

Scotland Europa
Scotland House
Rond-Point Schuman 6
1040 Brussels, Belgium
EU Transparency Register ID: 01312486176-25

Scotland Europa members' response to the European Commission public consultation on the Fitness Check of EU Nature Legislation (Birds and Habitats Directives)

Scotland Europa welcomes the opportunity to respond to the European Commission's public consultation. Our member organisations recognise that our nature and biodiversity are among Scotland's greatest assets – a natural capital that provides huge benefits for some of our key economic sectors like tourism, food and drink, as well as for the wellbeing of society as a whole. (For more information on Scotland's biodiversity strategy, consult the *2020 Challenge for Scotland's Biodiversity*¹.)

This response brings together the input from our membership, a large part of which takes a key interest in environment policy, as it represents government agencies as well as regulated industry, land owners, research and academia and environmental NGOs. (See the Annex at the end of this document for a full list of contributing member organisations.) Bearing in mind the wide and diverse reach of our organisation, this submission should not be seen as a position paper representing the lowest common denominator – it is rather a collection of evidence from Scotland and our actors involved in and impacted by EU nature legislation.

This consultation exercise has indeed been useful for us in Scotland as an opportunity to sit down and reflect and share experiences on what has worked well, less well, and to what extent existing policy and legislative tools allow us to effectively bridge any challenges together.

Our joint members' response outlines where there is a shared members' view and narrative to contribute to the EU-level gathering of evidence, as well as where individual members have specific and differing opinions. Some of our member organisations have also submitted individual responses to this consultation.

The contribution outlines the main evidence from the Scotland Europa membership, as organised according to the five criteria of the REFIT exercise: Effectiveness, Efficiency, Relevance, Coherence, and EU Added Value.

In summary, the key cross-membership messages from this submission are:

- The nature Directives have successfully slowed the loss of some habitats and species, but they are not wholly addressing the wider decline of nature, its underlying causes, or the restoration of ecosystem health. That said, the Directives are instrumental to protecting certain aspects of the European environment, upon which the European economy depends.
- There has been considerable success in setting up protected areas and the conservation of specific habitat and species features within them, but, with the exceptions where larger Natura 2000 sites have been designated, the Directives have not been implemented in a way that has resulted in a policy or legal framework for the protection and restoration of nature on a larger landscape scale, particularly outwith the confines of Natura 2000 sites.
- There is an urgent need for better policy integration. The main incoherence we are facing is not emanating from the Directives themselves, but rather a lack of consideration of the objectives of the Directives in the wider European policy framework in which they interact, in relation to climate change, land use and marine planning, transport, agriculture, energy, health etc.
- Europe needs to raise its collective public awareness of nature and the benefits it provides. There are currently too many people thinking that nature is something you visit, rather than something we live in. We need to better understand that we live alongside nature, and that nature and economic activity are co- and inter-dependant. For that to materialise, we need to consider nature, and the Directives, at the earliest possible stage of planning new policies and projects.

¹ <http://www.biodiversityscotland.gov.uk/doing/framework/strategy>

Effectiveness

There is a general view held across the contributing members that the provisions on specific protected areas and species have been fairly effective, but the Directives have been implemented less effectively with regard to conservation in the wider countryside and consideration of ecosystem health.

As pointed out by the Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH), the context for establishing firstly the Birds Directive then the Habitats Directive is very important when considering the Fitness Check. Both Directives were a policy response to the recognition of the loss and fragmentation of Europe's natural habitats over many decades. Post-war development prior to the formation of EU treaties and, initially, after the formation of the Union, were largely subject to economic and some social consideration. Economic development was promoted at much expense to the natural environment and much of that was lost or significantly degraded as a result. Many of the development pressures that led to this are still in play. Indeed, new pressures emerge all the time (anthropogenic climate change, new hazardous substances, new energy generation technologies, new crops, a seemingly endless list of invasive non-native species from outside Europe or elsewhere in Europe, etc), all with their own unique impacts on the natural environment.

The nature Directives have begun the process of arresting the damage, but so far largely only by seeking to prevent further loss and fragmentation of the 'best remaining' parts of Europe's habitats. There is still a long way to go to find the right balance between development and environment. This will in particular require habitat restoration and the (re)building of better integrated habitat networks. The Directives (and supporting mechanisms such as the LIFE programme) have begun to provide good examples of the art of what is possible. Even so, the latest *State of Nature in the EU* report indicates that many habitats and species continue to deteriorate or decline. Piecemeal attempts at restoration fail to get to the heart of the problem, which is about natural assets and the distribution of benefits derived from them and hence the political-economies in which these decisions are made.

In terms of achieving the objectives in Scotland, habitats such as blanket bogs, machair and Atlantic oak woodlands and species such as red kite, white-tailed eagle, otter, bats and corncrake have benefited from the Directives, as well as from increased investment in their conservation, although the opportunity cost for other habitats and species is unclear. Others, such as freshwater pearl mussel and Atlantic salmon have fared less well. Scotland has conservation measures in place to counteract some of these declines and has trialled the reintroduction of species such as the Eurasian beaver.

According to the Scottish Wildlife Trust (SWT), Scotland has seen variable progress towards achieving the objectives set out in the Directives. Regarding the Birds Directive there has been significant progress towards achieving certain articles such as 3, 4 and 5; whilst significant progress has been made under the Habitats Directive to achieve objectives of articles 4, 6, 12 and 13. Although there has been some progress towards objective 3 in the Habitats Directive, the national indicator which measures the proportion of protected nature sites in satisfactory condition; or recovering, with the necessary management measures in place, shows that the proportion is 79.3%. SWT therefore considers it unlikely that the main objective will be achieved by 2020. SNH notes that this objective is based around largely arbitrary notions of 'favourable condition/status' and reflects issues about defining and quantifying 'biodiversity' at a site, local or even Member State level.

As pointed out by the SWT, more effective implementation is needed to fully achieve the objectives of Articles 3 and 10 of the Habitats Directive on a coherent ecological network. For example, the SWT and RSPB argue that in Scotland the delivery of a National Ecological Network, as is outlined in Scotland's Biodiversity Strategy², to complement the Central Scotland Green Network³, will make a major contribution toward delivering the wider objectives of the Directives.

SNH and SWT also point out that key threats to biodiversity and ecosystem health are not necessarily addressed through the network of protected areas as other policy drivers are causing environmental damage, with continuing biodiversity decline as a result. The key threats to Scotland's natural capital include climate change, overgrazing/undergrazing, pollution, intensive agriculture, land use change, habitat fragmentation and invasive non-native species. This need for an integrated approach to nature legislation, taking into account all interacting factors, is also stressed by the James Hutton Institute (JHI). They quote the *Scottish Regional Land*

² <http://www.gov.scot/Resource/0042/00425276.pdf>

³ <http://www.centalscotlandgreennetwork.org>

Use *Pilot* projects⁴ as good examples of an integrated approach to land management that could be built upon further for the benefit of nature, society and economy.

To halt the decline in biodiversity, the SWT believes that a three pillar approach to conservation is needed: conserving species, protecting habitats and restoring ecosystem health at the landscape scale. The first two pillars are covered by the Directives and the third pillar to some extent by Articles 3 and 10 of the Habitats Directive. This approach would address the challenge recognised by the EU 2020 Biodiversity Strategy, that “many ecosystems and their services have been degraded, largely as a result of land fragmentation”.

Scottish Land & Estates (SL&E) feels that having the Directives, in their current format, is better for biodiversity than if they did not exist, but questions whether the protected areas and protected species approach is the best way forward, given the *State of Nature in the EU* report findings. SL&E are signed up to a move towards landscape scale approaches. This approach would allow for conversations to take place about how nature fits with economic and social activity and is therefore something all of us should take account of in our daily lives, rather than something that takes place philosophically and/or geographically remote from the activities of much of society. SNH notes that work it is leading in Scotland⁵, and work that JNCC (Joint Nature Conservation Committee) is considering at UK level, is actively seeking to put protected areas in this wider landscape scale.

RSPB Scotland strongly believes that the system of protected areas and species established by the Directives provides the most effective and coherent method for protecting biodiversity. They are the cornerstone of attempts across the EU to halt and reverse the loss of biodiversity, and their full implementation is essential if the objectives of the 7th Environment Action Programme are to be achieved. They have delivered demonstrable progress towards ensuring biodiversity, through the conservation of Europe’s most valuable habitats and species, especially within Natura 2000. However, the failure by Member States to adequately define Favourable Conservation Status under the Habitats Directive and the corresponding Birds Directive Article 2 requirements limits the extent to which an absolute measure of their effectiveness can be made. Delays, and ongoing gaps in implementation, coupled with chronic underfunding, and a lack of political will to deliver on biodiversity conservation commitments, have constrained progress towards achievement of the objectives set out in the Directives. RSPB also finds that unsustainable land management and fisheries practices promoted under EU sectoral policies have limited progress towards EU biodiversity objectives. Additional effort is required to deliver benefits outwith Natura sites but, as argued by RSPB Scotland, there must be no dilution of effort put into the Natura network, which will be the foundation for delivering wider ecological and other benefits.

The University of Dundee attributes the limited effectiveness to the comparative vagueness of the relevant provisions (e.g. the definition of “favourable conservation status” in the Habitats Directive and the population requirements in article 2 of the Birds Directive) and also because of implementation of policy, prioritising the sharply defined and geographically constrained provisions (e.g. articles 4(1) and 5 of the Birds Directive and 3, 4 and 12 of the Habitats Directive) over the more pervasive ones (e.g. articles 2 and 3(2) of the Birds Directive and 2(2) and 10(2) of the Habitats Directive).

Moreover, the University underlines that the Directives, as interpreted to focus on particular sites, do not provide for the dynamic nature of the environment, an increasingly practical problem as climate issues bring rapid changes in conditions. It is not just the places where species are today that need safeguarding, but those where they may need to be in future. JHI further underlines that it is critically important to consider potential species shifts in response to changing conditions and integrate such considerations into nature legislation, so that appropriate actions are promoted/supported in relation to future change, not just current conditions. SNH also notes the lack of provision for amending SPA and SAC boundaries to reflect significant and (expected to be) permanent changes in species distribution and hence their features of interest.

In terms of species protection, SL&E argues that at the time the Directives were approved not enough consideration was given to how recovered species would be managed in the long-term. Where species have recovered to a significant degree their numbers can impact on the health of the species itself, on the wider environment and also impact on economic land-based activity which conceivably can have consequences for rural jobs and communities, thus impacting the social dimension. An example in Scotland is provided by the success of wild goose management.

⁴ <http://www.gov.scot/Topics/Environment/Countryside/Landusestrategy/regional>

⁵ <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/notices/protected-areas-review>

Wild goose management and the need for adaptive management approaches

After the Second World War populations of certain breeding and overwintering wild geese were critically low and species protection legislation was passed to prevent any further loss.

With one exception (Greenland white-fronted goose), their populations have recovered considerably and overwintering geese have for many years now presented a significant challenge to agriculture particularly on Scotland's remote west coast and islands in areas close to key roosting sites. To safeguard goose populations and resolve conflicts with agriculture, SNH set up goose management schemes and has, since 2000, been compensating farmers for goose impacts in these areas. However, goose numbers continued to grow and by 2010 it was felt necessary to review the sustainability of this approach. Following the review, an adaptive management approach is being piloted for greylag geese in four separate island communities of the coasts of Scotland, and another pilot is proposed for barnacle goose. These approaches are based on population monitoring and allow for a sustainable harvest to balance goose numbers with the needs of agriculture and the cost to the public purse of protection/compensation.

Such approaches need formal derogations under the Birds Directive. With an increasing number of species recovering to a similar extent following protection, it would be helpful if the derogation mechanism could be assessed to consider whether it is the most expedient, responsive and efficient way to develop adaptive management approaches.

SL&E also provide an example in Scotland of the need to integrate and balance the economy and the environment. The example of Langholm Moor in the Scottish Borders is provided below.

Langholm Moor – Hen Harrier SPA

In Scotland, we have designated SPAs on grouse moors to conserve hen harriers and their habitats. These areas are also important for other species of conservation concern such as black grouse and upland waders. Rather than seeing an increase in hen harriers on these sites, the opposite has happened with numbers deteriorating. Why this happened has been researched in 2013⁶, using the example of Langholm Moor in the Scottish Borders (part of the Langholm-Newcastleton Hills SPA, where there has been protection for hen harriers since 1974). Further study of Berwyn Moor in Wales provides similar evidence.⁷

In essence, species of conservation concern on managed moorland benefited from the predator control that accompanied the economic activity of grouse shooting and when this activity ceased to be viable numbers of hen harriers fell away. The Langholm Moor Demonstration Project⁸ has since been set-up with the aim of demonstrating that kept moors can deliver grouse shooting and conservation benefits. The project is a collaboration of interested stakeholders from land management, environmental NGOs, government and research. It represents an evidence-based piece of work that we would like to see replicated in other areas of wildlife conservation and management.

Efficiency

In relation to the cost effectiveness of the Directives, SNH and JHI raise the point on needing to find a balance between achieving overall targets and considering the bigger picture, i.e. the opportunity cost of protecting protected areas for nature outside protected areas. There are considerable uncertainties about how successful the Directives have been in moving to natural resources management. SL&E supports this view, and questions whether gold-plating protected areas is the best use of a limited funding pot to deliver for biodiversity.

The SWT argues that the Directives should be seen as being cost effective when ecosystem services and their value to people are factored into a cost benefit analysis. SWT refers to *The Value of Natura 2000* report⁹ which estimates the network's benefits to people at €223-314 billion per year. This is a gross, rather than net figure, because it does not account for the costs of managing the network, monitoring and infrastructure. However,

⁶ Baines, D., & Richardson, M. (2013) <https://www.gwct.org.uk/research/scientific-publications/2013/baines2013>

⁷ Warren, P., & Baines, D. (2014) <https://www.gwct.org.uk/research/scientific-publications/2014/warren2014>

⁸ <http://www.langholmproject.com>

⁹ http://ec.europa.eu/environment/integration/research/newsalert/pdf/value_of_natura_2000_FB12_en.pdf

Gantioler et al.¹⁰ investigated this, estimating these costs to €5.8 billion per year for the EU. This means that the network's benefits far outweigh management costs.¹¹

In relation to compliance costs, SL&E argues that benefits achieved through species and habitat protection can often be difficult to quantify because they do not have a traditional economic value. SL&E has no particular concerns about the cost of compliance being excessive, but underline that those who accrue costs associated with species protection are rarely the same people who accrue economic benefits. So tourism tends to benefit and land-based businesses tend to carry the costs. Particularly in relation to species reintroductions in Scotland, we have seen an impressive boost to tourism on the Isles of Skye and Mull related to the presence of sea eagles. Yet farmers on these islands have carried the cost of losing live lambs to sea eagle predation. Only very recently has this been acknowledged and addressed with a compensation scheme.

White-tailed eagles on the Isle of Mull

One of Scotland's most well known studies with an economic analysis of the benefits of wildlife protection is the 2010 economic survey¹² by the RSPB on the economic impact associated with the reappearance of white-tailed eagles on the Isle of Mull. The main findings of this study were:

- Up to £5 million of tourist spend on Mull is attracted every year by white-tailed eagles
- 110 jobs are supported by this spend each year
- £1.4 million of local income is supported each year

Relating to the re-introduction of species, the SWT and RSPB argue that Article 22 of the Habitats Directive has been instrumental for the formal reintroduction of the Eurasian beaver in Scotland, currently being trialled at small scale in Knapdale, Argyll. SWT and the RSPB stress that the socio-economic impacts of Annex IV species re-introductions must be fully explored. This accords with the IUCN guidelines on species reintroductions and translocations¹³ and the Scottish Code for Conservation Translocations¹⁴ which has a special focus on both Scottish socio-economic and biological issues. Results of the five year trial have been documented by the Scottish Government (SNH)¹⁵ and the SWT/Royal Zoological Society of Scotland¹⁶. From the perspective of landowners, SL&E says that, once again, the tourism and socio-economic benefits of beaver presence are reported as being higher than the costs of beaver presence to land-based businesses. However, there is no mechanism at the moment by which those who are disadvantaged can be compensated by those who stand to gain economically. It is also not clear that the public purse will carry this burden either.

SNH agrees that there are issues around the apportionment of costs and benefits from actions taken to secure societal benefits from nature but notes that there may be other ways to fix this than public-funded compensation schemes (e.g. tourism operators could pay farmers/landowners for maintaining sea eagles/beavers etc) – i.e. private sector solutions.

SNH notes that the Directives, their implementation and enforcement by the European Commission, and the openness of decisions made by competent authorities have together generated a strong background concern over potential challenge, infraction and prosecution which, in turn, has driven a risk averse culture. To address this risk, procedures are formalised and complex, increasing the costs of implementing the Directives and in turn the transaction costs of countering the negative impacts of contrary public policies. Greater clarity over the definition of nature Directive terms and thresholds, drawing on the relevant case law, would go far to reduce concerns and facilitate simpler and potentially lower cost procedures.

The University and RSPB also add that in the UK, litigation arising from the failure to apply the Directives properly is a major cost for all parties affected, but arises more from domestic failings in application and the flaws of our justice system (in breach of the Århus Convention) rather than the Directives themselves.

¹⁰ http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf

¹¹ For information on Scottish examples of demonstrating the value of nature, we can point to the IUCN UK Peatland Programme: <http://www.iucn-uk-peatlandprogramme.org/publications/demonstrating-success/global-demonstrating-success>

¹² https://www.rspb.org.uk/Images/wildlifeatwork_tcm9-282134.pdf

¹³ <https://portals.iucn.org/library/efiles/documents/2013-009.pdf>

¹⁴ <http://www.snh.gov.uk/protecting-scotlands-nature/reintroducing-native-species/scct/>

¹⁵ <http://www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=2273>

¹⁶ <http://www.scottishbeavers.org.uk>

On the specific requirements for surveillance and reporting, SNH notes the costs of effective, formal monitoring and reporting (e.g. for Article 17) are particularly high in the marine environment and doubts that all Member States will be able to report effectively to defined timescales, especially with wider obligations coming through the Marine Strategy Framework Directive. Even if affordable, SNH questions the opportunity cost of this approach, especially as resources are scarce. There is growing support to consider instead a risk-based approach, focusing monitoring in areas of greatest risk, and monitoring the pressures on the marine environment as a proxy for habitat condition. Greater clarity over the Commission's minimum requirements for surveillance and monitoring would help ensure that costs and procedures were fit for purpose.

In relation to our knowledge base, the University of Dundee and RSPB stress that the ecological knowledge base is not strong or widespread enough, especially the awareness and expertise required among those taking "front-line" decisions in proposing and considering development. Unless an EIA is required, there is every chance of all but the most significant features being ignored.

Relevance

According to SEPA, the nature Directives are extremely important for the achievement of sustainable development. Globally, economy and society are fundamentally dependent on the natural environment. Natura is seeking to ensure that Europe (and beyond) has a coherent natural environment and that the habitats that form much of the natural capital on which Europe's economies depend are protected (and eventually restored).

SNH agrees with the whole-landscape or ecosystem approach, but observes that the EU has to date encouraged Member States to focus implementation on the more clearly specified, protected areas and species needs of the Directives (e.g. using the Natura barometer and infraction threats for inadequate designation of SPA & SAC), and has given far less priority to the whole countryside aspects. As such, action to date under the nature Directives has had limited effect in – and has possibly distracted attention from – addressing the underlying problems for biodiversity – of changing consumption patterns, population growth, rising incomes and, more proximally, contradictory public policies, land-use change and intensification, over-exploitation, invasive non-native species and pollution.

The Directives are highly relevant to achieving sustainable development, SNH adds, providing, through the definition of protected areas and species and various derogations for over-riding interests, a strong framework for limiting damage to the rarest, most vulnerable and, by some at least, the most valued aspects of Europe's natural environment. However, a strong focus on protected areas and species alone, as has been the case since the Directives were introduced, is insufficient to halt losses from these areas and species and contributes little to halting the losses from the other 72% of Europe – and the ecosystem services these provide for people (including social and economic benefits).

From the perspective of private landowners, SL&E argue that the Directives, as implemented to date, are of little relevance to the achievement of sustainable development since the approach taken is simply one of protection of some specific species and places in the interests of nature. To achieve sustainable development we need to have proper conversations about how nature, society and the economy can inhabit the same space in a balanced way (land-sharing) rather than the current approach which could be seen as 'we do nature over here' in protected area compartments and 'we do industry and living elsewhere' (land-sparing).

The SWT, who believe that the Directives do accord with sustainable development, as it is outlined in the preamble of the Habitats Directive, stresses that the nature Directives are by far the most important EU instrument to protect biodiversity. They are important for achieving all the targets of the EU 2020 Biodiversity Strategy, and particularly essential for Target 1. The SWT does not want to see the Directives 'opened up', as this would bring with it uncertainty and a risk of diminishing the level of protection of the EU's natural capital, leaving us highly unlikely to achieve the EU's vision for biodiversity.

The RSPB Scotland underlines that the Natura network of protected areas is just the beginning of measures to halt the loss and delivering ecological restoration – and the network is already largely successful in delivering this within those protected sites. The EU needs to maintain efforts in protecting and enhancing Natura 2000 sites and use them as a foundation or stepping stone to increasing efforts elsewhere. The landscape scale conservation projects and ecological networks being developed in Scotland will make a major contribution in the next phase of the implementation of the Directives but more commitment, effort and resource is required.

JHI, the SWT and SNH note the importance of the ecosystem approach, which is a strategy for integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. They argue that this approach could be better used and promoted within the nature Directives and more effort should be placed on ensuring Member States understand and adopt it which would mean taking account of how nature works, the benefits that nature provides to people and crucially involves people in decision-making.

In terms of relevance to businesses, Scottish Enterprise underlines that many businesses depend directly on the natural environment and all businesses depend to some extent indirectly on it. For Scotland this is particularly the case for our tourism, food and drink sectors, where the provenance and high quality of Scotland's natural environment are a prerequisite for our prosperity. Although business engagement with biodiversity is recognised as helping to manage risk and build reputation, the business benefits of this are not widely understood across Scotland's company base. There is also a perceived disconnect between EU nature policy and businesses. Much more could be done to bring businesses closer to policy making and protection of wildlife and nature, for example through guidance to business, case studies, funding for business and biodiversity projects and the establishment of local business and environment forums. In relation to the last point, efforts to better disseminate the outputs of the useful *EU Business @ Biodiversity Platform* at local level would be very beneficial. The development of a species champion approach by businesses could also be a way to increase engagement with the natural environment.

In terms of relevance to European citizens, members point to the latest Eurobarometer on attitudes towards biodiversity¹⁷, which shows a wide-spread concern about biodiversity losses and recognition of the importance of biodiversity for health, wellbeing and providing value, but also very low awareness of the Natura 2000 Network. Certainly in the UK, we are aware that some other Member States have traditionally been better than us at celebrating protected areas and habitats. We therefore have to become better at looking at the bigger picture, where nature is considered as a more important part of all aspects of human life (as opposed to merely recreation).

Coherence

As pointed out by the University of Dundee and SWT, the Birds and Habitats Directives operate against a very unbalanced background, after decades of serious environmental degradation and with almost all other policies pushing towards activity that produces continuing losses of biodiversity. The playing field is not level even with the Directives taken at their most powerful, so that weakening them is a move not towards equilibrium but to even greater unbalance.

According to SNH, there is a need for better integration of European public policy and its implementation. Currently, different policies are working against each other and, without better integration, to safeguard biodiversity (including protected areas and species) and ecosystem services we will need increasing effort and resources to counteract their negative pressures. The overwhelming need is to design public policy for land use so that resource management better reflects the natural assets on which it depends and the range and distribution of public benefits that can be derived from them now and in the future. Examples include the Common Agricultural Policy (especially Pillar I), Common Fisheries Policy, and support for renewable energy developments.

In relation to coherence with other EU policy objectives, SSE points out that the Directives were originally developed at a time when climate change was not a particular issue. This meant that climate change was not a serious consideration behind the principles and practice laid out in the Directives and subsequent guidance. As a result, there is no mechanism in place to deal with potential conflicts between the original conservation objectives and climate change mitigation considerations that have subsequently emerged. This has meant that many projects, like renewable energy generation and the necessary supporting infrastructure (transmission and distribution systems), which are designed to mitigate climate change and address the mid to long term threats to wider species and habitats, are in fact blocked by the shorter term, local conservation requirements of the Directives.

SSE supports more local site-specific approach to environmental protection of rivers, habitats, wildlife etc as there are different characteristics across Europe, and as such there will not always be a one-size-fits-all approach.

¹⁷ http://ec.europa.eu/public_opinion/flash/fl_379_en.pdf

According to the RSPB, the legal tests of the Habitats Regulations and the Directives themselves do allow for climate change mitigation to be considered in relation to planning. They say that the legal tests allow for projects that have the primary aim of delivering climate change mitigation but would damage a Natura site to consider whether this aim can be delivered in alternative locations that would not cause such damage to our most important wildlife sites. This process was gone through quite clearly (and has been used across Europe as a best practice example) by the Scottish Government when they refused consent for the Lewis Wind Farm.¹⁸ According to the RSPB, the way in which the tests have directed onshore wind development away from Scotland's most sensitive wildlife sites is a massive success story. Over the last 10 years Scotland has gone from having almost no installed wind capacity to a situation where it is quite likely that the target of 100% equivalent demand of electricity will be met by renewables by 2020, without significant damage to Scotland's most important places for wildlife. According to the RSPB, this has happened because of the presence of the Natura network. The flexibility for implementation at Member State level is also a strength of the Directives, provided that they are adequately implemented.

In relation to energy policy, the University of Dundee notes that, as currently interpreted and applied, it is inspiring a lot of renewables development which may generate conflicts over biodiversity features, and would therefore like to see a stronger steer given towards other aspects of the policy (energy efficiency, heat, transport).

SEPA and the University of Dundee recognise that there are inconsistencies between the Habitats/Birds and Water Framework Directives. According to the University of Dundee, there is also a perceived lack of consistency between the two nature Directives in relation to the more general provisions and the specific rules on derogations. There is also inconsistency between the Directives and other provisions in the Environmental Liability Directive and the Marine Strategy Framework Directive (e.g. relation to reporting commitments). Moreover, the relationship between assessments under the Directives and EIA/SEA could be clearer.

The agencies SEPA and SNH note a lack of clarity in the Directives relating to some key concepts, which have been slowly drawn out over time via case law from the European Court of Justice and the UK Court systems. The agencies welcome the provision of relevant guidance at European level, which has to date, together with our own experience with public enquiries and ministerial call-ins on individual decisions, helped Scotland to develop a more nuanced and detailed understanding of the interactions between these Directives (and the Directives on Industrial Emissions, Waste, Air etc) and how we should make decisions to allow legitimate economic activity to proceed. In reality, Scotland's agencies very rarely need to refuse permission for an environmental permit on the basis of its interaction with a Natura site.

In relation to agriculture policy, SL&E points to increasing opportunities for the Common Agricultural Policy (CAP) – particularly Pillar 2 – to deliver more effectively for nature. In their view, the delivery focus of Pillar 2 in Scotland is rather on the wider landscape than for protected areas, however. Protected species are dealt with through regulation, although enhancements to the farmed environment may well assist protected species recovery. They note a limited integration of the Directives with rural development.

Looking at Pillar 1 of CAP, SWT and SNH point out that there are still perverse incentives in place, for example greening measures do not go far enough to protect and restore ecosystems outwith the Natura 2000 network, but they could do more to contribute to the ecological coherence of the network. This is more likely to be addressed in Pillar 2, but the amount of money available is much smaller in comparison to Pillar 1.

The University of Dundee adds that agriculture has moved a long way towards paying heed to nature. The RSPB stresses that achievement of the goals set out in the Directives and in the EU's Biodiversity Strategy has been significantly undermined by inadequate implementation, underfunding, and unsustainable practices promoted under the EU's sectoral policies particularly the Common Agricultural and Fisheries Policies.

EU added value

Our membership supports the proposition that the EU provides added value. Creation of a level playing field in terms of the burden habitats and species protection places on the economy and society is important in the context of a single market. Without it there could be a real temptation to reduce the level of protection to enhance short-term economic output. Our members recognise that without nature legislation the situation for biodiversity would be likely to be much worse than it is today.

¹⁸ <http://www.gov.scot/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Applications-Database/Wind/Lewis-Decision-Index>

Looking at EU environmental legislation at large, we can see that it has helped to create and boost the “green economy” through the creation of new roles and sectors, including new environmental professionals, and new businesses. For example, Scottish expertise in assessing the environmental impacts of onshore wind farms and developing sites in a sustainable manner, is already being exported overseas, in particular via the EU-funded Good Practice Wind (GP WIND) project.¹⁹ The GP WIND project was set up to address barriers to the deployment of onshore and offshore wind energy generation, by recording and sharing good practice in reconciling renewable energy objectives with wider environmental objectives and actively involving communities in planning and implementation. By bringing together developers, regional and local government, environmental agencies and NGOs from different countries to share experiences, it has been possible to develop a set of good practice guidance and a toolkit, which can be used to aid more effective and efficient deployment of renewable energy.

Some of our members would like to underline the message of the 2013 European Commission report “The economic benefits of the Natura 200 network”²⁰ suggests the following: *“A first estimate for the value of the benefits of the (terrestrial) Natura 2000 network – scaling up from existing site-based studies – suggests that these could be between €200 and €300 billion per year at present (or 2% to 3% of EU GDP). This value should be seen as ‘gross benefits’ delivered by sites, rather than the net benefits of the Natura 2000 designation and associated conservation measures. The estimate is based on a relatively small number of studies scaled up to the EU level using the benefit transfer method.”* This is a non-trivial sum but the report provides only a partial estimate, lacking, as it does, the value of freshwater and marine Natura interests. SEPA estimates that the value is at least double that and it should be a priority to provide an estimate of the value of the full network as soon as possible. Arguments about the economic value of development and perceived impacts of Natura on this need to be balanced with an understanding of the full value of the Natura network and the multiple economic, social, environmental and intrinsic benefits that it delivers.

¹⁹ <http://project-gpwind.eu>

²⁰ http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf

Annex – Background on the contributors

Scotland Europa is a membership-based organisation that promotes Scotland's interests across the institutions of the European Union and to the representatives of Europe's regions and nations. We help Scottish organisations foster successful European relationships, providing guidance on European policies, funding and networks. We manage Scotland House in Brussels, which is also home to the EU offices of the Scottish Government, Highlands & Islands of Scotland, and other Scottish and European partners.

www.scotlandeuropa.com

Scottish Natural Heritage (SNH) is the Scottish Government agency responsible for natural heritage – that is Scotland's wildlife, habitats, landscapes and natural beauty. SNH's work is about caring for the natural heritage, enabling people to enjoy it, helping people to understand and appreciate it, and supporting those who manage it. It advises the Scottish Government and acts as a government agent in the delivery of conservation designations. SNH is a member of the Head of European Nature Conservation Agencies (ENCA), Europarc Federation and Eurosite.

www.snh.gov.uk

Scottish Environment Protection Agency (SEPA) is Scotland's principal environmental regulator, protecting and improving Scotland's environment. As a non-departmental public body of the Scottish Government, its role is to make sure that the environment and human health are protected, to ensure that Scotland's natural resources and services are used as sustainably as possible, and contribute to sustainable economic growth. SEPA's work includes providing advice and guidance on environmental issues, and monitoring and reporting on the state of the environment. SEPA is a member of the EPA Network (European Network of the Heads of Environment Protection Agencies) and IMPEL (EU Network for the Implementation and Enforcement of Environmental Law).

www.sepa.org.uk

James Hutton Institute is an international research institute delivering integrated and innovative science that contributes knowledge, products and services to meet multiple demands on land and natural resources. The institute combines strengths in environmental and socioeconomic research, crops, soils, and wider land use issues. The institute, which has two main sites in Aberdeen and Dundee, is one of the Scottish Government's main research providers in environmental, socioeconomic, crop and food science.

www.hutton.ac.uk

RSPB (Royal Society for the Protection of Birds) Scotland is part of the RSPB, the largest wildlife conservation charity in Europe. RSPB Scotland has over 80,000 members and 1,200 volunteers. RSPB Scotland campaigns on issues affecting wildlife and the natural environment, carry out scientific research, education, land management and policy advocacy, and promote the conservation of birds and biodiversity, as well as their enjoyment to all people. RSPB Scotland manages 80 nature reserves across Scotland which extend to some 72,000ha. RSPB Scotland is part of the UK partner of Birdlife International.

www.rspb.org.uk/whatwedo/scotland

Scottish Enterprise (SE) is Scotland's main economic, enterprise, innovation and investment agency. SE's objective is to build Scotland's international competitiveness, within the Scottish Government's framework of long-term, inclusive economic growth for Scotland. The hyperlink below leads to SE's Biodiversity duty report, which outlines the agency's actions taken to further the conservation of biodiversity and to mainstream concern for the natural environment into our operations and support provided to Scottish companies.

www.scottish-enterprise.com

Scottish Land & Estates (SL&E) is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. SL&E has over 2,500 members with interests in a great variety of land uses. The work of SL&E is driven by its membership and their desire to represent and demonstrate the contributions they make to rural Scotland. SL&E focus on three core policy areas: land use &

environment, tourism & enterprise, and housing & communities. SL&E are members of the European Landowners' Organisation. SL&E is on the EU Transparency Register with ID 596130217231-71.

www.scottishlandandestates.com

Scottish Wildlife Trust (SWT) is a registered charity dedicated to conserving the wildlife and natural environment of Scotland. The Trust manages a network of 120 wildlife reserves across Scotland and is a member of the UK-wide Wildlife Trusts movement. SWT is pursuing a vision of a network of healthy, resilient ecosystems supporting expanding communities of native species across large areas of Scotland's land, water and seas.

www.scottishwildlifetrust.org.uk

SSE plc is a UK listed energy company headquartered in Perth, Scotland and operating in the energy markets across the UK and Ireland. SSE has interests in the transmission, distribution, generation, storage and supply of electricity as well as the production, distribution, storage and supply of gas. SSE is committed to build genuine partnerships with those who are interested in protecting and enhancing biodiversity, assess the company's impact on key biodiversity issues, and make decisions which take account of these impacts. SSE is on the EU Transparency Register with ID 64436972598-17.

www.sse.com

The **University of Dundee** was founded in 1881 and became an independent body in 1967. The contribution to this consultation is made by Prof. Colin T. Reid, FRSA, Professor of Environmental Law at the School of Law since 1995. His two main areas of interest are public law and environmental law, which have come together in studies of the handling of environmental matters, especially climate change, within systems of devolved government. He has written widely biodiversity law.

www.dundee.ac.uk

For questions about this consultation response, please contact:

Rickard Eksten

Senior EU Policy Executive

Scotland Europa

E rickard.eksten@scotent.co.uk

T +32 (0) 2 282 83 13