

To: naturegreenpaper@defra.gov.uk Date: 11th May 2022

Circulation: Ref:

Contact: Diane Mitchell; Claire Robinson;
Jo Woodhams; Rohit Kaushish;
Poppy Sherborne; Rosie
Throup; Sam Durham; Jonathan
Gorham

Tel: 0247 685 8500

Fax:

Email: diane.mitchell@nfu.org.uk
jo.woodhams@nfu.org.uk
claire.robinson@nfu.org.uk
rohit.kaushish@nfu.org.uk
poppy.sherborne@nfu.org.uk
rosie.throup@nfu.org.uk
sam.durham@nfu.org.uk
jonathan.gorham@nfu.org.uk

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

Nature Recovery Green Paper: Protected Sites and Species

7.1 Introductory questions

1. What is your correspondence address?

Please provide an email address or telephone number unless unable to. If you enter your email address, then you will automatically receive an acknowledgement email when you submit your response. diane.mitchell@nfu.org.uk

2. Would you like your response to be confidential? Please see the confidentiality and data protection section at the end of this document.

- Yes
- **No**
- If ticked 'Yes', please state why

3. Please tell us in what capacity you are responding to the consultation by selecting from the following:

- Individual
- Research organisation
- **Sector trade body or membership organisation**
- Ecologist 34 of 42
- Academic
- Planning consultant
- Developer or builder
- Local Authority
- Public body
- Non-governmental organisation
- Farmer
- Landowner
- Other (please state)

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



NFU SUPPORTED BY

NFU Mutual

4. If responding on behalf of an organisation, please provide the name of the organisation you are responding for.

National Farmers' Union

5. Please indicate your specific areas of interest in responding to this consultation:

- 30 by 30
- Protected sites
- Habitats Regulations assessment
- Trees and forests
- Species
- Green finance
- Marine: protected sites
- Marine: 30 by 30
- Arm's length bodies
- Cost recovery
- Environmental impact assessment
- Other (please specify)

6. Please indicate which location your response relates to, selecting from the following:

- United Kingdom
- England
- Northern Ireland
- Scotland
- Wales
- Other (please state, where)

7.2 Consultation questions

Protected sites: a new consolidated approach

7. What degree of reform do we need to ensure a simpler and more ecologically coherent network of terrestrial protected sites? We would be particularly interested in your views of how we can have a coherent, effective, and well-understood system of protections, as well as supporting the delivery of our legal binding species abundance target and other potential long-term targets. Please tick the option you prefer and explain your answer in the free text box.

- Option 1: Reform including a tiered approach emulating the approach taken in the marine area for HPMAs and MPAs, consolidating existing protected site designations and the creation of highly protected sites
- Option 2: Lighter touch reform including streamlining existing site designations (SACs, SPAs, and SSSIs)
- Option 3: Amalgamation into a single type of designation with a scale of protections
- Other
- No reform
- Do not know

The NFU agrees that there is an opportunity to review and streamline the current approach to protected site designations. The options proposed have their strengths and weaknesses as we outline below. For many farmers the main concern will be relate to the tools deployed by Government to manage designated those sites.

Option 1 has the potential to deliver significant benefits as it would ensure that there is one single regulatory regime governing protected sites, simplifying the legal regime and

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



making it easier to ascertain what the applicable rules and protections are. It would also move the regime onto an entirely domestic regulatory framework, helping to move away from those aspects of the EU regime that have not worked well in the domestic context. However, there needs to be a sufficient number of different levels of protection to ensure that each site can be protected in an appropriate and proportionate manner. The NFU would not support an approach which involved upgrading the protection of sites without consideration of whether that level of protection was justified and without consultation and engagement with the landowners and managers of land within and adjacent to those sites, as the implications of any such change need to be fully understood. It may also be appropriate to review whether sites should continue to be protected, and to what extent, based on national targets and priorities to ensure that there is confidence in the quality of the protected site network.

It is important that any new regime:

- **Is able to differentiate between different types/tiers of site to ensure that the level of protection is appropriate for the nature of the site;**
- **Ensures that only high-quality sites which make a valuable contribution to nature and biodiversity are designated;**
- **Ensures the targets for each site are realistic, taking into account the current condition of the site and scientific/technical understanding of what needs to be done to improve the condition of the site;**
- **Is forward looking, seeking to develop a network of high-quality habitats which are resilient and are able to adapt to climate change, rather than seeking to preserve a historic position regardless of whether that is realistically achievable;**
- **There is clarity around the level of protection afforded for the managers of these habitats, the measures of success and acceptable management;**
- **Works for those who own and manage these habitats, recognising the social and economic importance of supporting sustainable commercial use of these areas. This is particularly important within the agricultural sector, as farmers and growers are dependent on their ability to use the land to produce food.**
- **It possible to measure success nationally and at a site level, particularly the success of the actions within land manager's control. An innovative approach to assessment will be needed to account for dynamic changes caused by climate change.**

The NFU's experience is that the current system of protection is too precautionary, and in some instances can be a barrier to modernisations which could deliver environmental improvements. For example, where farmers want to replace livestock housing or slurry stores with newer infrastructure, they often experience difficulties obtaining planning permission due to emissions, particularly ammonia, even though the newer infrastructure would have lower emissions than the existing infrastructure and reduce environmental risk. This is detrimental to the protected site, as it prevents or delays reductions in pollution in the vicinity of the site, and also threatens the long-term viability of the farming business. Whilst the NFU understands the need to protect our environment, it also believes that regulation needs to work for those who have to implement it, and that the system should be supportive of those who are trying to make changes that benefit the environment, rather than being a barrier to those improvements.

The NFU also believes that economic and social factors should be given greater weight in the decision-making process. Maintaining the nation's food security is in the public interest and should be given due consideration in the decision-making process. Further, many of our

most important landscapes and many of our protected sites require active management, often delivered by farmers and growers, so ensuring the long-term viability of these businesses is also important for securing the long-term management of these valuable habitats.

Some protected sites also fall within areas which support important cultural traditions, such as common land. These areas have social and cultural significance for the local community and also support unique skills and techniques which could disappear entirely if these traditions are not preserved. **It is, therefore, also important that any new designation regime supports communities, such as common land, and helps to preserve the skills and traditions associated with these unique areas.**

The NFU is, however, deeply concerned about the suggestion that the potential for economic use of land within some categories of protected site could be limited. For many farming businesses, land is the largest capital asset, and may be used as security for credit; in addition, the business will be dependent on deriving an income from its use of that land. Imposing restrictions which prevent economic use of the land could have serious implications for the landowner, so the NFU would be strongly opposed to any system which could result in this level of protection being imposed on a landowner without appropriate compensation and on-going support for maintenance. The NFU believes that it is important that any protection regime works for both landowners and the environment, and supports sustainable land use, including use for economic purposes, supporting viable local communities as well as protecting our most important sites.

Whilst option 2 does have the potential to offer some benefits in terms of streamlining designations, it is questionable whether it would deliver the required simplifications. There would also be complexity as amendments to the regime in the future would be made by policy makers having regard to the national Environmental Principles Policy Statement, whilst the underlying regime was made on the basis of the EU's approach to the Environmental Principles; this has the potential to result in disputes regarding the correct approach to the interpretation of the legislation, and the extent to which EU case law continues to be relevant. In the long term, moving to a purely domestic regime for protecting sites, based on national priorities and applying national principles and domestically derived case law seems to be the most appropriate approach to ensure that the system is fit for purpose and reflects national priorities and needs.

The NFU does not support option 3 in its current form as there is insufficient detail about how different tiers of protection would be accommodated into a single designation. The NFU does not consider that it would be appropriate to simply convert all SACs, SPAs and SSSIs to a single new type of site with the same level of protection. The NFU considers that a single blanket level of protection would not be appropriate as it would lead to the under protection of our most important sites and/or disproportionately high levels of protection and restrictions on some of our less important sites.

If options 2 or 3 are pursued, it would, therefore, be important to consider how the transition to the approach to environmental principles set out in the environmental principles policy statement can be achieved, and to identify areas where the EU regime is not working as well as it could to ensure that the necessary improvements can be made.

Whatever approach is taken, it will be important to ensure that adequate support is available, including advice and guidance as well as funding. It will be important that designation is not a barrier to entering schemes such as ELMs, as agri-environment schemes have historically been an important source of funding for those adapting their land management practices benefiting these important protected habitats.

8. What degree of reform for the marine protected area network do we need to meet our biodiversity objectives and commitments?

Please tick the option you prefer and briefly explain your preference and what benefits or risks it may have in the free text box.

- Option 1: Reform including a tiered approach consolidating existing protected site designations and the creation of highly protected sites.
- Option 2: Continuing to manage existing site designations (SACs, SPAs, and MCZs) similarly, streamlining our approach by to refer to them all as Marine Protected Areas (MPAs).
- Option 3: Amalgamation into a single type of designation with a scale of protections.
- Other
- No reform
- **Do not know**

9. Do you agree that there should be a single process for terrestrial designation? We would be particularly interested in your views on how this might best be done for example, should decisions be vested in the appropriate authority [ministers] on the advice of its nature conservation bodies?

Please tick the option you prefer and explain your answer in the free text box.

- **Yes**
- No
- Unsure

A single process for designating sites would make it easier for members of the public, and in particular landowners, to understand the designation process and find the information they need in order to assess and respond to any proposed designations. A single process also ensures that the appropriate level of protection can be considered throughout the designation process and changed, if necessary, to ensure that the site is given the appropriate level of protection.

The designation process must be science based, with a strong emphasis on selecting only high-quality sites which can make a significant contribution to the natural environment. There should be a presumption against designating poor quality sites, particularly where it is unclear whether, or how, the site could be brought into favourable condition.

The views of the owner and/or occupier of any land proposed for designation must be taken into consideration. As mentioned in response to question 7 above, for agricultural businesses, land may be the main capital asset of the business as well as being critical for future income. Designations can, therefore, have very serious implications for businesses. This must be factored into the decision-making process, and any designation must not deprive the landowner of their ability to use their land for their livelihood.

The designation process should encourage early engagement with landowners, with discussions taking place before any formal designation process commences. This will ensure that the current land use and land management practices are understood and that the landowner/occupier's future intentions can be considered. Where possible, the aim should be to agree an appropriate way forward with the landowner, ensuring that valuable features can be protected whilst ensuring that the landowner/occupier can continue to operate a viable farming business. As many habitats require active management to maintain and improve their condition, it is essential that landowners are supportive of proposals to designate their land if the network of protected sites is to deliver maximum results.

The NFU also believes that it is essential to have an appeal procedure, to allow landowners to challenge the decision to designate their land as a protected site. This appeal procedure must be entirely independent; the upper tribunal may be an appropriate forum for such appeals, as technical expertise will be important when making decisions regarding

designations. Alternatively, the planning inspectorate may also be a suitable forum which could be considered.

Our preference would be for the appropriate authority, in this case the Secretary of State, to designate sites. The Secretary of State will need to take a balanced view which includes socio-economic impacts and not be driven by achieving purely environmental outcomes. This is important when the evidence for designation is marginal. Currently, it appears that any socio-economic impact assessment that may be carried at the point of designation is only a tick box exercise. The business impacts and the costs to government of the designation should be assessed. For example, the designation of Poole Harbour has led to calls for changes to farmland management in the catchment. These socio-economic impacts on farming were unknown to the farming community at the point of designation.

The activities listed in the consultation range from those undertaken with full consent of the land manager and privately funded (e.g., biodiversity net gain delivery) through to local designations that do not afford reward to the land manager or require their input to that designation decision. Local Wildlife sites don't always have a rigorous process behind them to justify another level of protection afforded by a new designation.

Biodiversity net gain, conservation covenants and Landscape Recovery schemes will deliver land use change. Each will have complex management requirements attached to them. At the end of any formal agreement, Environmental Impact Assessment or other regulations will prevent them from being destroyed. **Overlaying a designation on agreements such as biodiversity net gain, conservation covenants and Landscape Recovery may only add to the complexity of delivery. Also, it could undermine the additionality required to secure the private funding required for these schemes.**

10. Should we reform the current feature-based approach to site selection and management to also allow for more dynamic ecological processes? We would be particularly interested in your views of how our sites can be made more resilient to climate and other natural changes and can encompass wider purposes such as carbon sequestration.

Briefly explain your answer in the free text box.

- Yes, for both terrestrial and marine sites
- Yes, for terrestrial sites only
- Yes, for marine sites only
- No, neither for marine not terrestrial sites
- **Unsure**

On the one hand, feature based focuses on protecting what is currently there, making it harder to adapt to climate change etc. A more outcomes-based approach may be more responsive and adaptive as it would focus on what the site can deliver going forwards, rather than just preserving certain features that are currently present.

On the other hand, delivery of outcomes is often dependent on a number of factors delivery is not always achievable, despite best efforts. Outcomes can be hard to define or articulate. The understanding of the outcome could change with time. So, enforcing a purely outcomes-based approach to protection or designation could be difficult, introducing a lot of uncertainty for those managing the land.

Perhaps a hybrid model, which identifies the key features which are important on the site and justify its designation, coupled with a long-term forward-looking vision for the site could have some merit. The longer-term vision could consider the likely future adaptation of the site, whilst also identifying current pressures that need to be addressed to ensure that adverse impacts are being appropriately addressed. In order to be effective, the features and the long-term vision would need to be reviewed so that unforeseen/unavoidable events or

impacts can be taken into account. **Whichever approach is taken, in developing a new designation to support nature recovery, Defra should understand the failings of the current approaches, so that these are not repeated.**

However, part of the reason for the overall discussion is to simplify the designation process and establish our own domestic framework going forward. One of the drivers behind this is to simplify the designation process. **The NFU can understand Defra's desire to have a more flexible designation compared to the current regime; a designation that can incorporate unpredictable habitat change e.g., climate change adaptation and habitat creation schemes, but this has the potential to add, rather than reduce, complexity. There also needs to be clearer principles behind such an approach and consideration must give to the consequences of such a designation. Without this knowledge, it is hard to comment.**

11. How do we promote nature recovery beyond designated protected sites?

A large proportion of land is privately owned and managed by individuals who are also carrying out commercial activities on the land and rely on such activities for their livelihood.

- Engagement with these landowners and the development of appropriate funding and support schemes to encourage nature recovery by private landowners will, therefore, be important if nature recovery is to be promoted outside of designated areas.
- Whilst there is the potential for some private sector funding to be brought into nature recovery, for example through biodiversity net gain, but it is important to remember that this may not be accessible for all, so a degree of public funding also needs to be available. For example, where land is already rich in biodiversity it may not offer sufficient net gain potential for it to be commercially attractive, but the land may still offer nature recovery opportunities which should be supported.

Promoting and supporting nature recovery alongside productive commercial use of the land is crucial if we are to deliver widespread nature recovery.

- Throughout the consultation there is a desire to create '*both the space and ecological connectivity across the country*'. However, a balanced approach needs to be taken to this that engages farmers and growers in the process.
- At present, the focus is often on "rewilding" or other activities which take land out of production, but this approach is not sustainable in the long-term as we need to consider other priorities such as food security.
- Further, without a guarantee of a long-term income stream to replace lost income, taking land out of production will not be an attractive prospect for many landowners.

Moving forward, farmers and growers will become more cautious about nature recovery activities that could lead to designations due to the unintended consequences.

- Ensuring that the designation regime works for landowners and facilitates sustainable economic development with the vicinity of the protected site will be key to addressing these issues. Many agricultural businesses have operated for many generations, alongside the protected site, and it is important that this is supported going forwards.
- As noted in our response to question 7, high background levels of ammonia emissions near protected sites are preventing the upgrading of farm buildings and infrastructure to meet regulatory requirements, net zero or to improve animal health. So, farmers will not want to constrain their ability to respond to regulatory or market demands by taking up nature recovery activities may lead to a designation nearby.
- Equally, farmers and growers are seeing farming activities being constrained near designated sites where their actions are perceived to impact on the SSSI or the activities on

site negatively impact on the farmland. For example, blocking of drains within a SSSI has led to a lake forming in the up field, outside the SSSI site. The farmer in question has not received compensation for the loss of this asset. It would require an expensive legal case to resolve. Defra need to reward land manager engagement with Government's aims to create greater connectivity to benefit species and habitats.

If done well, Local Nature Recovery Strategies could be a useful tool for identifying areas which offer significant opportunities for nature recovery. It will be important that these strategies are used to inform other local decisions regarding nature recovery to ensure that there is a consistent approach.

Considering how private finance can work to support nature recovery and developing mechanisms that allow landowners to stack environmental off-sets on the same area (e.g. separately selling carbon, nitrogen and biodiversity off-sets) could increase the resources available for private nature recovery actions. Consideration also needs to be given to how the future maintenance of these areas can be supported/encouraged after the end of the initial term, either by allowing maintenance to be sold as a further off-set or by ensuring that public funding is available to those willing to continue to maintain these areas.

Ultimately, the key to securing nature recovery outside of protected sites at a large scale will be to ensure that nature recovery is an attractive proposition for private landowners, many of whom will be dependent on deriving an income from their land. Ensuring that the designation scheme works for private landowners and supports sustainable economic activities will be key to addressing the negative perceptions associated with having land designated which may deter landowners from improving the natural habitats on their land. Long-term financial support for environmental land management (ELMs) will also be key.

12. Do you see a potential role for additional designations?

Please provide detail in the free text box.

- Yes
- **No**
- Unsure

The example projects highlighted in the consultation paper have happened because they have been driven by innovative individuals. To designate and formalise the process would remove that innovation. Hence, **the NFU does not consider that it would be appropriate to create a designation for nature recovery areas as it is not clear that any such designation would achieve any significant benefits for the environment. Instead, areas which offer the potential to make a contribution to nature recovery should be identified through Local Nature Recovery Strategies, helping to target funding to those areas.** Where the landowner is interested entering into commitments to deliver nature recovery, they will be able to explore options such as offering biodiversity off-sets, entering into conservation covenants or entering into ELMs to secure and facilitate the delivery of nature recovery on their land. These obligations will be enforceable, so there will already be a mechanism in place to ensure that efforts are being made to deliver the commitments entered into. However, there will always be a degree of uncertainty regarding the final outcome, and it is inevitable that some projects may have to be modified due to unforeseen circumstances, so it is important that a degree of flexibility is maintained to ensure that projects can be adapted in response to events.

If there is to be a designation for nature recovery areas, the NFU considers that it should be targeted at areas where long-term nature recovery commitments have already been entered into, and where the landowner consents to the land being designated.

- Such areas will require active management to deliver results, so it is essential that landowners are supportive of the designation.

- ‘Designation’ does infer a level of formality, rules and constraints. A different approach needs to be developed that captures that local innovation without being prescriptive as inferred by designations. This would give greater flexibility than existing experience of the current designation system.
- The regime should also be lighter touch and more flexible than other categories of protection to reflect the lower value of the habitat at the start of the project and the uncertainty around the end results. Provision should be made for such designations to be periodically reviewed, with the potential for areas to be de-designated, as well as the potential for higher levels of protection to be imposed if a sufficiently high-quality site is created.
- Landowners should also be able to apply for the land to be de-designated in a range of circumstances, including where the underlying nature recovery commitment is terminated or comes to an end.
- The main purpose of such a designation would be to identify areas which may merit higher levels of protection in the future.
- Provided there are underlying existing long-term commitments to manage such areas for nature recovery, the NFU considers that such areas should count towards 30 by 30; nature recovery takes time, so including these areas in the 30 by 30 target would avoid the need to designate poor quality sites in the hope that they will improve in the future, and on the basis of features that it is hoped will be present in the future, when there may be a degree of uncertainty regarding the delivery of those features.

Local nature reserves should continue to either sit outside of the protection regime discussed above, with a level of protection which reflects the lower ecological value of the sites and the less stringent designation criteria.

Landscape designations, such as National Parks and Areas of Outstanding Natural Beauty should also continue to be governed by a separate regime as the nature of those designations is fundamentally different.

Protected sites: site management and protection

13. Do you agree we should pursue the potential areas for reforms on assessments and consents?

• Yes

- No – keep as it is
- No – reform but not these areas or additional areas (please state, why)

The NFU believes that the current approach to Habitat Regulation Assessments (HRAs) is not fit for purpose. Whilst the NFU supports the desire to protect our most important and sensitive habitats, the NFU believes that the current system is too precautionary, resulting in a situation where environmental improvements are sometimes prevented or delayed because of the difficulties in navigating the HRA processes. Our experience is that local authorities are often very risk averse, because of the risk of legal challenges, resulting in delays in obtaining permissions and in some cases resulting in permissions being refused because of uncertainties regarding the extent of any potential adverse impacts. With the proposed move to new designations the NFU would not want to see HRA required for all protected sites.

The NFU believes that the HRA process needs to be based on sound scientific evidence, but also needs to set the bar at a realistic level as proving the absence of harm is extremely difficult. Taking an overly precautionary approach makes it easy for those opposed to a plan or project to increase the costs of the HRA and delay the outcome of the process by submitting evidence, which has often not been subject to peer review, suggesting alternative mechanisms by which there could be adverse impacts on protected sites. It can be very difficult, and very costly, for the applicant to counter this evidence.

The HRA process is very difficult for an individual business to navigate or even engage with. For example, where a small family dairy farm is told that their proposed replacement building is required to go through the HRA process due to potential ammonia impacts on a nearby designated site. Without expert help, it is very difficult for a small business to establish the in-combination effect of all ammonia emissions that potentially impact on that site.

The NFU also believes that social and economic factors should be given greater weight in the decision-making process than is currently the case. Article 2(3) of the Habitats Directive states “*Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics*”. This suggests that at the time the Directive was implemented, it was intended that the social and economic consequences of actions taken under the Directive should be considered. However, our experience is that the HRA process does not allow for the consideration of social and economic consequences, regardless of the extent of the impacts on the applicant, unless the impacts are so great that the impetative reasons of overriding public interest (IROPI) test can be met. Our experience to date is that it is very difficult for a single agricultural business to meet the threshold for IROPI, meaning that the implications of the individual business are often regarded as irrelevant, even if the practical consequence would be that the business ceases to be viable.

The NFU would, therefore, like to see a fundamental review of the HRA process, with a new approach which supports and encourages sustainable development and accepts that a degree of risk or uncertainty may be unavoidable in some instances.

The NFU supports the retention of a two-stage process, with a relatively simple screening exercise, followed where necessary by a more detailed assessment. This would ensure that those projects which are unlikely to have any significant adverse impacts on protected sites are not subject to disproportionate burdens. Where a project has been designed to include mitigation measures to reduce its impacts it would be sensible for those mitigation measures to be taken into account at the screening stage where tools exist to enable this to happen, provided they can be secured by through appropriate conditions in any subsequent licence/permit/permission. This would help to reduce the burdens on those who are considering and planning in mitigation measures when designing their projects and incentivise the early consideration of mitigation measures.

The NFU also supports the working group’s recommendation for there to be a centralised resource collating information which is known about a particular site, making it easier for applicants to carry out their assessments, and potentially helping to reduce duplication where knowledge already exists. This could also help to inform decision making before detailed plans are drawn up as it would enable individuals to quickly and easily ascertain what the key pressures are on a particular site and what difficulties they are likely to need to overcome if their project is to be successful.

The role of strategic solutions is something that may also merit further exploration however, this cannot always involve taking large areas of land out of production, and consideration must be given to developing solutions which work alongside productive agriculture and other land uses. Clarity regarding the funding for these projects and the cost implications for development or other activities benefiting from these projects would be required in order to fully evaluate the potential benefits and/or risks associated with this type of approach.

The NFU would also like to see a move towards a system that supports businesses which are trying to reduce their environmental impacts by investing in newer and more environmentally friendly infrastructure (e.g., more modern livestock housing or slurry stores). As set out in our responses to questions 7 and 11, where a project involves the replacement of existing infrastructure, the NFU believes that the focus should take into account the net impact on emissions, rather than focusing solely on the emissions from the new

infrastructure. This will ensure that those who are seeking to implement best available means to reduce their emissions are able to do so. In many cases, actions by a single business will not be able to fully address the pressures on a protected site but ensuring that each business can take the steps that are within their power to reduce those pressures, whilst also remaining viable, will help to improve the condition of our protected sites, whilst ensuring that businesses remain viable.

Site condition surveys also need to be kept up to date by Natural England. The land covered by a designation is often privately owned, and access for surveys is not always available to those wishing to undertake plans or projects in the area. Knowing where sensitive features are within the protected site is important to ensure that the appropriate assessment is an accurate reflection of the potential impacts on a site. Where access is not granted by the landowner, the site condition surveys may be the most reliable resource available to assess where sensitive features are within a protected site. However, in some cases these are not up to date, so assessments may not always be based on data which accurately reflects the current position on the ground. **Having up to date condition assessments detailing where sensitive features are would, therefore, ensure that the impacts of a project are properly assessed.**

14. Should action be taken to address legacy consents?

If 'Yes', we would particularly welcome your views on how this might be done in a cost-effective and fair way explaining your answers in the free text box.

- Yes
- No
- Unsure

Yes, but only in consultation with the holder of the consent, and with compensation being payable where the revocation of the consent would have a detrimental impact on the holder of the consent.

As existing consents have to be considered when assessing the implications of new plans or projects, reviewing consents which are already in place and seeking to reduce the number of dormant consents has the potential to offer some benefits by making it easier for other projects to be approved. However, it should not be assumed that a consent is no longer needed because it hasn't been exercised recently. Some consents may relate to activities which are carried out periodically, and which need to continue in the future.

The NFU considers that any review of consents must be carried out in a manner which encourages open dialogue between Natural England and the holder of the consent, with a view to agreeing an appropriate course of action going forward. That could involve the consent being modified to reflect the current needs or surrendered if it is no longer required. Natural England must take into account socio-economic impacts to ensure the business remains viable in the long term. If agreement cannot be reached, Natural England should make use of its existing powers to vary or revoke the consent, with the holder of the consent being compensated where appropriate.

15. Should we move to this more outcomes-focused approach to site management?

Please tick the option you prefer and briefly explain your preference and what benefits it may have in the free text box.

- Yes, using Site Improvement Plans
- Yes, but building on Site Improvement Plans to offer a holistic site outcome plan
- No
- Other
- Unsure

Being clear about the long-term ambitions and outcomes for protected sites, taking into account climate adaptations etc, has the potential to offer some benefits, provided that the outcomes are realistic and achievable. An outcomes-based approach has the potential to move away from a focus on protection, which has not always delivered. For this approach to work it must be through on-going dialogue with the site managers to ensure the outcomes can be delivered, or at least have a shared understanding of the risks from adopting this approach.

Outcomes need to be clearly defined so it is possible to assess progress towards and achievement of the outcome. It would enable future ambitions for a site to be taken into account when assessing plans and activities to ensure that they are compatible with the long-term vision of the site. However, there is also a danger in over-reliance on outcomes, as there will always be a degree of uncertainty regarding what can be achieved, and there could be a range of reasons why actions do not deliver the expected results.

Equally, if the outcomes determined do not align with the land managers ambitions it will not secure delivery. Currently this can happen where Natural England has a duty to achieve favourable condition on SSSIs. The land manager is more focussed on management of the site, say, for grazing. For example, Higher Level Scheme (HLS) agreements have indicators of success which are based around an outcomes approach. When negotiating the agreement land manager would be thinking about stocking levels and how those requirements fitted with animal welfare requirements and the rest of his farm business. There have been cases where these grazing levels don't deliver Natural England's outcomes/ indicators of success. Natural England then use the HLS agreement to reduce the grazing levels. The land manager will resist this as he signed up to an agreement with a stocking level, as set out in a detailed stocking calendar, not the outcome/ indicator of success.

Natural England has recently been given new powers to produce protected site strategies, which have a statutory basis. **It is not clear whether giving site improvement plans more significance, in addition to the introduction of protected site strategies would add unnecessary duplication or increase the potential for complications if the protected site strategy and the site improvement plan have areas of inconsistency.** If site improvement plans are to be given greater emphasis it will be important that the respective roles of site improvement plans, and protected site strategies are clear and that there is a clear hierarchy to ensure it is clear which should be applied if there are conflicts.

If site improvement plans are to be given more weight, consideration needs to be given to how they will be implemented. Often land within protected sites is privately owned, and the actions needed to improve the condition of the site may not offer benefits to the landowner; indeed, in some cases they may restrict the landowner's use of the land. It is important, therefore, that mechanisms are in place to support the delivery of these public goods, either through ELMs or through other sources. Site improvement plans would also need to be reviewed before they are given greater weight to ensure that they appropriately balance ambition and achievability; overly ambitious plans with no clear indication of how goals can be achieved may be a barrier to implementation so if these plans are to be given greater weight measures need to be implemented to ensure they are fit for their revised purpose.

In addition, it is worth noting that if site improvement plans are made statutory it will undermine the ability of the land manager to secure funding through ELMs or other funding streams as it will be difficult to prove additionality.

16. Do you have suggestions for how regulation 9 requirements should be reformed to support delivery of England's 2030 species target or other long term biodiversity targets and to improve our natural environment?

Please set out your answer briefly explaining what benefits it may have in the free text box.

• Yes

- No
- **Unsure**

The reach of the regulation 9 requirements is extensive, covering a range of functions and activities by different public authorities. Therefore, any reform should be approached in a considered way. It is right that multiple public bodies carry out their functions in a complementary manner to achieve environmental outcomes. However, they must be given the ability to balance this with their other public functions and a process is provided to help find solutions. Recent experiences of the implementation of the nutrient neutrality policy have left planning authorities unable to resolve Natural England's advice against the needs of their local community.

Recent casework has highlighted how environmental regulations have carried more weight than other considerations. Furthermore, those regulations have only focussed on environmental delivery to the exclusion of socio-economic factors, even though they are provided for in the regulations. This has been seen recently with issues around nutrient neutrality issues.

As set out in our response to question 13, **the NFU also believes that social and economic factors should be given greater weight in the decision-making process than is currently the case.** Article 2(3) of the Habitats Directive states "*Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics*". This suggests that at the time the Directive was implemented, it was intended that the social and economic consequences of actions taken under the Directive should be considered.

Much of the land within protected sites is privately owned and managed, so it is important to consider what public bodies can deliver through the application of their duties in Regulation 9. It may be that more detailed guidance to aid the understanding and application of the existing duties is a more appropriate approach than seeking to change the regulatory provisions. Whatever approach is taken, it is important that the duties are consistent with the powers public bodies have in relation to the management of protected sites within their area and the interpretation of the requirements helps public bodies/ authorities understand how the requirements apply proportionately to small businesses.

17. Do you have suggestions for how processes under Regulation 6 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 and sections 125 to 127 of the Marine and Coastal Access Act 2009 together could better deliver outcomes for the MPA network? Please explain your answer, these regulations are shared with devolved administrations, and therefore careful consideration will be given to any potential effects on these duties, with full evaluation following this consultation.

- Yes
- No
- Other
- **Unsure**

18. Do you have suggestions for improving the EIA scope and process for the Defra EIA regimes? We would particularly welcome your views on how they can more effectively help to reduce the environmental pressures outlined in chapters 3 and 4, deliver the objectives in the Environment Act, and facilitate sustainable development.

Please tick all regimes that apply and explain your answer in the free text box.

- Yes – Marine Works EIA regime
- **Yes – Forestry EIA regime**
- **Yes – Agriculture EIA regime**
- Yes – Land Drainage EIA regime
- Yes – Water Resources EIA regime

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



- No
- Unsure

If Defra pursues further changes to streamline environmental assessments, the requirements must be made proportionate to small and medium sized business. The requirements need to make sense to those working in the environment. The regulations need to give sufficient weight to economic impacts, particularly where requirements negatively impact on capital assets. Many environmental regulations are written and implemented without any regard to socio-economic factors.

In reviewing the EIA process Defra should not seek to change the purpose of EIAs. There are always changes that could be made to make Environmental Impact Assessments (EIAs) more effective e.g., refine and clarify the appeals process. The current version of EIA agriculture guidance has extended definitions and changed the scope of EIAs. It has also increased the evidence requirements at the first stages of the EIA process. Some of this was driven by changes to EU regulations and it would be worth reviewing whether they have added any value to the applicants or the regulator.

The NFU has responded to the separate Impact Evaluation Survey initiated by Defra in April 2022, seeking views on the EIA process, and given several examples of where the Forestry and Agriculture EIA regimes. In particular, we commented that:

- Agriculture EIA regime. We would like to see the EIA scoping stage to be less onerous.
- Forestry EIA. A simplified approach and reduced costs for smaller projects is needed. The current process contributes to complexity and barriers to tree planting. Simplification is key.

The NFU would be happy to comment upon any further Defra proposals to make the process simpler and less costly for our members to undertaken and await the next phase of consultation.

19. What are your views on our proposal to establish priority areas for afforestation?

The NFU welcomes the proposal to simplify the EIA regulation approach to ease the administrative burden for those wishing to undertake afforestation projects. This will help address one of the barriers which prevent landowners entering into woodland creation projects and achieving the governments proposed tree planting targets.

The Afforestation Strategic Assessment landscape scoping project used to identify 'low risk' areas, would need to take pragmatic approach to the 'features' likely to be affected and ensure sound scientific information that is up to date is used to identify these features. At a national level the NFU is keen to be consulted on what the existing policy parameters for defining acceptable development, advanced surveys and mapping are going to be used in this tool. It is important this tool link to other policy and local strategies e.g., biodiversity net gain and Local Nature Recovery Strategies. At a regional level the NFU supports the approach to work with local stakeholders (including land managers, farmers and growers) to gather relevant local information and ensure the right tree is in the right place.

30 by 30

20. What are your views on our proposed criteria to achieving our 30 by 30 commitment? We are keen to hear views on the proposed approach for assessing Protected Areas set out under 4.1 and suggestions for areas of land we should consider as OECMs in England under section 4.1.0

Farmers and growers already do much to deliver for nature and the wider environment and 30 by 30 cannot be delivered without them. Therefore, widespread involvement of farmers and growers is fundamental for the successful delivery of 30 by 30.

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



Our vision for nature improvement, including 30 by 30 is based on a preference for land sharing (the delivery of multiple outputs and benefits from the same land parcel) to deliver for nature, not land sparing (the re-purposing of farmland to deliver new outcomes) and must represent viable business propositions, in harmony with the production of food, fibre and energy. In addition, nature's recovery should also not be pursued in isolation: optimal environmental outcomes should seek to enhance air and water quality and build soil health.

To add to the examples mentioned in the Green Paper of where an integrated approach to farming and land management can benefit nature whilst producing food, the [NFU's Farmed Environment](#) and [Landscape and Access](#) reports contain a number of case studies of farmers and growers farming alongside the environment.

What counts towards the 30 by 30 target is a complex picture of policy mechanisms, funding and spatial prioritisation and much more needs to be done to aid the understanding of farmers and growers.

However, Defra logically proposes that 30 by 30 is delivered through brigading existing delivery approaches under the 30 by 30 banner. We believe that the 30 by 30 ambition, in itself, should not create additional bureaucracy or constraints for land captured by the definition. These areas will be delivering against scheme or contract requirements e.g, ELMs or biodiversity net gain.

ELMs

ELMs will be an important policy and funding mechanism to help deliver 30 by 30.

Although we note that the consultation proposal is for future Landscape Recovery projects within ELMs to deliver for 30 by 30. **It should be noted that where ELMs activity leads to more permanent land use change, the business considerations are significantly different.** As land is their capital asset, individuals will look at the long-term funding, beyond the length of the ELMs agreement. They will consider the impact on future generations, which makes land use change less appealing. Government's historic behaviour will also be taken into account. Upland farmers have already been delivering public goods for many years through successive Government-funded agri-environment schemes. As a consequence of their engagement with such schemes they have seen their land tied into management for environmental outcomes and wider public goods through legislation, for example, EIA regulations or SSSI management requirements. Currently, they are having government support withdrawn (BPS) without the means to attract new income as the environmental requirements, including the agri-environment scheme, prevent them from improving agricultural productivity. This does not incentivise land use change based on government support.

ELMs is still very much in development and is not due to be fully rolled out until 2024, but to deliver wider government ambitions ELMs has to be adopted across the wider countryside. To secure the high levels of engagement required to have the broad impact ELMs must be simple, deliverable and offer fair reward to the farmers and growers managing the countryside. So, to be successful ELMs requires:

- High uptake across farmland. This will help deliver a 'bigger better and more joined up' approach, as per the principles set out by Lawton.
- Financial support for environmental maintenance and not just creation. For example, hedge maintenance comes at a cost but delivers for net zero and the wider environment, providing wildlife corridors and supporting pollinators.
- Fair reward. Payments need to offer a fair reward and an incentive for participation, going beyond the current 'income foregone' calculation.
- Recognition that farms are dynamic businesses and needs to reflect those different structures and tenures to ensure inclusivity. With around 30% of farmland in some form of

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



tenancy and an average tenancy length of 3 – 4 years, land tenure arrangements can be a barrier to participation in environmental schemes, particularly where the scheme is multiannual.

In designing ELMs, the government needs to use an engaging narrative. Farmers and growers have been involved in environment schemes for many years and maintain the majority of our important habitats designated as SSSIs. The management of these SSSIs has been prescribed by successive conservation regulators since their designation, hence **the narrative of ‘nature recovery’ risks disenfranchising the very farmers and growers who have already been delivering on those government policies for nature and ‘nature improvement’ may be preferred.**

Biodiversity net gain

On, government must balance any future net gain policy with the use of land, a limited resource, for the production of food, fibre and energy.

Landscape Review

On the Landscape Review proposals for National Parks and AONBs to contribute more towards the 30 %, we have just responded in full to the recent Defra consultation. Our view on the strengthened nature recovery purpose for protected landscapes is that **nature recovery can’t be delivered as a standalone function and that equal weight must be given to the socio-economic purpose** (as set out in the Glover review) as a core function of these landscapes, alongside nature recovery.

The NFU would like to see thriving, progressive and viable farm businesses at the heart of rural England. We are particularly keen that **proposals for new designations do not stifle necessary farm diversification, development or progress that may be required by regulation** or as a means of meeting targets, such as net zero ambitions.

Local Nature Recovery Strategies

Local Nature Recovery Strategies will play a key role in spatial planning at a local authority level in future. **We are very keen that Local Nature Recovery Strategies must be developed in consultation with land managers from the very beginning of the process to ensure these are an accurate representation of what is on the ground**, or what could be achieved; there must be a simple mechanism to challenge inaccuracies of any Local Nature Recovery Strategies, particularly where it is used to target ELMs funding, and ELMs funding should be open to land managers outside of priority areas.

Tree planting

The NFU has a clear vision of what is needed to ensure farmers can engage with tree planting in the years ahead and play their vital part in delivering for the climate. This thinking is set out in the [NFU Tree Strategy](#), launched in July 2021.

Ultimately, the NFU wants to see the right tree in the right place, more recognition for trees outside woodlands that can be incorporated into a farmed landscape and the continuation of the core business of producing food and fibre alongside tree planting. Existing policy, such as the existing tenancy clauses that prevent 30% of our agricultural land from engaging in tree planting schemes and the permanency element of planting trees, present challenges and need to be addressed. In addition, the NFU would like to see incentives to bring existing woodlands back into management, and for this to be prioritised over new tree planting. We also believe that there must be a separate ELM scheme for large scale tree planting and woodland creation.

We need to be cognisant about the knock-on impacts of an increased drive for tree planting in some areas, which include lead to non-renewal of existing farm tenancies and increasingly limited opportunities for the next generation of farmers.

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



Rewilding

On Defra's proposals for rewilding, our strong view is that government must focus on land sharing to deliver food and environmental delivery through policies like ELMs, and not adopt an approach that risks undermining the social fabric of rural communities.

Rewilding also ignores the fact that our iconic farmed landscapes are valued by the many who make 4 billion visits to the British countryside each year.

21. What are your views on our proposal to reform forestry governance and strengthen protections for the Nation's Forests? We are keen to hear views on any additional powers and statutory duties we should consider that would help to deliver on the benefits of woodland beyond timber production.

Strengthening the commitment to ensure no net loss in the size of the nation's forests, aligns with other government commitments however to deliver this it must encapsulate no net loss of socioeconomic and cultural values of biodiversity (as well as intrinsic values like listed species) to ensure affected communities or landowners are at least as well off – and preferably better off – than they were before. As outlined in 'Ensuring no Net loss for People: Good Practice Principles' (Bull et al, 2019).

The UK Government forestry body statutory duties currently prioritise timber production and conservation of natural beauty areas. The proposed reforms outline how these duties must better reflect environmental and social importance of woodlands, and how a new duty to protect nature and promote biodiversity could be introduced. The consultation states that this would be accompanied by 'expanded powers to deliver these duties', without understanding what these powers are, the NFU is concerned about the impact of a change of duty and resulting powers could have and if this would impact landowners who surround the Nations Forests e.g., change of access, increase and relocation of deer pressures. With a change in duty, we are also interested in understanding how conflicts in duties e.g., environmental trade-offs, would be managed. The NFU would therefore welcome more detail and to be consulted on these powers in order to make an informed decision. Clarity must also be provided about how a change in duty and powers would operate alongside other bodies and authorities.

22. What are your views on our proposal to adjust forestry permanency requirements for certain project types?

As we set out in the [NFU's Tree Strategy](#), the permanency element of planting new woodland is a major barrier to the land manager and landowner community, and we recommended that this needed to be reviewed. Therefore, the NFU welcomes the proposal to consider allowing trees and woodlands (including orchards, silviculture practices and agroforestry) to be planted on an impermanent basis and are keen to be included in future discussions and policy development on the matter.

30 by 30: UK Marine Strategy

23. Do you agree with the proposed changes to the UK Marine Strategy (UKMS) delivery programme, and if not, what other changes would you make to streamline the reporting of UKMS?

Please explain whether you agree with these changes and provide reasoning. If required, please outline any additional proposed changes that will help us achieve the stated goals. When you respond please highlight your experience and make us aware of any evidence you can share that supports your view.

- Yes
- No
- **Unsure**

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



24. Do you support the approach set out to split the high-level Good Environmental Status (GES) target into individual descriptor level GES targets?

- Yes
- No
- **Unsure**

Protecting Species (page 22)

25. Do you agree we should pursue the potential areas for reforms for species?

- **Yes**
- No – keep as it is
- No – reform but not these areas or additional areas (please state, why)

The NFU agrees that the current species protection regime is piecemeal. Currently, there is a complex system in place with broad legislation covering a number of protected species, as well as individual pieces of legislation for specific species, such as badgers. Some species are given the same level of protection by general legislation as those in individual legislation. **The NFU therefore agrees that reform is needed in order to provide harmonisation and clarity across the species protection regime whilst at the same time ensuring that the level of protection is appropriate for the species concerned.**

The NFU broadly supports a tiered approach, as suggested in the consultation, provided that it is underpinned by robust scientific evidence to ensure that the level of protection is appropriate for the species concerned. It will be important that species are able to move between the tiers as necessary, including moving to lower tiers if the conservation status improves sufficiently. This will ensure that the strictest controls are reserved for the most vulnerable species and that resources are targeted effectively; it will also ensure that restrictions remain proportionate and enable problems to be dealt with appropriately. Periodic reviews, underpinned by robust, independent scientific evidence will be important. It will also be important to ensure that there is alignment between nature recovery and protected sites policies and protected species policies, particularly in relation to the most highly protected species. The NFU would support the use of secondary legislation to amend species lists, as this would facilitate such changes, but subject to a requirement for there to be consultation with relevant stakeholders prior to protections being introduced or increased in particular to ensure that the implications of such changes are understood.

Whether the tier approach suggested is the correct approach depends on the scientific evidence and the detail of how such a tier system will work in practice. As set out above, there must be an opportunity for species to move tiers, but we query how exactly land managers, and the public will be notified of any such changes. Land managers must be informed if species move tiers, particularly if species are awarded higher levels of protection, as land managers may be at risk of committing a criminal offence without that knowledge.

Overall, the NFU would be keen to understand more about the proposed tier system, including the evidence base to be used to determine which species lie under which tier, the process for moving tiers and the intended methods for notifying the public and land managers of any changes. The NFU would also like further clarity about what would be included in “welfare protections” referred to in the tier 1 protections. The NFU understands and supports the need to take appropriate action to protect the welfare of wild animals, such as the regulation of methods of capture and killing, but it is important that the protections offered to wild animals are appropriate for animals living in the wild state, and this will necessarily be very different to the standards applied to domestic animals.

If the highest tier of protection is to include habitat protections, consideration will also have to be given to how this aligns with other policies and targets, such as Local Nature Recovery Strategies and protected site legislation.

There must be a thorough discussion about the protections afforded to species in each tier. The protections must be realistic and proportionate. As with the Wildlife and Countryside Act 1981 there must be a regime to allow effective management of the protected species where it is causing harm to agriculture, for example, through crop damage or enabling disease spread.

26. Based on your knowledge and experience please can you tick the criteria below that you think we should use to determine what level of protection a species should be given?

You can tick more than one box.

• Threat of local or national extinction

- Welfare of wild animals
- Controls in trade
- Importance to the ecosystem (a species that has a disproportionate beneficial effect on an ecosystem and if they are not present the ecosystem will be in danger of collapse).
- Promoting recovery (a species with a low or declining population, which may not yet have a threatened conservation status, but could be protected to support recovery and increased distribution).
- Importance to genetic biodiversity (endemic species or sub-species within England that are important for the wider genetic diversity of the species).
- Management requirements (a species where management is required for public health, to protect agriculture, commercial interests and to protect habitats)
- Socio-economic importance (a species that could be protected to benefit people and communities, for example, to promote tourism)
- To support efforts to reintroduce species or rewild habitats.
- Unsure
- Other – please state, why

Others should include

- Threat of local or national extinction
- Importance in the ecosystem
- Management requirements

Threat of extinction should be one of the main factors, ensuring that protections are reserved for those species which are in need of protection. Protecting species which are not vulnerable could impose disproportionate burdens on those who need to take action to control the population in order to prevent harm being caused. An example that is often cited is that of great crested newts. They are protected due to low levels of the species across Europe. They are afforded high levels of protection. Across England great crested newts are more widespread and a different approach to protection could be afforded.

Importance in the ecosystem could help to ensure that protections are reserved for native species and could be useful in prioritising action where the needs of two species conflict? However, it is unclear how this would work and how it interfaces with site protections. Arrangements need to work in harmony across sites and species as they will co-locate. Ecosystems could be interpreted very widely, with little evidence, impacting on many communities and businesses. As yet, species protection has not required a socio-economic impact assessment as part of the decision making and considerations for affording protection.

Management requirements should also be taken into account, as it is important that species can be managed in a proportionate manner to ensure that, for example, damage to crops and livestock can be minimised.

The NFU has concerns about using protections to support reintroductions. Reintroductions have the potential to result in unintended consequences. These impact directly on farm businesses and the wider community. A system must be in place to address these impacts immediately to the satisfaction of the affected businesses.

Protecting the species could be detrimental to this flexibility, thereby increasing the harm caused. The NFU believes that species reintroductions should be dealt with outside of the protected species regime and after national consultation with relevant stakeholders, as well as consultation with local communities in the initial trial areas. Part of the species reintroduction project consultation should consider the long-term impacts and potential future management arrangements. Any decision regarding protected status should be taken only where there is sufficient information regarding the implications of any proposed reintroduction, so that the wider social, economic and ecological impacts of the proposal are understood prior to protection being granted.

The NFU agrees there is a need to support the recovery of some species that meet certain criteria. It should not extend to all species that may see a decline in numbers as that would become unmanageable for regulators and communities.

27. What proposals should we look at to improve our current licensing regime? When you respond please state what you think is not working under the current licensing regime, which principles you think should be brought out in any new regime. Please highlight your experience, as well as making us aware of any evidence you can share that supports your view.

The NFU would support a more straightforward and consistent licensing regime which is sufficiently certain, clear and unambiguous given that non-compliance may lead to criminal prosecution. The system must also be proportionate and practical to implement, ensuring that land managers can respond to problems in an appropriate and timely manner in order to prevent unnecessary harm and/or damage from occurring.

Whilst the NFU supports the use of lethal control as a last resort to deal with significant issues, the NFU is also concerned to ensure that the legislative framework underpinning the issuing of licences needs to be clear, proportionate, and practical. The NFU would suggest that any requirements to have exhausted other means before applying for licences for lethal controls are framed in terms of taking “reasonable steps”, as this recognises the need to take account of the facts of a specific situation when considering the alternative options that could be considered. Similarly, licences for other activities need to be available in a timely manner, with a proportionate and practical legislative framework underpinning the licencing regime.

The NFU believes that the licensing system in place for wild birds works well in general and is pleased with the position that Defra has reached, particularly for general licences. It is essential that general licences remain under any new licensing regime due to the vital role they play for farmers and growers to protect crops and livestock from serious damage caused by wild birds and ensure that the burdens are proportionate. Without general licences, farmers and growers would suffer loss and damage to crops and livestock which would have a significant, detrimental impact on many farming businesses; there would also be an administrative burden on the licencing body if licences had to be applied for in these instances. It is important that general licences remain lawful, flexible and workable for the user in order to fulfil the purpose of the general licence. This is also important to avoid litigation, as the NFU recognises that there has been unnecessary litigation against the English and Welsh

general licences. Having robust general licences which meet the underpinning legal tests will help to avoid that, which is a position the NFU believes Defra has reached with its current general licences.

The implementation of the licencing regime should be reviewed to align with the principles outlined above. For example, licenced species do come in conflict with each other through predation: corvids and gulls predate on vulnerable ground nesting birds such as the curlew or lapwing. The regime for deciding the appropriate level of licence should allow for general licences to manage such predation, benefitting ground nesting birds. When there is a localised problem the licence approach should consider wider populations. For example, dealing with birds attacking livestock where the wider bird population is healthy then a different approach to the licence could be warranted, over a licence applying to one bird. The problem only reoccurs with another bird a few days later.

As well as licences to prevent damage to crops and livestock, **licences for disease control are also crucial to ensure that effective action can be taken to control diseases where necessary.** Wildlife can be a reservoir for diseases which can also affect farmed livestock, and in those situations the ability to take action to address the wildlife reservoir, alongside measures for domesticated animals, are critical, including the ability to use lethal controls where necessary. Prompt action at an early stage in the outbreak could help to protect the wider population of wild animals, thus minimising harm to the species at a national level in the longer term. There needs to be legal mechanisms in place to transport animal carcasses where they have been legally taken.

The NFU largely supports the inclusion of species to purpose combinations in general licences as it helps to meet the legal requirement to set out clear circumstances in which lethal control may be used. Having said that, it is important that the species to purpose combinations are practical and based on robust evidence to ensure general licences remain workable on the ground and are not too limited for users. In the event that species are removed from a general licence or for a certain purpose (but continue to cause serious damage and are not in decline) then individual licences must be available for users to apply for.

It is understood that the recording of actions taken under a general licence may become a requirement for users. Whilst the NFU is not against this in principle, as it helps users demonstrate that they are complying with the licence conditions, it is important that any system for recording such requirements is user-friendly and not burdensome for the licence user. However, such information should not be made publicly available, and the NFU would want to understand fully how such data is to be used.

The NFU recognises that there are currently inconsistencies across licensing powers. It is important that licensing bodies have all the necessary and appropriate legislative powers to enable them to address changes in circumstances without the need to revoke licences unnecessarily.

Overall, the NFU would support harmonisation across a new licensing regime but stresses the importance of certainty and clarity for the user in order to ensure compliance. It is also important to ensure that the licencing regime is proportionate, so the system needs to be able to differentiate between the different tiers of protection afforded to species. Conditions imposed on licences, as well as the difficulty in obtaining a licence, need to be proportionate to the circumstances. Also, it is vital for farmers and growers and their farming business that general licences remain.

The need for flexibility and timely responses will also be important where species are protected following a successful reintroduction pilot. In these circumstances, some problems may only

become apparent as the species expands its natural range, and it will be important that a rapid response can be initiated where necessary.

28. What proposals do you think would make our enforcement toolkit more effective at combatting wildlife offences? When you respond please highlight your experience, as well as making us aware of any evidence you can share that supports your view.

The NFU agrees that enforcement provisions and wildlife offences are inconsistent and outdated and would support harmonisation across wildlife provisions. In doing so, however, it is important that a sensible approach is taken and that penalties are not disproportionate to the offence. It is also important that stakeholders are involved in shaping any new framework and the NFU would be keen to see and influence draft proposals and legislation.

Wildlife offences potentially cover a broad range of offences, and it is important to ensure that penalties are proportional to the severity of each offence; if the intention is to create a single overarching framework for all wildlife offences, it will be important to consider the elements and severity of the offences to be covered within the framework. For example, offences such as poaching involve unlawful entry onto land, as well as the killing of wildlife, and this should be reflected in the severity of the penalty. It is, therefore, vital that any penalty regime includes a range of penalties to ensure that each offence attracts a proportionate, but dissuasive, penalty. Whilst the NFU can understand the logic of looking to animal welfare offences as a reference point for penalties, the NFU considers that penalties should be based on the elements of the offence and the severity of its impact on both wildlife and those managing the land on which the offence occurred. Offences need to be drafted in a manner which ensures that they are enforceable, but also ensures that they only capture behaviour which genuinely merits criminal sanctions.

In terms of breaches of licence conditions, NFU queries whether a breach of a licence condition should always be a criminal offence and believes that it should not be for some licence conditions which could be deemed to be minor compared to others. For example, a delay in undertaking an administrative task should not ordinarily result in a criminal prosecution, as this would be disproportionate to the harm caused.

The NFU considers that there may be a place for civil sanctions as a means of dealing with some of the more minor offences/breaches, rather than resorting to criminal prosecutions for enforcing wildlife offences. These sanctions have the potential to offer a more cost and time effective method of addressing some more minor offences, whilst ensuring that the offender is penalised appropriately for the offence. Some administrative offences could be dealt with effectively through fixed or variable monetary penalties, whilst enforcement undertakings could be a useful tool for securing remedial action where there is a detrimental impact on wildlife. Fixed penalty notices could also be considered, although it would be important to ensure that the level of the penalty is appropriate to the severity of the offence. In either case, it would be important for the process to encourage dialogue between the parties as education may play a key role in helping to avoid further offences in the future, and also to ensure that any misunderstandings can be resolved before formal enforcement action is initiated.

Delivering for nature through public bodies

29. What are the most important functions and duties delivered by Defra group ALBs to support our long-term environmental goals?

As we noted in response to question 20 (discussing delivery of 30 by 30), we need to seek optimal outcomes for the whole of the environment and nature's recovery should also not be

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



pursued in isolation from enhancing air and water quality and building soil health. So, there is no doubt that many of the functions and duties delivered by the Defra group ALBs are important.

In terms of the proposals in the consultation to embed the core mission of nature's recovery at the heart of all relevant bodies, this would be of concern to us without equal recognition of the importance of sustainable economic growth and food security. One aspect of sustainable development must not be considered and delivered on its own, without due regard to the social and economic pillars. **Therefore, we propose that sustainable economic growth and food security need to be included as a purpose for ALBs, alongside delivering for environmental outcomes.**

30. Where are there overlaps, duplication, or boundary issues between ALBs, or between ALBs and government? How could these be addressed?

We have identified a number of overlaps which impact on boundaries between different ALB organisations including

- **Ammonia.** Both the Environment Agency and Natural England have an interest in ammonia and its impacts. The Environment Agency from the perspective of its enforcement of the Environmental Permitting regulations and their application to the pig and poultry sectors and Natural England in relation to the impacts of ammonia on protected sites. We have seen differing stances being taken between the agencies, which causes confusion for farmers and growers as most will not differentiate between the two regulators.
- **Nutrient neutrality.** As noted in response to questions 7, 11 and 13, high background levels of ammonia emissions near protected sites are preventing the upgrading of farm buildings and infrastructure to meet regulatory requirements, net zero or to improve animal health; even though newer infrastructure would have lower emissions than the existing infrastructure and reduce environmental risk. This is because of the need to meet nutrient neutrality in certain areas of the country. Both Natural England and the Environment Agency have an interest – in relation to protection on sites and improvement in water quality, yet we have been awaiting guidance to resolve this issue for some time.
- **Historic features.** Natural England is using the Environmental Impact Assessment regulations to prevent cultivations on historic features after a Countryside Stewardship agreement ends. But the lead body on historic environment is England Heritage.
- **Agri-environment schemes.** Natural England has an advisory role for Countryside Stewardship agreements, but the RPA is responsible for the actual agreement management. Again, farmers and growers do not differentiate between them which causes problems with contract management e.g., the farmer talks to Natural England about a contract issue, rather than RPA.

There are a number of functions and duties delivered by the Defra ALBs, some of which are duplicated. We note that functions such as an environmental regulator, monitoring and evidence and providing technical support to government are recurring themes. **Duplication of functions creates confusion for farm businesses and organisations like the NFU and adds cost. Duplication should be addressed to reduce this confusion, to promote more consistent messaging and contribute to cost reduction.**

In addition, the current inspection regimes are carried out by a number of different ALBs, and the available information is confusing, opaque, and spread across a large number of websites and associated documentation. **A single inspection portal could help.**

31. What are the benefits and risks of bringing all environmental regulation into a single body?

We note that the consultation paper specifically mentions that Defra will assess the recommendations of the Dame Glenys Stacey Farm Inspection and Regulation Review (2018).

As we noted in response to the Dame Glenys Stacey Review, **a single inspection field force would help to provide integrated approach to current inspection and enforcement. This could provide much needed clarity of purpose, consistency in messaging, enforcement, and possible reduced delivery costs.**

However, counter to Dame Glenys Stacey's proposal to combine the functions of regulation and enforcement, we disagreed. The NFU believes that regulation and enforcement would be significantly improved by separation of these functions. The functions of inspector, enforcer, determiner, penalty-applier, and costs collector should not be embodied in the same agency or worse, the same department or individual. In the criminal justice regime, the inspector is the police; the enforcer is the Crown Prosecution Service; and the determiner, penalty-applier and costs collector is the Court. The consequences for farmers and growers of regulatory breaches can be serious; enforcement should therefore be fair, objective, and independent. However, it may be possible to explore an adaptation of the model proposed by Dame Glenys Stacey whereby there is a single point of contact on guidance and advice (on public policy) with a separate body acting to enforce legislation.

A single regulator with revised purposes and duties would need significant cultural change in order to be successful. This may present upheaval and challenges and we do not underestimate the significant undertaking this would represent.

32. What are the opportunities for consolidating environmental delivery functions into a single body? Which programmes and activities would this include?

In terms of Dame Glenys Stacey's proposal for a single regulatory body for farming, and as noted in our response to question 32, it may be possible to explore an adaptation of the model proposed by Dame Glenys Stacey whereby there is a single point of contact on guidance and advice (on public policy) with a separate body acting to enforce legislation.

Other aspects of the Dame Glenys Stacey report that we believed had merit and should be progressed by the Government included

- A more pragmatic approach – training, support, education before prosecution
- The principal that the regulator should impose the least burdensome intervention necessary to achieve the desired outcome
- Recognition that public interventions need a full spectrum of advice and guidance, payments as well as notice, enforcement, and fines: “good regulation is as much about incentives to change behaviour as it is about enforcement”
- Recognition that government inspectors should exercise judgement and discretion
- Consideration of how earned recognition may be used by the regulator
- Proposal that all inspections should be based on sound evidence of need/risk

Points that we noted as concerns in response to Dame Glenys Stacey's report included

- A single regulator raises many practical questions that need answering including how this will work with outcome-based regulation, scheme design, weighting, ownership, confidentiality etc.
- The practicality of finding sufficient multi-disciplinary inspectors to implement the report's core objective is overlooked (e.g. skills, experience, qualifications?): inspectors would be required to inspect slurry tanks, animal feed, soil health, weed control, water management etc.

In addition, we had concerns about Dame Glenys Stacey's proposals for central registration and licensing and we could not accept licensing as a central or general feature of future inspection.

Evidence we gathered for the Triennial Review of the Environment Agency and Natural England in 2012/2013 suggested that the biggest difference can be made at a local level by establishing consistent and trusting relationships between agency staff and farmers and growers, and this still holds now. This would involve establishing:

- Dedicated officers who understand the sector they are regulating, able and willing to make pragmatic decisions based on what is practically and economically achievable.
- A transparent enforcement strategy, which provides opportunity for escalation of concern should the local relationships breakdown.
- Clearly presented ambitions for environmental protection or enhancement – it is vital these ambitions are developed in a participatory way with those farming businesses concerned.

If a single regulator were to be formed, the NFU would expect it to uphold the seven principles of public life as set out by the Committee on Standards in Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Cost recovery

33. Please provide your views on how more effective cost recovery for regulation would affect:

a) environmental protections

b) businesses

Dame Glenys Stacey's Review made it clear that regulatory strategies should impose "the most minimal and least burdensome intervention necessary to achieve the desired outcome, at the lowest cost to the taxpayer".

However, **our experiences of licensing or registration systems are that these can be accompanied by the need for the relevant regulatory authority to fully recover its administrative costs.** For example, the Environment Agency charges that relate to the enforcement of the environmental permitting regulations and more recently abstraction licences are significant, with poor transparency based on charge changes and the ability to seek alternative providers (i.e., competition) do not exist. Therefore, not only does business carry potentially unfair costs but also permit costs have driven perverse business responses, such as use of less environmentally friendly technologies, and could be seen as a barrier to new entrants. This does not help cement good relationships between the regulator and farming community.

When considering the approach to the polluter pays principle, the NFU believes that policy makers should be required to reflect on the five principles of good regulation set out by the Better Regulation Task Force; namely: proportionality; accountability; consistency; transparency; and targeting.

The agricultural sector faces its own unique difficulties due to the imbalance of power in the supply chain and the strong consumer interest in affordable homegrown food. It is difficult for farmers and growers to pass on costs through the supply chain and the margins in many areas are limited and variable. The position of tenant farmers and growers is particularly challenging, as long-term investments in infrastructure may be out of their control or unviable if they do not have long-term security of tenure. In addition, clauses within the tenancy agreements may, in some instances, prevent land being managed environmentally, rather than for productive agriculture, limiting the ability of tenants to off-set impacts on their own holding. This means that policy delivery with short timeframes can disproportionately affect a significant proportion of active food producers in the market. Given the importance of maintaining national food security, and also in recognition of the public goods that the farming sector delivers through the maintenance of the British Countryside (particularly in upland areas

where profit margins can be lower), it is important to ensure that the costs passed on to the industry are appropriate and affordable.

Whilst it is right that the farming sector, like other comparable activities, needs to be accountable for the environmental impacts of its actions, it is also important to recognise that there are circumstances where farmers and growers need to be supported to ensure that they are able to invest in more sustainable technologies to protect against unintended consequences in the agriculture and food system. The business of farming is often over-simplified, but it is itself a complex ecosystem of various types of business that have structural limitations for investment and change. Farming is also often naturally dictated by long-term cycles of production largely driven by the seasons, and it cannot be overstated that short-term confidence can have long-term impacts on the viability of the farming sector. It follows that wider social, value chain, and food policy impacts are inextricably linked and why careful consideration of these complexities is needed.

The application of the polluter pays principle demonstrates the importance of ensuring that a wide range of policy options are available and considered. For example, ensuring that environmental land management schemes are open to all farmers and growers who wish to participate in them, and that appropriate capital grant schemes, to support farmers and growers as they invest in new technologies and infrastructure, are available to the sector. Whilst farmers and growers need to ensure that they farm appropriately and minimise their environmental impact, it is also right that society as a whole should be collectively responsible for the impacts of producing the food we all need.

It is also important that policies recognise the benefits of different approaches to tackling issues. For example, in some instances, offering advice and guidance to educate and support individuals and businesses can be more cost effective and deliver greater results than additional regulation. It is, therefore, important that the polluter pays principle does not drive policy makers down the regulation, enforcement, and sanctions route in order to address issues. Instead, it should encourage consideration of the multiple tools and approaches that can be used, including considering the use of education, guidance, and support schemes, which may sometimes be more effective and economically viable measures to drive change.

34. What is the most efficient way of ensuring businesses and regulated persons pay an appropriate share of the cost of regulation

We are keen to identify and develop solutions that provide mutual benefit to the relevant agency and the industry to help keep costs down and more could be done to support earned recognition.

Earned recognition is about the recognition of good performance, such as using membership of third-party schemes to assess risk and therefore the need and frequency for the state or its agencies to inspect.

The Farming Regulation Task Force, which reported to Defra in 2011, proposed that the principle of “earned recognition” be central to future regulatory policy making. The NFU is fully supportive of such systems that reward good practice, with verified adherence leading to less frequent statutory inspection.

This helps to ensure that low risk farms are not targeted on multiple occasions, allowing regulators to focus their resources on those more likely to be non-compliant. It is an approach that has already been successfully implemented to reduce inspection burdens for both farmers and administrators in Feed and Food Hygiene inspections. Farmers and growers that demonstrate they present a low risk of infringing on rules, and those that go further through

voluntary schemes should have this effort recognised when compliance with regulation is being assessed.

Therefore, earned recognition should therefore feature in the design and implementation of future regulation.

Transparency in how costs are derived is important. In our experience however, the level of transparency is poor. In the recent past, very little information has been provided by the Environment Agency as the base for charges or any charge increases, and any services that will be charged on a time & materials basis. The onus should be on the relevant agency

- to demonstrate greater transparency and show that these costs are fair, proportionate and competitive; and
- to show that it is efficient in its processes and doing everything it can to keep these costs of these services to a minimum.

Full cost recovery may not be fair in all cases and difficult to justify across the board.

- There may be a strong argument for the continued use of grant in aid to contribute to costs and charges. For example, an environmental permit nearly always has additional and wider socio-economic benefits, such as flood mitigation, improvement in air quality or water quality or waste recovery, which provides wider public goods.
- We would have concerns if regulators were able to recover the costs of providing advice. Advice has a number of benefits, and not just to those who are being regulated. As we noted in relation to our response to question 32, Dame Glenys Stacey's Review recognised that public interventions need a full spectrum of interventions, including advice and guidance.

Financing nature recovery

35. What mechanisms should government explore to incentivise the private sector to shift towards nature-positive operations and investment?

The NFU supports the approach outlined whereby the government is exploring its role for enabling the development of a robust market framework centred on clear principles, standards and governance arrangements. The NFU believes the government has a central role to play in driving the realisation of common standards which underpin high integrity environmental markets in turn driving investment in nature-positive operations in agriculture. The NFU has conducted a review of the existing barriers to the development of environmental markets suitable for the agricultural sector and through engagement with a broad range of industry stakeholders and farmers and growers within our membership, the lack of a coherent framework to underpin the integrity of environmental markets is consistently cited as the primary barrier to participation. The consultation is correct to highlight that voluntary codes must span beyond woodland and peatland which have very specific spatial applications, if nature positive investment is to be scaled up to incentivise the provision of the multiple ecosystem services which may be delivered by productive agricultural businesses including biodiversity, water quality, flood risk management, public amenities for leisure and recreation and carbon credits from soils and other habitats such as hedgerows.

It is encouraging that the consultation asserts the government's commitment to support the development of new and existing evidence-based codes and mechanisms which are critical to unlock the diversification opportunities for farmers and growers, as outlined.

Similarly, the acknowledgement that the government is working on common principles for the stacking and bundling of public and private revenue flows for different ecosystem services is encouraging, but also critical if nature-based solutions are to become economically viable for farm businesses given the high level of capital expenditure and long-term commitments in

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



respect of land use change, which must be incorporated into the farming business. The ability to blend and stack revenue flows with minimum complexity will play a crucial role in driving attractive returns on investment and in turn mobilising engagement in ELMs which if designed correctly will allow the leveraging and crowding in of private finance to provide a more economically attractive nature-based intervention within a productive farming environment. Whilst the government has in principle signalled its support for stacking, **current lack of clarity on how such stacking and blending will work alongside key schemes such as the SFI is a significant barrier to farmers and growers engaging in such agreements and is something that needs to be addressed as a priority.**

The NFU endorses the concerns outlined regarding the risk of ‘greenwash’ in the absence of a robust market framework which may undermine the integrity and financial viability of long-term nature-based solutions delivered by farmers and growers. We therefore agree that with the right standards, rules and data the potential of such markets would be unlocked. This should be a key focus for government to shape the development of robust standards which align with long-term environmental policy objectives as well as key strategic objectives such as food security, supporting a thriving agri-food sector and levelling up **which require such markets to work alongside agricultural businesses rather than to displace or compete with the production of agricultural outputs.**

Establishing specialist green finance institutions

The availability of a range of financial solutions and advice on how to structure nature-based projects has an important role to play in scaling up nature-based environmental markets. Government-led financial institutions which specialise in addressing market failures in order to channel public and private funding towards both environmental projects and SMEs, have the potential to effectively target finance and drive the development of environmental markets. They can also ensure farmers, growers and project developers have the access to capital they need to invest in developing nature-based solutions. The UK Infrastructure Bank and the British Business Bank are two such government owned institutions whose specialist knowledge and ability to develop targeted financial products could facilitate the availability of project capital coupled with relevant advice on how to structure financial investments into nature-based solutions.

Where investment in nature is currently at an early stage, with markets still being piloted and developed, financial institutions can help to de-risk early investment to promote market development. This may include both driving the availability of finance (where commercial lenders may deem nature-based solutions a risky investment due to the high levels of existing uncertainty on the robustness of environmental markets), as well as concessional finance to crowd in private investment. **From a farmer’s perspective, the availability of finance that matches the long-term investment horizon of environmental projects and provides low costs of borrowing to reduce the cost of the initial capital investment will help to overcome a significant obstacle:** the often-front-loaded investment required to establish nature-based solutions with the promise of payments in the future over long intervals, which in itself carries risk.

Such institutions are also in a good position to develop their expertise on nature-based projects alongside relevant financing structures to then be able to blend sources of public-private finance to channel investment into nature-based projects that bundle up environmental goods. The institution would help to ensure that the objectives of public and private actors are sufficiently aligned with funding delivered through one funding stream. This will avoid farmers and growers having to deal with the complexity of managing the interests of multiple parties in one nature-based project, which is what would occur when stacking environmental goods and aiming to sell different outcomes to different parties from the same project.

Where stacking is a viable option, the experience of such specialist green finance institutions in delivering blended finance could help to develop best practice and co-ordinate the delivery of contractually sound stacking arrangements for ecosystem services. As such, the unique expertise developed could inform the best practice guidance delivered by the government, inform the accreditation of private sector projects which are compatible with public initiatives such as, but not only ELMs, and build capacity for private sector financial institutions to play a more active role in blending finance and the stacking and bundling of environmental goods as the market develops. With specific respect to the SFI within ELMs, it is likely that stacking will be more appropriate than blended finance. An example of where either blending, bundling, or stacking could possibly work is the Local Nature Recovery scheme within ELMs (with their relatively shorter agreement terms) to deliver seed funding to support the establishment of nature-based solutions with the aim of private market agreements paying for the long-term enhancement and maintenance of the environmental outcomes.

Another key area where such institutions can help build capacity is in the aggregation of nature-based projects to an appropriate scale to access markets. As such, it is critical that environmental markets should be accessible across a range of farm sizes, tenures and business structures

For the agriculture sector to play a meaningful role in nature-based markets, aggregation is essential to drive scalable investment in solutions delivered as part of productive agricultural systems. To scale up that delivery, a broad range of farm types across varying spatial scales and land tenure status will need to be able to effectively engage in the market mechanisms. This means going beyond developing markets which target large privately owned landholdings to those which can effectively aggregate multiple small-mid scale farm projects into investable market solutions.

Farming systems are highly varied, and the agricultural sector encompasses businesses which operate at different spatial scales and under varying land tenure agreements. For large owner-occupied land holdings, the opportunities to deliver investable nature-based solutions is clearer, however for small to medium sized farms and those with tenanted land, there are significant challenges regarding how efficient, long-term, and therefore investable, nature-based solutions may be delivered into private markets. This is because the highly fragmented nature of farmland means that to develop scalable projects that deliver carbon, biodiversity and water benefits will require the co-ordination of many different landholdings over the desirable spatial scale. Aggregation of farm level projects can be complex and require sophisticated agreements on obligations, liabilities and financing which drive up transaction costs. This in turn impacts the competitiveness of such projects within global and national environmental markets. Arguably it is smaller farm businesses that lack the skills and knowledge to access these new potential markets but conversely have huge pressure on compliance etc. but would also do well moving into new markets. There are promising pilot schemes currently in operation that are assessing the potential of various mechanisms to aggregate or co-ordinate the delivery of nature-based solutions for private markets, however, more work is needed in this space to unlock the true potential of such markets in driving scalable environmental delivery.

It is important to recognise that not all aggregation will happen through brokers who are linked to government. However, where government-led green finance institutions can help aggregate demand from buyers in environmental markets, they can also play a key role in supporting the aggregation of nature-based projects to an investable scale. This may involve identifying the appropriate legal and financial structure to support entities responsible for the establishment of agreements between multiple farmers with an aligned interest in delivering environmental outcomes for a market. In many cases, individual farm interventions that work alongside productive agricultural systems may be too small scale to attract private investment and therefore the aggregation of farm projects will be critical to increase the suitability of such projects for certain markets. Intermediary project developers or facilitators will need both

financial and legal support to devise appropriate operating models. Government-led green finance institutions can help build financial capacity through encouraging financing of such intermediaries and their respective projects, whilst a government accreditation body (refer to question 36 for more detail) could provide best practice guidance on how such farmer-led collaboration models can be robustly structured and underpinned by a sound legal framework.

Tenanted land plays an important role in agriculture with approximately a third of all farmed area in England rented. Tenanted land is also often a common entry point into farming for new entrants, and it is essential that this function is preserved to lower the barriers to entry and encourage new talent into the sector. With the average term of a tenancy being well within 10 years, the long-term, multi-decade investment horizons of nature-based markets are often better suited to landowners who can demonstrate control over the natural asset for the duration of the agreement. In practice, however, tenant farmers and growers will play an active role in managing the land and delivering the nature-based solutions being sold on such markets and will therefore have an active economic interest in the agreement. Key to this participation will be to encourage the landlords and tenants to negotiate suitable and mutually agreeable arrangements as to how such markets may be accessed. For environmental markets to achieve scale, best practice frameworks defining the risk and revenue sharing arrangements between landowners and tenants must be defined which appropriately articulate the role of the landowner and tenant in such agreements. Certain environmental markets which may have shorter investment horizons and work as part of agricultural practices and supply chain carbon insetting schemes, may enable direct agreements between buyers with the tenant farmer, whereas private markets with typically longer-term agreement periods, such as those focused on land sparing-based carbon and biodiversity measures, will typically require agreements with the landowner. These **longer-term agreements between the landowner and the buyer of nature-based solutions should be supported by equitable risk and revenue sharing agreements between the landowner and the tenant who is actively delivering the environmental outcome.** The government has an active role to play in determining how such agreements may fit within a robust market framework.

Actively empowering farmers and farmer collectives to co-design in new markets

Farmers and growers have the ability to shape and design the tools, rules and governance needed to create successful new markets that deliver for the environment and continue to meet our needs for food security. To do this government will need to provide funding directly into these groups and also ensure that projects working with farmers and growers do so in a genuine way which means the farmers' requirements are met. In the United States and New Zealand, the governments have invested in the accounting tools farmers need to improve water quality and access new markets. As a result, there is increased confidence and a high take-up among farmers and growers.

Taking this sort of approach will mean a better balance of land use can be achieved as well as increased compliance with existing regulations through enhanced and more robust delivery. At the heart of this is understanding that no two farms are the same and each area of the country will have different environmental priorities, regulatory and financial drivers and social cultures.

The development of mechanisms to manage the reliable flow of payments over the term of the agreement

Given the front-loaded profile of project costs versus the back-loaded profile of project revenues, the risk of the buyer or intermediary defaulting on payments owed would need to be managed. Therefore, suitable protections must be in place to ensure payments for the delivery of the outcomes or actions undertaken by the farmer are secure for the full term of the agreement.

Potential mechanisms to ensure such protections could include the full payment amount due over the agreement being entered into a trust or another suitable financial structure upon commencement of the agreement, with the trust/financial entity responsible for making staged payments to the farm business when appropriate project milestones are reached. An alternative model could be for the government/insurance schemes/project developers to underwrite the default risk to ensure full payment will be received upon successful delivery of the environmental good. There is currently a need for greater clarity on how such mechanisms can support environmental markets.

Clear mechanisms to manage the risk of underperformance or non-delivery due to factors outside of the farmers' control

Nature-based solutions carry a degree of uncertainty as to the level of environmental outcomes that may be achieved over time. This is because such solutions are grounded in natural systems where outcomes will be sensitive to broader environmental factors, some of which the farmer may have limited control over. Examples of this include exposure to extreme weather, pests, and disease, which could either destroy or reduce the extent or condition of the environmental outcome being pursued. Added to this there is a lack of knowledge and hence a degree of uncertainty that particular actions will actually deliver the desired environmental outcomes. For example, a farmer could follow the best advice and available knowledge, but still fail to deliver the outcomes. Finally, it is necessary to ensure there is a clear definition of the desired environmental outcomes in the first place as it could be open to misinterpretation.

A common means to ensure true additionality is achieved and delivered is for the environmental project to produce excess quantities of the environmental good being sold to have a credit reserve which can compensate for any yield impacts and ensure the full environmental outcome is delivered. Over time, **more innovation is required to help farmers and growers manage the risk of underperformance which could result in a farmer having invested significantly in establishing and maintaining the nature-based solution to lose out on future payments due to uncontrollable factors.** A potential market-based solution would be to encourage the development of insurance schemes which farmers may utilise to protect themselves against such an outcome. This would help farmers and growers to manage a key source of risk and would also drive down the high costs associated with developing reserve credits which may then not be required to play such a prominent role in managing delivery risk. This in turn would drive efficiency in environmental markets and encourage greater participation from farm businesses. The government has a potential role in helping to support the development of insurance solutions in partnership with the private sector during such a nascent stage for environmental markets.

36. What level of regulation is needed to incentivise private investment in nature while ensuring additionality and environmental integrity? What else should government be doing to facilitate the development of a market framework that provides investors, farmers and land managers, regulators, and the public with confidence in the quality of privately financed nature projects?

The government has a key role to play in shaping best practice within nature-based markets to build and maintain market confidence and help minimise the risk of adverse outcomes such as schemes or projects being discredited due to poor execution, agreements, measurement, reporting and verification (MRV) standards, or accounting protocols including the registration of credits.

A government accreditation body has the potential to serve the purpose of accrediting those environmental markets that are compatible with government policy drivers such as ELMs, Emissions Trading Schemes, meeting regulatory environmental targets, and carbon pricing initiatives. This will help to inform farmers and growers on which environmental projects would fit with their involvement in government schemes, supply chain initiatives to meet environmental

targets, as well as the farm businesses' own transition to more sustainable practices to achieve net zero. In addition to accrediting private markets, the government body would provide best practice guidance to support the development of compatible private market projects and provide farmers and growers with insight into what features of a project they should consider when evaluating their involvement.

There is a balance to be struck whereby the involvement of government in shaping such markets should not constrain innovation and should provide sufficient space for private sector environmental markets to devise specialist solutions for environmental delivery. This will be key to ensuring that environmental markets continue to reflect evolving market needs and new operating models supported by technical progress. Therefore, government accreditation should be limited to those schemes which aspire to achieve compatibility with particular government initiatives, such as but not limited to ELMs.

There must also be potential for voluntary markets to develop outside of this scope, whereby industry actors may be targeting different environmental and social outcomes and therefore do not require direct consideration of government policy initiatives. This may be for example where they seek to meet specific corporate social responsibility objectives. The existence of the government accreditation system alongside an independent voluntary market will provide flexibility for farmers and growers to engage in those markets which fit their farm business needs.

The foundation for effective markets in nature-based solutions is the ability to demonstrate with confidence what is being delivered in line with the agreement. This includes both farmers themselves needing to be confident that environmental markets will deliver positive environmental outcomes (additional, permanent, verifiable, etc.), and also confidence that the buyers of the environmental services aren't using them simply to avoid taking direct action they really ought to (e.g. buyers of carbon credits need to demonstrate they've first done everything they can to minimise their own emissions). Due to the complexity of nature-based solutions and the broad social and commercial interests that determine their success, it is therefore critical that there is clear agreement between farm businesses and those purchasing their environmental goods on what a successful outcome looks like.

This can be achieved by the establishment and implementation of widely recognised standards on measurement, reporting and verification.

To be effective, standards need to be clear (so that all parties understand what's required), robust (to give confidence that the desired impact is being delivered) and proportionate (so that they don't become overly costly and burdensome to implement). They also need to work in the context of productive agriculture. Government-led standards and private standards both have important roles to play.

Government-led standards

In an area where technical standards are fast evolving and there is significant complexity in how environmental outcomes are reliably measured and accounted for, the government will have an interest in ensuring private market standards align and achieve a degree of consistency with their own efforts to evaluate the effectiveness of government interventions in meeting environmental policy objectives and statutory environmental targets. There is also significant potential, through blended finance solutions, regulatory drivers and stacking, for government to leverage policy initiatives through private markets to help deliver policy objectives. It is therefore in the public interest for the government to develop MRV standards that will help drive the emergence of high-integrity environmental markets that are accessible to sectors such as agriculture and work alongside broader objectives regarding the environment and food production.

The government is already shaping some of these approaches through its different levels of involvement and financial support in developing standards such as the Woodland Carbon Code, Soil Carbon Code, and the Biodiversity Metric. Standards developed and/or endorsed by the government have the potential to serve as an industry benchmark which will provide farmers and growers with the confidence to navigate the range of private environmental markets which may emerge. They will also serve as a blueprint for privately developed standards.

For agriculture to engage in environmental markets at scale, there is a particular need to accelerate the development of a soil carbon code. Soil is one of a farmer's primary and most scalable assets which may be utilised to deliver environmental benefits whilst also driving more sustainable food production. A soil carbon code will also help to support the development of standards on priority areas such as water quality and build greater understanding of how such environmental markets may interact.

Private standards

There already exist a number of internationally recognised, high integrity voluntary carbon standards developed by independent standards bodies such as Verra and Gold Standard, although their applicability to British agricultural systems is currently somewhat limited. Private environmental standards for carbon, biodiversity and water are emerging, but currently there remains a level of uncertainty as to their long-term applicability and scalability for the agriculture sector. **More investment is required to develop private standards for the range of environmental goods farmers and growers can deliver and where appropriate to signpost the compatibility of such standards to government initiatives such as ELMs.**

Many of these standards may provide access to unique markets beyond the scope of public policy and focus on specific environmental, social and governance co-benefits, which in turn drive more attractive returns to farmers and growers who are able to deliver outcomes. Others may derive more novel approaches to MRV which are more compatible with farm management approaches or target specific nature-based projects which work within or alongside productive agricultural landscapes.

The important principle is that such standards must be developed and/or endorsed by independent bodies to internationally recognised robust standards for MRV with suitable levels of transparency on the methodology, so that farmers and growers can engage with confidence in medium to long-term environmental agreements without the risk of the specified approach being discredited.

37. What financial impact do you think the proposals set out in this green paper would have either on business (For example, landowners) or government? Please let us know if you felt these proposals would have a significant impact on your business area, or if you thought they would have an impact on public funds. For example, this could be about costs or if you think certain proposals would have a positive financial impact or create opportunities.

Please tell us in what way you think these impacts would come about, which proposals would drive that change, and try to evidence any financial estimations of costs or benefits.

Inevitably, the Green Paper proposals will have a financial impact on farming businesses and farmers and growers contributions will be important to help deliver nature's improvement. Our interest is in reducing the costs and burdens of any current and future regulation on farming businesses, whilst also protecting, maintaining and enhancing our environment.

We have responded to a number of questions during the course of our response to the consultation paper which set out areas of interest to us and how we would like to achieve the ambition of improving nature, but also ensuring that prosperous farming businesses can still play a key role.

Drawing a few of these points out again here these include

- **Farmers are willing to continue to play a huge role in meeting the environmental challenges of our countryside, alongside providing food for the nation.**
- **Any future framework for nature must be flexible to meet the needs of agriculture and the environment and sitting alongside plans for food production.**
- Our vision for nature's recovery is based on a **preference for land sharing, not land sparing** and must represent viable business propositions, in harmony with the production of food, fibre and energy.
- In addition, **nature's recovery should also not be pursued in isolation**: optimal environmental outcomes should seek to enhance air and water quality and build soil health.
- **Our approach to post-Brexit legal framework for the natural environment must strike a balance between maintaining the high levels of environmental protection we currently enjoy alongside appropriate levels of regulatory equivalence with trading partners to maintain the smooth flow of trade in agri-food products**; and ensuring a degree of regulatory autonomy so that our regulations are designed to take into account the specific conditions and challenges of the UK's farmed environment.
- However, it is worth bearing in mind that many sectors of the economy contribute to the quality of the wider environment and **farmers, while they have an important role in the countryside, are only part of the picture.**
- We need to **move away from the current precautionary system of site protections**, give greater weight to economic and social factors in the decision-making process and promote nature's recovery alongside sustainable economic activities.
 - **The NFU agrees that there is an opportunity to review and streamline the current approach to protected site designations.**
 - We agree with a single process for designation based on science and evidence and our preference is for the Secretary of State to designate sites.
 - We propose a shift from a feature-based designation to a hybrid model, based on features & a long-term, forward-looking vision for the site
- To deliver wider government ambitions, **ELMs has to be adopted across the wider countryside**. ELMs is still very much in development and is not due to be fully rolled out until 2024 but to secure the high levels of engagement required to have the broad impact ELMs must be simple, deliverable and offer fair reward to the farmers managing the countryside.
- **Local Nature Recovery Strategies should be used to identify opportunities for nature's recovery**, rather than assign further land to designation and long-term financial support is needed from ELMs.
- **Rewilding risks undermining the social fabric of rural communities** and so our strong view is that government must focus on land sharing to deliver food and environmental delivery through policies such as ELMs, instead.
- **Reform of the species protection legislation is important** to ensure harmonisation, clarity and appropriate levels of protection for the species - although we propose that species reintroductions is dealt with outside of the protected species regime.
 - The legislative framework underpinning the issuing of species licences needs to be clear, proportionate, and practical.
 - The licensing system in place for wild birds works well in general. It is essential that general licences remain under any new licensing regime.
- **Sustainable economic growth and food security need to be included as a purpose for Arms Length Bodies**, alongside delivering for environmental outcomes.

- **To help reduce regulatory costs, earned recognition should feature more in the design and implementation of future regulation.**
- **In respect of the application of the polluter pays principle, there needs to be recognition that the agricultural sector faces its own unique challenges due to the imbalance of power in the supply chain** and a wide range of policy options must be considered including incentive schemes such as ELMs and capital grant schemes and recognition that advice and guidance, which can be more cost effective and deliver greater results than additional regulation.
- **We support the development of a robust market framework for private financing centred on clear principles, standards and governance arrangements.**
 - **Such markets must work alongside agricultural businesses rather than to displace or compete with the production of agricultural outputs.**
 - **The current lack of clarity on how such stacking and blending will work alongside key schemes such as the SFI needs to be addressed as a priority.**
 - **The government has an active role to play in determining how longer-term agreements between the landowner and the tenant may fit within a robust market framework.**
 - **For agriculture to engage in environmental markets at scale, there is a particular need to accelerate the development of a soil carbon code.**