in the administrative burden for certain sectors applying for licences and regulatory burden on the licensing authority. These burdens are summarised in Table 1. In 2006 there were 960 new applications for EPS licences in England and 983 in Wales. It is estimated that the number will increase by approximately 3,400 in England and Wales in 2007, but it could be as high as 12,000. However, we will work to drive down this burden by providing practical guidance to stakeholders. The guidance will encourage operators to modify their practices and thus avoid committing offences and therefore the need for a licence. In some circumstances, a licence will be required if committing offences cannot be avoided. However, in other circumstances stakeholders may not be able to obtain a licence as a result of the strict tests which must be met before one can be granted. In these cases, it will be essential that practical guidance is followed and offences avoided.

With regards to appropriate assessment of land use plans, the burden comes from having to demonstrate no significant adverse effect in the plan even when it does not refer to any sites and in having to meet the reporting arrangements separately from the Strategic Environmental Assessment. The new requirement on regional planning bodies and local planning authorities to undertake appropriate assessments of their new spatial plans has already had a considerable impact on both plan costs and speed at a particularly critical time. This is especially true where plans had reached an advanced stage of preparation. However as the period since the ECJ judgment grows longer, it will become easier for planning bodies to take account of their new obligations in drawing up project plans for their work.

(iii) Equity and fairness

It may be viewed that prohibiting the possession of legally obtained specimens is unfair. In broad terms, changes by the Amendment Regulations will make it unlawful to possess wild specimens of Annex IV(a) and (b) and Annex II(b) species (other than bryophytes) which had been taken etc or picked etc on or after 10 June 1994 from most EC countries. However, the date will be later for the recent accession countries and will be the day they joined the EC. A licence will be required to continue to possess such specimens which have already been taken from the wild. The licence will be as simple as possible in order to reduce the administrative burden and there will be a three month "grace" period for people to obtain licences after the changes come into force.

(iv) Direct costs to Government and its agencies

The proposed changes should not result in any significant additional cost to Government or its Agencies although Government Offices have already incurred costs undertaking appropriate assessments of Regional Spatial Strategy changes after public examination. However this should reduce over time.

A number of regional planning bodies and local planning authorities have already undertaken the new assessments. Costs range from £10,000 to £20,000 per plan. There are 1500 potential development plan documents, as well as 8 Regional Spatial Strategies and one London Plan. A forward look suggests that around 350 plans are produced a year - although not all will need a full assessment owing to their location in relation to European sites.

There is also at present quite a high cost as a result of delays to plan making processes which should reduce over time. The delays have occurred where authorities had not anticipated the UK would lose the ECJ case and therefore had to apply the assessment retrospectively. As the time passes, the delay due to consideration of effect on habitats should be factored into the project planning and therefore become less or even nothing. These costs will apply not only to government and local/regional government but also to the development industry and ultimately to those in housing need.

In terms of assessing and reviewing abstraction licences, the Environment Agency is, through the general duty under regulation 3(4), already undertaking what it is obliged to do under Article 6(3) and (4) with regards to assessment and review of effect on European sites. The Regulations merely formalise current arrangements concerning assessment and review of water abstraction consents.

With regards to changes in species protection provisions, there is likely to be an increase in the number of EPS licences. The increased cost of administering the licenses will fall to the licensing authorities; NE in England, and NAW and CCW in Wales. This will be accompanied by an increase in demand for advice from Government nature conservation bodies on how to apply for a licence and the level of information required to support the application. It is estimated that there will be an increase in costs to the licensing authorities of £323,000. There will also be increased costs to those parts of Government that own or manage land or buildings where EPS are likely to be found. The greatest impact will therefore be incurred by the MoD and the Forestry Commission. The Forestry Commission estimate that costs will be up to £1.5 million per year.

The proposals also formalise current arrangements concerning surveillance and monitoring which is co-ordinated across the UK by the Joint Nature Conservation Committee (JNCC) and is mainly carried out by volunteers and professional bodies. As the necessary work is already being done, we do not predict any increased costs as a result of the proposals

7. Small Firms' Impact Test

We have separately consulted key stakeholders that represent small firms, such as the Forestry Commission, the National Farming Union and the Guild of Taxidermists. Their views concerning the impact of the changes to species protection have been considered and as a consequence no small firms impact test questionnaire is attached to this RIA. There is likely to be some impact on small enterprises, such as those that work in forestry, as they now need to assess the presence of EPS and their breeding sites and resting places. There will be significant constraints on some

of the operations they carry out and the seasonality of those operations. Many may find the risk of damaging or destroying a breeding site or resting place of an EPS cannot be avoided and thus the risk of prosecution unacceptable and feel forced to shut down areas of activity.

8. Competition Assessment

With the exception of forestry and agriculture, we do not envisage that any economic sector will be significantly affected by the proposals more than at present. For forestry and agriculture guidance will help to inform operators of the changes and provide practical advice on how to avoid offences and reduce impact on their businesses. There may be some concerns regarding the prohibition of trade in Annex IV species which may have some impact on the trade sector. However, we do not expect this to be significant as trade in these species is currently at a relatively low level.

9. Enforcement, sanctions and monitoring

The Habitats Regulations require enforcement;

- i) for plans and projects,
- ii) for the offences relating to habitats and species.

For the former, as is the situation at present, the enforcement and monitoring activity will take place through the consenting regimes currently operated by competent authorities.

With regards to land use plans: In the first instance, if a government office is aware of an apparent failure to comply it may alert the planning authority to ensure any delays in adopting a plan are avoided or minimised. Similarly the Planning Inspectorate will be likely to alert an authority of apparent failure to comply with the Directive in the interests of holding purposeful examinations into plans. Nevertheless, neither government offices nor the Planning Inspectorate are competent authorities and it is for councils to take their own advice on whether they have complied with the Habitats Directive or Regulations. Similarly it is not for the government to enforce compliance with the Habitats Directive or Regulations except in the helpful manner referred to above. Ultimately it is a matter for third parties to take councils to court if they feel that the Habitats Regulations have not been complied with.

Habitats and species offences will continue to be primarily enforced by the police. NE in England, and NAW and CCW in Wales will continue to monitor activities, including those licensed, to ensure compliance with the amended Habitats Regulations. They will continue to work in partnership with the UK's enforcement agencies to take forward prosecutions.

The current maximum penalty for offences against animal Annex IV species is a level 5 fine on the standard scale (currently £5000) and for plant Annex IV species a level 4 fine on the standard scale (currently £4000). In order to ensure consistency with the WCA, the maximum penalties (for animals and plants) will be raised to a level 5 fine and/or a 6 months custodial sentence.

10. Implementation and Delivery plan

The amended Habitats Regulations will be implemented using a number of avenues. A simplified guide to the changes to the legislation will be sent to key stakeholders and a guide on the changes to licensing will be made available. Practical guidance developed by key stakeholders and experts will be available on the internet to enable future updates if necessary. Draft departmental guidance for regional and local planning authorities has already been published by Communities and Local Government (CLG) regarding compliance with the requirement to undertake Habitats Assessments in connection with regional special strategies and local development documents. Changes will be publicised widely through the media using key stakeholder publications. A number of stakeholder workshops have already been undertaken in Bristol, Peterborough and Newcastle to explain the changes to the species provisions.

11. Post Implementation Review

With regards to changes to the species provisions and the likely increased licensing burden, we will monitor and review the impact on the licensing regime during the 12 months after the Amendment Regulations come into force.

With regards to land use plans, there are no formal proposals to monitor the uptake of habitats assessments.

12. Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible minister

Barry Gardiner...

Date 22nd June 2007...

Further information on the development of Regulatory Impact Assessments is available from the Cabinet Office's website at

<http://www.cabinetoffice.gov.uk/regulation/ria/index.asp>

Contact point for enquiries and comments on this RIA:

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simon.liebert@defra.gsi.gov.uk

Table 1 England and Wales

Summary costs and benefits table		
Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	None	The ECJ can impose very heavy fines. France was recently fined a lump sum of Euro 20 million, plus Euro 57 million for every six months it failed to comply with a judgment of the ECJ.
2	There will be social and environmental benefits, although these are at present unquantifiable.	<p>For changes to species protection provisions</p> <p>Admin burden = £592,700 Regulatory burden = £323,000 Total = £915,700 per year</p> <p>For appropriate assessment of land use plans – taking average cost of assessment to be £15,000 and assuming 300 plans a year need a full assessment. (see ‘Direct costs to Government and its agencies’ section above)</p> <p>Regulatory burden = £4,500,000 Total = £4,500,000 per year</p> <p>No significant increase in costs with regard to appropriate assessment of water abstraction consents as this is already being undertaken (see ‘Direct costs to Government and its agencies’ section above)</p>

Annex A

Recipients for the Public Consultation on the Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations

Access Committee for England	Association of Marine Scientific
ACES	Industries
Action with Communities in Rural	Association of National Park Authorities
England (ACRE)	Association of North East Councils
Adur District Council	Association of North Thames Amenity
Advisory Board for Redundant Churches	Societies
Advisory Committee on the Protection of	Association of Preservation Trusts
the Sea	Association of Sea Fisheries
Airport Operators Association	Committees of England and Wales
Alcatel UK	Association of Small Historic Towns and
Alistair Hardy Foundation for	Villages
Oceanographic Science	Atkins Global
Allerdale Borough Council	Aviation Environment Federation
Alnwick District Council	All Wales Ethnic Minority Association
Amber Valley Borough Council	Aylesbury Vale District Council
Amber Valley Housing LTD	BAA Plc
Ancient Monuments Society	Babergh District Council
Anglesey Wind and Energy Ltd	Barnsley Metropolitan Borough Council
Anglo-French Offshore Surveys Ltd	Barrow in Furness District Council
Anglo-North Irish Fish Producers'	Bartlett Scholl of Planning
Organisation Ltd	Basildon District Council
ARC	Basingstoke & Deane Borough Council
Architects & Surveyors Institute	(DC)
Architectural Heritage Fund	Bassetlaw District Council
Arun District Council	Bat Conservation Trust
Ashfield District Council	Bath & North East Somerset Unitary
Ashford Borough Council	Council
Associated British Ports	Bedford Borough Council
Association of British Insurers	Bedfordshire County Council
Association of British Offshore	Berwick Upon Tweed Borough Council
Industries	Bexley London Borough Council
Association of Chartered Certified	BHP Billiton Plc
Accountants	Birdlife International
Association of Chief Police Officers	Birmingham City Council
Association of County Planning Officers	Blaby District Council
Association of District Salmon Fishery	Blackburn Borough Council
Boards	Blackpool Unitary Council
Association of Drainage Authorities	Blaenau Gwent County Borough Council
Association of Garden Trusts	Blyth Valley Borough Council
Association of Inland Navigation	BMT Cordah Ltd
Authorities	Bolsover District Council
Association of London Borough	Bolton Metropolitan Borough Council
Planning Officers	Boston Borough Council
Association of London Government	Bournemouth Borough Council
	Bracknell Forest Borough Council

Bradford Metropolitan District Council
Braintree District Council
Breckland District Council
Brecknock Wildlife Trust
Brecon Beacons National Park Authority
Brentwood Borough Council
Brett Marine Aggregates Ltd
Brick Development Association
Bridgend County Borough Council
Bridgnorth District Council
Brighton & Hove City Unitary Council
Bristol City Council
Bristol Port Company
Britannia Aggregates Limited
British Association for Shooting and Conservation (BASC)
British Association of Landscape Industries
British Association Of Leisure Parks, Piers
British Association of Settlements and Social Action Centres (BASSAC)
British Ball Clay Producers Federation Ltd
British Ceramic Confederation
British Chambers of Commerce
British Council of Shopping Centres
British Deer Society
British Divers Marine Life Rescue
British Ecological Society
British Fields Sports Society
British Geological Survey
British Herpetological Society
British Horse Industry Confederation (BHIC)
British Horse Society
British Insurance Brokers Association
British Marine Aggregate Producers Association
British Marine Federation
British Nuclear Fuels Plc
British Oil Spill Control Association
British Parking Association
British Pest Control Association
British Ports Association
British Precast Concrete Federation
British Property Federation
British Rig Owners Association
British Shippers Council
British Sub-Aqua Club
British Telecom Subsea Operations
British Tourist Authority
British Trust for Ornithology
British Tug Owners Association
British Water
British Water Ski Federation
British Waterways
British Wildlife Health Association
British Wildlife Management
British Wildlife Rehabilitation Council (BWRC)
British Wind Energy Association
Broadland District Council
Broads Authority
Bromsgrove District Council
Bromsgrove District Housing Trust
Broxbourne Borough Council
Broxtowe Borough Council
BT Plc
Buckinghamshire County Council
Buglife
Builders Federation
Burnley Borough Council
Burry Inlet Hand Gatherers Association
Bury Borough Council
Business & Prof Women UK Ltd
Business in Sports and Leisure Ltd
Butterfly Conservation
Cabinet Office
Cabinet Office Legal Advisors
Cadw
Caerphilly County Borough Council
Calderdale Borough Council
Cambridge City Council
Cambridgeshire County Council
Campaign for the Protection of Rural Wales
Campaign to Protect Rural England
Cannock Chase District Council
Canterbury City Council
Caradon District Council
Cardiff Chamber of Commerce
Cardiff University
Cardigan Bay Fishermans Association
Carlisle City Council
Carmarthenshire County Council
Carrick District Council
Castle Morpeth Borough Council
Castle Point Borough Council
Celtic Energy Ltd

CEMEX Marine Ltd
 Central Association of Agricultural Valuers
 Central Council For Physical Recreation
 Central Council of Physical Recreation
 Central Science Laboratory
 Centre for Alternative Technology
 Centre For Environment, Fisheries & Aquaculture Science
 Ceredigion County Council
 Chamber of Shipping
 Charnwood Borough Council
 Chartered Institute of Building
 Chartered Institute of Environmental Health
 Chartered Institute of Housing
 Chartered Institute of Public Finance and Accountancy (CIPFA)
 Chelmsford Borough Council
 Chelonia Limited
 Cheltenham Borough Council
 Cheltenham Borough Home Ltd
 Chemical Industries Association
 Cherwell District Council
 Cheshire County Council
 Chester & District Housing Trust
 Chester City Council
 Chester Le Street District Council
 Chesterfield Borough Council
 Chichester District Council
 Children's Commissioner for Wales
 Chiltern District Council
 China Clay Association
 Chorley Borough Council
 Chris Blandford Associates
 Christchurch Borough Council
 Church Commissioners
 Churches Main Committee
 City and County of Cardiff
 City and County of Swansea
 City of Bradford Met Council
 City Of London Conservation Area
 City of Sunderland
 City of Wakefield District Council
 City of Westminster Council
 City of York Unitary Council
 Citywest Homes
 Civic Trust
 Civic Trust for Wales
 Clearmarine Ltd
 Coastal Fisheries Conservation and Management
 Coastal Management for Sustainability
 CoastNET
 Coed Cymru
 Colchester Borough Council
 Colchester Borough Homes
 Combined Heat And Power Association
 Commercial Horticultural Association
 Commission for Architecture and the Built Environment (CABE)
 Commission For Local Admin. In England
 Commission for Racial Equality
 Confederation of British Industry
 Confederation of British Industry (CBI) Wales
 Confederation of British Industry (Wales)
 Confederation of Construction Specialists
 Congleton Borough Council
 Construction Industry Council
 Construction Products Association
 Consumer Council For Water
 Convention of Scottish Local Authorities
 Conwy County Borough Council
 Conwy Mussel Fishermans Association
 Copeland Borough Council
 Corby Borough Council
 Cornwall County Council
 Cornwall Sea Fisheries Committee
 Corporation of London
 Cory Env
 Cotswold District Council
 Council For British Archaeology
 Council For National Parks
 Council of the Isles of Scilly
 Council On Tribunals
 Country Land and Business Association
 Countryside Agency
 Countryside Alliance
 Countryside Council for Wales
 Countryside Recreation Network
 County Surveyors Society
 Coventry City Council
 Craven District Council
 Craven Housing
 Crawley Borough Council
 Crewe and Nantwich Borough Council

Crewe Nantwich Borough Council
 Crosskeys Homes
 Crown Estate
 Cumbria County Council
 Cumbria Sea Fisheries Committee
 Cyfarwydd Strategol
 Cyngor Sir Ceredigion
 Cyngor Sir Ynys Mon
 Dacorum Borough Council
 Darlington Borough Council
 Dartford Borough Council
 Dartmoor National Park Authority
 Daventry District Council
 Dee Valley Water Plc, Packsaddle
 Deep Dock Ltd
 Deer Initiative Wales
 Denbighshire County Council
 Denton Wilde Spate
 Department for Constitutional Affairs
 Department for Culture Media and Sport
 Department for Environment, Food and Rural Affairs
 Department for International Development
 Department for Transport
 Department for Work and Pensions
 Department of Culture Media & Sport
 Department of Education & Skills
 Department of Health
 Department of Land Economy
 Department of Trade & Industry
 Derby City Council
 Derby Homes LTD
 Derbyshire County Council
 Derbyshire Dales District Council
 Derwentside District Council
 Design Commission for Wales
 Development Control Services Ltd
 Devon and Cornwall Police Constabulary
 Devon County Council
 Devon Sea Fisheries Committee
 Dickinson Dees
 Disabled Persons Transport Advisory Committee (DPTAC)
 District Of Bolsover
 Doncaster Metropolitan Borough Council
 Dorset County Council
 Dover District Council
 Dredging International (UK) Ltd
 Dudley Metropolitan Borough Council
 Durham City Council
 Durham City Council
 Dwr Cymru
 Dyfed Powys Police
 E.ON UK plc
 Earthkind
 Easington District Council
 East Cambridgeshire District Council
 East Devon District Council
 East Dorset District Council
 East Durham Homes
 East Hampshire District Council
 East Hertfordshire District Council
 East Lindsey District Council
 East Midlands Regional Assembly
 East Northamptonshire Council
 East Riding of Yorkshire Council
 East Staffordshire Borough Council
 East Sussex County Council
 Eastbourne Borough Council
 Eastbourne Homes Ltd
 Eastern Sea Fisheries Joint Committee
 Eastleigh Borough Council
 Ecology Planning and Research
 Eden District Council
 Electricity Association Services Limited
 Ellesmere Port & Neston Borough Council
 Council
 Elmbridge Borough Council
 EMU Environmental
 Energy Institute
 Energy Networks Association
 Engineered Communications Solutions Ltd
 English Heritage
 English Historic Towns Forum
 English Nature
 English Partnerships
 English Tourism Council
 Environment & Resources Service
 Environment Agency
 Environment Agency Wales
 Environment Conservation & Management - Marine Policy
 Environment Trust
 Environmental Advisory Service
 Environmental Industries Commission
 Environmental Services Association

EnviroWatch UK
 Epping Forest District Council
 Epsom & Ewell Borough Council
 Equal Opportunities Commission
 Erewash Borough Council
 Erimus Housing Ltd
 Essex County Council
 European Affairs
 European Cetacean Bycatch Campaign
 European Community Shipowners
 Association
 European Federation of Sea Anglers
 Europilots
 Exeter City Council
 Exmoor National Park Authority
 Fareham Borough Council
 Farm Stay UK
 Farmers' Union of Wales
 Farningham McCreadie Partnership
 Fauna and Flora International
 Federation of Private Residents
 Associations
 Federation of Small Businesses
 Federation of Small Businesses (Wales)
 Fenland District Council
 First Choice Homes Oldham
 Flintshire County Council
 Flowers and Plants Association
 Foreign and Commonwealth Office
 Forest Authority (Wales)
 Forest Heath District Council
 Forest Of Dean District Council
 Forestry and Timber Association
 Forestry Commission
 Forestry Commission Wales
 Forum for the Future
 Forum of Private Business
 Frere Cholmeley and Bischoff
 Friends of Cardigan Bay
 Friends of the Earth
 Friends of the Earth Cymru
 Froglife
 Fylde Borough Council
 Galvanizers Association
 Garden History Society
 Gateshead Council
 Gedling Borough Council
 General Aviation Awareness Council
 Geological Society of London
 Georgian Group
 Glamorgan Gwent Archaeological Trust
 Ltd
 Gloucester City Council
 Gloucestershire County Council
 Gosport Borough Council
 Government Office for London
 Government Office for the East
 Government Office for the East
 Midlands
 Government Office for the North East
 Government Office for the North West
 Government Office for the South East
 Government Office for the South West
 Government Office for the West
 Midlands
 Government Office for Yorkshire and the
 Humber
 Gravesham Borough Council
 Great Crested Newt Consultancy
 Great Yarmouth Borough Council
 Greater London Authority
 Green Base Exchange
 Groundwork UK
 Groundwork West Cumbria
 Guildford Borough Council
 GVA Grimley
 Gwent Police HQ
 Gwent Wildlife Trust
 Gwynedd Archaeological Trust
 Halcrow
 Halliwell Landau
 Halton Borough Council
 HAM Dredging Limited
 Hambleton District Council
 Hampshire County Council
 Hanson Aggregates Marine Ltd
 Harborough District Council
 Harlow District Council
 Harmers Limited
 Harrogate Borough Council
 Hart District Council
 Hartlepool Unitary Council
 Hastings Borough Council
 Havant Borough Council
 Havebury Housing Partnership
 Havenshead Business Park
 Health and Safety Executive
 Health and Safety Executive
 Herefordshire Council
 Herpetological Conservation Trust

Hertfordshire County Council
 Hertsmere District Council
 High Peak Borough Council
 Highways Agency
 Hillingdon London Borough
 Hinckley & Bosworth Borough Council
 Historic Houses Association
 HM Customs and Excise
 HM Treasury
 Home Office
 Horsham District Council
 Horticultural Traders Association
 Hounslow Homes (Almo)
 House Builders Federation
 House of Commons Information Bulletin
 Housing Corporation
 HR Wallingford
 Huntingdonshire District Council
 Hyndburn Borough Council
 Ian Hewitt Associates
 Ian Salisbury Ltd
 Improvement and Development Agency
 Incorporated Society of Valuers and Auctioneers
 Inland Revenue – International
 Inshore Fishermans Association
 Institute Of Directors
 Institute Environmental Sciences
 Institute for Outdoor Learning
 Institute of Chartered Foresters
 Institute Of Directors
 Institute of Ecology and Environmental Management
 Institute of Environmental Assessment
 Institute of Environmental Management & Assessment
 Institute of Historic Building Conservation
 Institute of Leisure and Amenity Management
 Institute of Petroleum
 Institution Of Civil Engineers
 Institution of Material Minerals and Mining
 Institution of Mining Engineers
 International Association of Drilling Contractors
 International Association of Geophysical Contractors
 International Centre for Protected Landscapes
 International Council on Monuments and Sites
 International Marine Contractors Association
 Ipswich Borough Council
 Isle of Wight Council
 Isles Of Scilly Council
 Isles of Scilly Sea Fisheries Committee
 J J Hatfield & Co
 John Gooms
 Joint Fishing Communities of South & West Wales
 Joint Links Oil and Gas Consortium
 Joint Nature Conservation Committee
 Journal of Planning & Environment Law
 Kaolin & Ball Clay Association (UK)
 Kennet District Council
 Kent and Essex Sea Fisheries Committee
 Kent County Council
 Kerrier District Council
 Kettering Borough Council
 King's Lynn & West Norfolk Borough
 Kingston upon Hull City Unitary Council
 Kirklees Metropolitan Council
 Knowsley Borough Council
 Labour Planning & Environment Group
 Lake District National Park Authority
 Lancashire County Council
 Lancaster City Council
 Landscape Institute
 Landscape Institute Wales
 Law Society
 Lee Valley Regional Park Authority
 Leeds City Council
 Leicester City Unitary Council
 Leicestershire County Council
 Lewes District Council
 Lichfield District Council
 Lincoln City Council
 Lincolnshire County Council
 Liverpool City Council
 Living Streets / Pedestrians Association
 Lobster Pot
 Local Government Association
 London Borough of Barking and Dagenham

London Borough of Barnet
London Borough Of Brent
London Borough of Bromley
London Borough of Camden
London Borough of Croydon
London Borough of Ealing
London Borough of Enfield
London Borough of Greenwich
London Borough of Hackney
London Borough of Hammersmith & Fulham
London Borough of Haringey
London Borough of Harrow
London Borough of Havering
London Borough of Hillingdon
London Borough of Hounslow
London Borough Of Islington
London Borough Of Lambeth
London Borough of Lewisham
London Borough of Merton
London Borough of Newham
London Borough of Redbridge
London Borough Of Richmond Upon Thames
London Borough of Southwark
London Borough of Sutton
London Borough of Tower Hamlets
London Borough Of Waltham Forest
London Borough of Wandsworth
London Development Agency
London First
London Green Belt Council
Lord Crewe's Charity
LP Gas Association
Luton Borough Council
Luton Borough Council
Macclesfield Borough Council
Magistrate's Association
Maidstone Borough Council
Maldon District Council
Malvern Hills District Council
Mammal Society
Mammals Trust UK
Manchester Airport Group Plc
Manchester City Council
Mansfield District Council
Manweb
Marathon Oil UK Ltd
Marine Biological Association of the United Kingdom

Marine Connection
Marine Conservation Society
Marine Ecology & Sailing
Marine Fisheries Agency
Marine Forum for Environmental Issues
Marine Laboratory
Marine Stewardship Council
Maritime and Coastguard Agency
Mayfair Chambers
Medway Towns Unitary District Council
Melton Borough Council
Mendip District Council
Merthyr Tydfil County Borough Council
Met. Office
Metropolitan Police
Mid Bedfordshire District Council
Mid Devon District Council
Mid Suffolk District Council
Mid Sussex District Council
Middlesbrough Council
Midland Amenity Societies Associations
Milford Haven Shellfishermans Assoc
Milton Keynes Council
Mining Association of The UK
Ministry of Defence
Mole Valley District Council
Monmouthshire County Council
Montgomeryshire Wildlife Trust
National Assembly for Wales
National Assembly Sustainable Energy Group
National Association for Areas of Outstanding Natural Beauty
National Association of British Market Authorities
National Association Of Local Councils
National Botanic Garden of Wales
National Caravan Council
National Cave Karst & Mine Register
National Caving Association
National Consumer Council
National Farm Attractions Network
National Farmers Union
National Federation of Charter Skippers
National Federation of Fishermen's Organisations
National Federation of Sea Anglers
National Federation of Sea Schools
National Forest Company
National Gamekeepers Organisation

National Grid Company
 National Heritage Memorial Fund
 National Homeless Alliance
 National House Builders Federation
 National Housing and Town Planning Council
 National Housing Federation
 National Housing Federation
 National Joint Utilities Group
 National Museum of Wales
 National Museums and Galleries of Wales
 National Oceanography Centre
 National Park Officers Group
 National Playing Fields Association
 National Trust
 National Trust, Office for Wales
 National Union of Residents Associations
 National Wind Power
 Natural Environment Research Council
 Natural History Museum
 Nautical Archaeology Society
 Neath Port Talbot County Borough Council
 Network Rail
 New Charter Housing Trust Group
 New Forest Committee
 New Forest District Council
 New Forest National Park Authority
 Newark & Sherwood District Council
 Newcastle Under Lyme Borough Council
 Newcastle University
 Newcastle Upon Tyne City Council
 Newport County Borough Council
 NFU Cymru
 NHS Executive
 Non Operators' Forum
 Norfolk County Council
 North Cornwall District Council
 North Devon District Council
 North Dorset District Council
 North East Derbyshire Council Office
 North East Lincolnshire Council
 North Eastern Sea Fisheries Committee
 North Hertfordshire District Council
 North Hertfordshire Homes
 North Kesteven District Council
 North Lincolnshire Council
 North Norfolk District Council
 North Northamptonshire Joint Planning Unit
 North Sea Regional Advisory Council
 North Shropshire District Council
 North Somerset Unitary Council
 North Tyneside Council
 North Wales and North Western Sea Fisheries Committee
 North Wales Police
 North Wales Wildlife Trust
 North Warwickshire Borough Council
 North West Leicestershire DC
 North West Regional Assembly
 North West Sussex Branch Federation of Sussex Society
 North Wiltshire District Council
 North York Moors National Park Authority
 North Yorkshire County Council
 Northampton Borough Council
 Northamptonshire County Council
 Northumberland County Council
 Northumberland National Park Authority
 Northumberland Sea Fisheries Committee
 Northwood (Farnham) Limited
 Norton Rose Solicitors
 Norwich City Council
 Norwood Society
 Nottingham City Council
 Nottingham City Home Ltd
 Nottinghamshire County Council
 Npower Renewables
 Nuneaton & Bedworth Borough Council
 Oadby & Wigston Borough Council
 Oakwood Environmental
 Office of the Deputy Prime Minister
 Office of the Secretary of State for Wales
 Office of Water Services
 Ofgem
 Ofwat
 Oldham Metropolitan Borough
 One Voice Wales
 Open Spaces Society
 Ordnance Survey
 Ornamental and Aquatic Trade Association
 Oswestry Borough Council

Oxford City Council
 Oxfordshire County Council
 Park Homes Residents Action Alliance
 Peak District National Park Authority
 Pembrokeshire Coast National Park Authority
 Pembrokeshire County Council
 Pembrokeshire Fisheries Development Association
 Penclawd Shellfish Association
 Pendle Borough Council
 Penlon
 Penny Environmental
 Penwith District Council
 Personal Watercraft Partnership
 Peterborough City Council
 Planning Aid Wales
 Planning and Environment Bar Association
 Planning Inspectorate
 Plantlife
 Plymouth City Council
 Plymouth Marine Laboratory
 Plymouth University
 Pond Action
 Poole Borough Council
 Poole Harbour Commissioners
 Port of London Authority
 Port Penrhyn
 Portsmouth City Council
 Portsmouth University, CEMARE
 Posford Haskoning
 Post Office Property Holdings
 Powys County Council
 Preston Borough Council
 Preston City Council
 Professional Boatman's Association
 Proudman Oceanographic Laboratory
 PS Lands Highways Agency
 Purbeck District Council
 Quarry Products Association
 Radiocommunications Agency
 Radnorshire Wildlife Trust
 Ramblers Association
 Ramblers Association Wales
 Rawlings Trawling
 Reading Borough Council
 Redcar & Cleveland Borough Council
 Redditch Borough Council
 Registered Nursing Home Association
 Reigate & Banstead Borough Council
 Reigate & Banstead Housing Trust
 Renewable Energy Systems Ltd
 Restormel Borough Council
 Rhondda Cynon Taff County Borough Council
 Rhyl Fishermens Association
 Ribble Valley Borough Council
 Richmond upon Thames L B
 Richmondshire District Council
 RICS Wales
 Rochdale Borough Council
 Rochdale Boroughwide Housing
 Rochford District Council
 Roger Humber
 Roger Tym & Partners
 Rolandon Water & Sea Freight Advisory Services
 Rossendale Borough Council
 Rother District Council
 Rotherham Borough Council
 Royal Archaeological Institute
 Royal Borough of Kensington & Chelsea
 Royal Borough of Kingston Upon Thames
 Royal Borough of Windsor & Maidenhead
 Royal Botanic Gardens, Kew
 Royal Commission on Environmental Pollution
 Royal Commission on the Ancient & Historical Monuments of Wales
 Royal Holloway University of London
 Royal Horticultural Society
 Royal Institute of British Architects
 Royal Institute of Chartered Surveyors
 Royal Institution of Chartered Surveyors in Wales
 Royal Society for the Prevention of Cruelty to Animals
 Royal Society for the Protection of Birds
 Royal Society of Architects in Wales
 Royal Town Planning Institute
 Royal Town Planning Institute in Wales
 Royal Welsh Agricultural Society
 Royal Yachting Association
 RSPB Cymru
 Rugby Borough Council
 Runnymede Borough Council
 Rural Design & Building Association

Rushcliffe Borough Council
 Rushcliffe Homes
 Rushmoor Borough Council
 Rutland County Council
 RWE Innogy Plc
 RWE Npower
 Ryder HKS
 Ryedale District Council
 Salford M Borough Council
 Salford City Council
 Salisbury District Council
 Salvage Association
 Sandwell Homes
 Sandwell Metropolitan Borough Council
 Saundersfoot Fishermans Association
 SAVE Britain's Heritage
 Scarborough Borough Council
 School of Architecture Planning &
 Landscape
 School of the Built Environment
 Sea Fish Industry Authority
 Sea Mammal Research Unit
 SeaWatch Foundation
 SeaZone
 Sedgefield Borough Council
 Sedgemoor District Council
 Sefton Borough Council
 Selby District Council
 Serplan
 Sevenoaks District Council
 Shark Trust
 Sheffield City Council
 Sheffield Hallam University
 Shellfish Association of Great Britain
 Shepway District Council
 Shrewsbury & Atcham Borough Council
 Shropshire County Council
 Slough Borough Council
 Small Business Service
 Smiths Gore
 Snowdonia National Park Authority
 Society for the Protection of Ancient
 Buildings
 Society for Underwater Technology
 Society of Aerospace Companies
 Society Of County Treasurers
 Society of Local Council Clerks
 Solace Journal
 Solihull Community Housing
 Solihull Metropolitan Borough Council
 Somerset County Council
 South & West Wales Fishermen's
 Association
 South & West Wales Wildlife Trust
 South Bedfordshire District Council
 South Buckinghamshire District Council
 South Cambridgeshire District Council
 South Coast Shipping Co Ltd
 South Derbyshire District Council
 South East Wales Biodiversity Records
 Centre
 South Gloucestershire Unitary Council
 South Hams District Council
 South Holland District Council
 South Kesteven District Council
 South Lakeland District Council
 South Lakes Housing
 South Norfolk District Council
 South Northamptonshire Council
 South Oxfordshire District Council
 South Ribble Borough Council
 South Shropshire District Council
 South Somerset District Council
 South Staffordshire Council
 South Tyneside Borough Council
 South Wales Police HQ
 South Wales Sea Fisheries Committee
 South West Interfish Project
 South West of England RDA
 South West Regional Assembly
 Southampton City Council
 Southend on Sea Borough Council
 Southern Sea Fisheries Committee
 SP Power Systems
 Spelthorne Borough Council
 Sport England
 Sports Council
 St Albans City and District Council
 St Edmundsbury B.C
 St Helens Borough Council
 Stafford Borough Council
 Staffordshire County council
 Staffordshire Moorland District Council
 Stevenage Borough Council
 Stevens & Bolton LLP
 Stockport Borough Council
 Stockton-on-Tees County Council
 Stoke On Trent City Council
 Stratford on Avon District Council
 Stroud District Council

Suffolk Coastal District Council
 Suffolk County Council
 Surrey County Council
 Surrey Heath Borough Council
 Sussex Sea Fisheries Committee
 Sustainable Land Use
 Sustrans Cymru
 Swale Borough Council
 Swalec
 Swansea Fishermens Association
 Swindon Borough Council
 Tameside Metropolitan Borough Council
 Tamworth Borough Council
 Tandridge District Council
 Taunton Deane Borough Council
 Tees Valley Joint Strategy Unit
 Teesdale District Council
 Teignbridge District Council
 Telford & Wrekin Borough Council
 Tendring District Council
 Test Valley Borough Council
 Tewkesbury Borough Council
 Textile Services Association Ltd
 Thames Water
 Thanet District Council
 The Woodland Trust
 Theatres Trust
 Three Rivers District Council
 Thurrock Borough Council
 Tonbridge & Malling Borough Council
 Torbay Council
 Torfaen County Borough Council
 Torridge District Council
 Town And Country Planning Association (TCPA)
 Trafford Housing Trust
 Trafford Metropolitan Borough Council
 Transco
 Transport For London
 Transport Strategy Group
 Treasury Solicitor Department
 Tree Council
 Trent & Dove Housing Ltd
 Trinity Lighthouse Service
 Tunbridge Wells Borough Council
 Tynedale District Council
 UK Association of Fish Producers Organisation Ltd
 UK Atomic Energy Authority
 UK Cable Protection Committee
 UK Coal
 UK Environmental Law Association
 UK Forest Products Association (UKFPA)
 UK Guild of Taxidermists
 UK Hydrographic Office
 UK Major Ports Group
 UK Offshore Oil and Gas Association
 UK Offshore Operators Association
 UK Petroleum Industry Association (UKPIA)
 UK Spill Association
 UNISON
 United Kingdom Environmental Law Association
 United Kingdom Hydrographic Office
 United Kingdom Land and Hydrographic Survey Association
 United Marine Aggregates
 United Marine Dredging Limited
 United Utilities
 University College London
 University of Birmingham
 University of Dundee
 University of Hull
 University of Oxford DCE
 University of Salford
 University of the West of England
 University of Wales
 University of Westminster
 Uttlesford District Council
 Vale of Glamorgan Council
 Vale of White Horse District Council
 Vale Royal Borough Council
 Valuation Office Agency
 Van Oord UK Ltd
 Vegetarian Economy & Green Agriculture (VEGA)
 Victorian Society
 Visit Britain
 Volker Dredging Ltd.
 Wakefield Met District Council
 Wales & West Coast Producer Organisation
 Wales Coastal and Maritime Partnership
 Wales Environment Link
 Wales Planning Forum
 Wales Social Partners Unit
 Wales TUC

Wales Wildlife and Countryside Link
 Walsall Metropolitan Borough Council
 Walters Group
 Walton & Co
 Wandsworth Borough Council
 Wansbeck District Council
 Wardell Armstrong
 Warrington Borough Council
 Warwick District Council
 Warwickshire County Council
 Waste Recycling Group
 Water UK
 Watford Borough Council
 Waveney District Council
 Waverley Borough Council
 WDCS (Whale and Dolphin Conservation Society)
 Wealden District Council
 Wear Valley District Council
 Wellingborough Borough Council
 Wellingborough Borough Council
 Welsh Assembly Government
 Welsh Association of Community and Town Councils
 Welsh Council for Voluntary Action
 Welsh Development Agency
 Welsh Federation of Fishermens' Associations
 Welsh Federation of Sea Anglers
 Welsh Inshore Fishermens Association
 Welsh Language Board
 Welsh Local Government Association
 Welsh Tourist Board
 Welsh Water Network Development
 Welsh Wildlife Centre
 Welsh Women's National Coalition
 Welsh Yachting Association
 Welwyn Hatfield District Council
 West Berkshire Council
 West Coast Energy Ltd
 West Devon Borough Council
 West Dorset District Council
 West Lancashire District Council
 West Lindsey District Council
 West Oxfordshire District Council
 West Somerset District Council
 West Sussex County Council
 West Wiltshire District Council
 West Yorkshire Ecology
 Westminster Gravels Limited
 Weymouth & Portland Borough Council
 Whale and Dolphin Conservation Society
 Wigan and Leigh Housing Company LTD
 Wigan Council
 Wilbraham & Co Solicitors
 Wildfowl and Wetlands Trust
 Wildlife & Countryside Link
 Wildlife Trust of South and West Wales
 Wildlife Trusts
 Wiltshire City Council
 Winchester City Council
 Windjen Power Ltd
 Wirral District Council
 Wirral M.B.C., Planning and Economic Development Department
 Woking Borough Council
 Wokingham District Council
 Wolverhampton Borough Council
 Wolverton and Greenleys town council
 Woodland Trust
 Woodland Trust Wales
 Worcester City Council
 Worcestershire County Council
 Worthing Borough Council
 Wragge & Co
 Wrexham County Borough Council
 WWF - UK
 WWF Cymru
 Wychavon District Council
 Wycombe District Council
 Wye and Usk Foundation
 Wyre Borough Council
 Wyre Forest District Council
 Yacht Charter Association
 Yacht Harbour Association
 York University
 Yorkshire and Humber Assembly
 Yorkshire Dales National Park Authority

Annex B

Responsees to the Public Consultation on the Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2007

ARK Group	London Borough of Southwark
Associated British Ports	Manchester Airport
Association of Burial Authorities	Marine Connection
British Association for Shooting & Conservation	Merseyside Environmental Advisory Service
Bat Conservation Trust	Myti Mussels Ltd.
Bedford Borough Council	National Farmers Union
British Herpetological Society	National Grid
British Waterways	Natural England
Broads Authority	New Forest National Park Authority
Cambridgeshire County Council	Norfolk County Council
Cherwell District Council	North Cornwall District Council
Chief Constable Richard Brunstrom (ACPO)	North York Moors National Park
Chris Davis	Northeast Assembly
Chris Lewis (Herpetological Conservation Trust)	Northumberland Sea Fisheries Committee
Commission for Local Admin in England	Peterborough City Council
Confederation of UK Coal Producers	Plantlife International
Conwy County Borough Council	Prof. Colin Reid Dundee University
Cornwall County Council	Redcar & Cleveland Borough Council
Council for National Parks	Reptile and Exotic Pet Trade Association
Country Land and Business Association	Reptile and Exotic Pet Trade Association
Countryside Council for Wales	RPS Planning, Transport & Environment Ltd
County Council and City of Cardiff	RSPB
Cyngor Gwynedd Council	RSPCA
D. G. Royans	Runnymede Borough Council
Doncaster Borough Council	RWE Npower plc
Dr Clive Cummins (British Herpetological Society)	Sea Fish Industry Authority
E A Wells	Shell
East Midlands Regional Assembly	Somerset County Council
English Heritage	South Bedfordshire Friends of the Earth
English Partnerships	South Gloucestershire Council
Environment Agency	South Norfolk Council
EnviroWatch UK	Steven Parker
Exmoor Society	Suffolk County Council
Friends of the Earth	Surrey Heath Borough Council
Girlguiding UK	Thames Water
Gloucester County Council	The Mammal Society
Government Office for London	The Planning Inspectorate
Guild of Taxidermists	The Wildlife Trusts

Halcrow Group Ltd
Hampshire County Council
Herpetological Conservation Trust
Hertfordshire County Council
Home Builders Federation
Inst. of Ecology & Environmental
Management
Institute of Directors
JNCC
John Harrison-Bryant
Kerrier District Council
Klaus Armstrong-Braun
Lancashire County Council
League Against Cruel Sports

Tom Fairfield
Transport Wales
UK Civil Aviation Authority
United Utilities
Vegetarian Economy and Green Agriculture
(VEGA)
Water UK
Waverley Borough Council
Welsh Water
West Lancashire District Council
Wildlife and Countryside Link
Winchester City Council
Wokingham District Council
Woodland Trust
World Wildlife Fund

Annex C

Code of Practice on Written Consultations

8. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
9. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
10. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
11. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
12. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
13. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
14. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.