



A Living Wales – the new “Briefing note for Sustainability Committee:

The Regulatory Framework supporting biodiversity conservation

Natural Environment Framework”

The RSPB has welcomed WAG’s decision to develop a new framework that seeks to embed the value of ecosystems to human wellbeing in Wales’ approach to sustainable development. This is an important opportunity to demonstrate that taking action on a larger scale to conserve and restore biodiversity can deliver multiple benefits to society. However, we are anxious to stress that, amidst the new focus on ecosystem services, the role of biodiversity in underpinning ecosystems must not be forgotten. Effective measures to protect and restore biodiversity must be central to the NEF.

It is important that, as part of the development of the NEF, the regulatory framework in Wales and its suitability to support the maintenance and restoration of healthy ecosystems is examined (*WAG Consultation Document September 2010: A Living Wales*); RSPB Cymru is planning to participate in this work.

This is not an exhaustive list, but we consider that the tools set out below are, and will remain, central to the conservation and restoration of Wales’ natural environment. We hope that the NEF process will consider how these tools can be better implemented and built upon, to achieve the desired outcomes including the EU’s new 2020 Biodiversity Target.

The Birds and Habitats Directives and associated national legislation

These two Directives set out a twin-track framework to deliver favourable status for species and habitats of European importance and thereby contribute to sustainable development. They provide a sound decision making framework, and their positive implementation is at the heart of the recovery of the natural environment. The protected area and species protection components of these two core Directives have largely been successfully transferred, although much work remains to secure the right management and enforcement. The Directives also contain measures for habitat creation and restoration in the wider countryside, but these have been viewed as discretionary in Wales and the UK; these aspects must be implemented if the Directives’ aims are to be delivered (for example, Article 10 and Article 3 of the Habitats and Birds Directives, respectively).

The legal framework for species protection provided by the Birds Directive as transposed by the Wildlife and Countryside Act (as amended) provides an appropriate framework, which has been instrumental in securing the recovery of many species, such as the red kite. It should be maintained, and must be rigorously applied and enforced.

Protected sites

We believe that without the existence of protected sites - including Special Areas of Conservation, Special Protection Areas and Sites of Special Scientific Interest – the scale of biodiversity losses would have been much greater. Such sites must be at the heart of the resilient and coherent ecological network we need, on land and at sea, to help the natural environment face future challenges.

It is essential that our protected sites are appropriately managed, restored to and maintained in favourable condition, and that adaptive and effective compliance and ecological monitoring programmes are put in place. Securing the appropriate management requires expertise and co-ordination that can only be provided by a dedicated national delivery body such as CCW.

Making Space for Nature: A review of England's Wildlife Sites and Ecological Network ("The Lawton Review"¹), made over 20 recommendations on how to achieve a coherent and resilient ecological network in England, stating that the current network of sites needs to be "more, bigger, better and joined". That means managing current sites better and increasing their size; enhancing the ecological connections between sites; creating new sites; and reducing the pressures on wildlife by improving the wider environment. We firmly believe that most if not all of the report's findings will hold true for Wales and we urge the Committee to recommend that the Review's findings are fully explored and addressed in the development of the Natural Environment Framework.

Marine and Coastal Access Act

The Act provides the long-awaited framework for an ecosystem-based approach to marine management, and this must be implemented fully and effectively by WAG, in co-ordination with other UK administrations.

Unfortunately, the draft guidance for selection of new Highly Protected Marine Conservation Zones (HPMCZs) in Wales is disappointing in that it arbitrarily limits the number of new protected sites WAG is willing to designate on the grounds of cost and other socioeconomic pressures. It is shortsighted to cap the end number of HPMCZs prior to the application of ecological criteria as the number of eligible sites is currently unknown. The small number proposed may not be sufficient to secure the ecologically coherent network of Marine Protected Areas needed to restore and maintain a healthy marine ecosystem, or to secure "Good Environmental Status" under the Marine Strategy Framework Directive.

Protected landscapes

Our National Parks and AONBs cover almost a quarter of Wales' land surface and encompass a large proportion of our protected sites. Much good work is already being done, but their unique governance means that these areas can and should be at the forefront of the recovery of Wales' natural environment.

Biodiversity Duty and List of Principal Biodiversity Species (NERC Act 2006)

The List of Principal Biodiversity Species for Wales (the "section 42 list") has galvanised action, including a number of successful species recovery projects and must remain an essential part of the nature conservation delivery framework. More resources are needed for partners to fully deliver Wales' biodiversity framework.

Section 40 of the NERC Act requires public bodies to have regard to the conservation of biodiversity in exercising their functions. This biodiversity duty has not been achieved by

¹ See <http://www.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>

all public bodies and while it is clear Wales has made significantly more progress in facilitating the implementation of the duty than England, the implementation of the duty *'to have regard'* is open to interpretation and there are no apparent implications for non-compliance. We firmly believe that for the duty to be effective, it needs to be strengthened.

The Water Framework Directive

This important European Directive has the potential to integrate the way we manage water and land to make it more sustainable in the long-term and provide benefits to water customers, water companies and farmers. However, as currently implemented, the delivery plans do not challenge existing unsustainable urban and rural land management, instead loading ever higher costs onto the water industry. As a result water customers are expected to bear 77% of costs in contrast to just 0.1% borne by agriculture. Furthermore, the current technical interpretation of the WFD limits its capacity to deliver protection and restoration management for many small lakes (that do not currently qualify as 'water bodies'), wetlands (between 1-50ha) and minor aquifers that provide water sources to such important habitats. The relatively minor modifications to the technical implementation of the Directive in Wales (and England) required to redress this situation would have proportionally larger benefits for water management and biodiversity as well as delivering SSSI condition outcomes. We therefore recommend that the Environment Agency Wales increase the ambition of River Basin Management Plans and implement measures on a catchment scale that incorporate wetland that feed into it, if we are to secure a sustainable future for water and land management.

The WFD also introduces a legal requirement, under Article 4.1(c), for water dependent Natura 2000 sites (as protected areas defined by the Directive) to achieve their objective of favourable conservation status by 2015. We are particularly concerned that the improvement to ten Natura 2000 sites in Wales have been delayed beyond the required timeframe of 2015.

Planning protection and restoration of the natural environment

Technical Advice Note 5 (TAN 5, 2009) states that a high-level objective of the town and country planning system is to achieve no net loss of biodiversity. However, a more formalised, stepwise approach is needed, to ensure that the steps of mitigation and compensation (when all else fails and where the need for the development clearly outweighs the site's biodiversity value) are fully pursued in all cases where development affects biodiversity (not only in relation to statutorily-designated sites). Please also see the separate briefing on Biodiversity Offsets for further discussion.

In order to meet their biodiversity duty, Local Planning Authorities should also seek opportunities to restore and enhance biodiversity, for example, by reconnecting fragmented habitats. The Networked Environment Regions project developed through the South East area group of the Wales Spatial Plan could provide a toolkit to integrate positive planning for biodiversity, or "green infrastructure" into local and strategic plans.

The role of statutory consultees, to consider environmental – including biodiversity – impacts of planning proposals within and outwith designated sites is critical.

Protection and appropriate management of agricultural land including commons

The Welsh Assembly Government has been too slow to bring in the regulations associated with Part 2 and Part 4 of the Commons Act 2006, which would facilitate the better management of common land for wildlife, by enabling more consistent and sustainable management of this significant resource. Part 2 of the Act, when implemented, would facilitate more cooperative management of common land through Common Councils enabling, for example, access to agri-environment schemes and in turn greater control over grazing and burning. Part 4 of the Act, when implemented, could ensure greater protection of common land from damaging activities. There are potentially significant benefits for both biodiversity and rural businesses. This legislation should be implemented without further delay.

The Welsh Assembly Government and appropriate statutory bodies must be more proactive and effective in implementing and enforcing compliance with Statutory Management Requirements (SMR), Standards of Good Agricultural and Environmental Condition (GEAC; together they are referred to as cross compliance) and the Environmental Impact Assessment (EIA) Regulations (Agriculture, Forestry, Heather and Grass Burning Code etc.) These basic environmental protection measures should limit damage to biodiversity. However, there is a body of evidence that identifies weaknesses in their implementation limiting their effectiveness and allowing incremental damage to habitats and resultant detrimental impacts on species.

The European Commission is currently reviewing the EIA Directive (85/337/EEC) under which the EIA Regulations sit. RSPB Cymru expects that the recommendations made by the EC as a consequence of this review will be incorporated in the review of the implementing regulations in the development of the NEF.