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Asesyd Interim Diogeulu'r Amgylchedd Cymru

Interim Environmental Protection Assessor, Wales

Protected Sites in Wales



Contents

Table of Contents	
Executive Summary	6
Recommendations	13
Table of Abbreviations	18
1.Introduction.....	20
1.1 Approach Taken.....	21
2 Legal Framework for Protected Sites in Wales.....	22
2.1 Introduction.....	22
2.2 Site of Special Scientific Interest.....	22
2.3 Nature Reserve	23
2.4 National Park.....	24
2.5 European Conservation Designations.....	24
2.6 Ramsar Sites.....	25
3 Planning Law and Policy	26
3.1 Planning Policy Wales	26
3.2 TAN 5 Nature Conservation and Planning.....	27
4 Status of Protected Sites in Wales.....	28
5 Monitoring of Protected Sites	29
5.1 Common Standards Monitoring	29
5.2 Statutory Duty to Report.....	31
5.2.1 Protected Sites	31
5.2.2 State of Natural Resources.....	33
6 Analysis of Evidence - Introduction	34
7 Monitoring.....	37
7.1 Overview	37
7.2 A Statutory Duty to Monitor Protected Sites	37
7.3 Approach to Monitoring.....	38
7.3.1 Features-Based and Site-Based Approaches to Monitoring.....	40
7.4 IEPAW's Views on Monitoring.....	46

8 Targets for Protected Sites	50
8.1 Introduction.....	50
8.2 Evidence on Targets	50
8.2.1 Overview	50
8.2.2 Support for and Concerns about Statutory Targets	51
8.2.3 The Nature of Statutory Targets for Protected Sites	52
8.3 IEPAW's Views on Targets.....	54
9 Changes to the Existing Legal Framework for Protected Sites	56
9.1 Introduction.....	56
9.2 Evidence on Changes to Existing Legal Framework	56
9.2.1 Overview	56
9.2.2 SSSI Notification and Consenting	57
9.2.3 Extension of SAC Protection to Other Designations.....	60
9.2.4 Wider Protection	61
9.2.5 Planning and Development.....	62
9.2.6 Effective Use of Current Legislation	63
9.3 IEPAW'S Views on Changes to Existing Legal Framework	63
10 Management and Management Agreements.....	65
10.1 The Legal Regime for Management of SSSIs	65
10.2 Management Agreements.....	65
10.3 Status of Management Agreements	67
10.4 Evidence on Management and Management Agreements	67
10.4.1 Overview	67
10.4.2 Barriers to Management Agreements.....	68
10.4.3 Overcoming the Barriers	69
10.4.4 Content of Management Agreements.....	70
10.4.5 NRW Powers	71
10.5 IEPAW Views on the Management of SSSIs.....	72
11 Enforcement Mechanisms	75
11.1 Introduction	75
11.2 Evidence on Enforcement Mechanisms	77
11.2.1 Overview.....	77
11.2.2 Approach to Enforcement.....	77
11.2.3 Use of Criminal Sanctions	78
11.2.4 Suggestions for Improvement	79

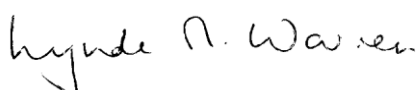
11.2.5 Proposed New Powers.....	80
11.3 IEPAW's Views on Enforcement Mechanisms	81
12 Adaptive Approach to Site Management.....	83
12.1 Introduction.....	83
12.2 Evidence on Adaptive Approaches.....	83
12.2.1 Overview	83
12.2.2 What needs to change	83
12.2.3 How to bring about change	85
12.3 IEPAW Views on Adaptive Approaches.....	87
13 Conclusions	91
Annex 1 Role of the Interim Environmental Protection Assessor for Wales (IEPAW)	94
Annex 2 Briefing Paper for Expert Forum on Management and Protection of Protected Sites.....	95
Annex 3 Record of Expert Forum on Management and Protection of Protected Sites	105
Annex 4 Call for Evidence	116

Foreword

The designation of protected sites has been the main mechanism for providing legal protection for sites of nature conservation importance in Wales. The biodiversity crisis places greater importance on these sites as the foundation for measures to reverse the declines. We know that many of these sites are not in good condition and there are many others where there is insufficient data to be able to assess their condition. This is clearly not an acceptable state of affairs.

There have been various initiatives relating to protected sites in Wales since the inception of this work, not least the publication of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill. We hope that the recommendations in our report will be helpful to the Welsh Government and that those recommendations of direct relevance to the Bill will be given due consideration.

Nerys Llewelyn Jones, my predecessor as Interim Environmental Protection Assessor for Wales, began her investigation into the management of protected sites in November 2022. We received evidence from a wide range of organisations including the statutory conservation bodies, environmental NGOs and farming representatives. The collation and analysis of all the information was painstakingly undertaken by the IEPAW Secretariat and a report summarising this work was produced for us by Professor Victoria Jenkins. We are extremely grateful for their contributions. We are also grateful to NRW for providing us with up-to-date information over the course of the investigation. I took over responsibility for the report when I joined as a deputy in May 2024. Our current deputy, John Henderson, has supported me in this work and helped shape my thinking on a number of points, for which many thanks are due. Any errors, of course rest with me.



Interim Environmental Protection Assessor for Wales

Executive Summary

In the summer of 2022, the Interim Environmental Protection Assessor for Wales (IEPAW) received two submissions about the management and protection of protected sites in Wales. They were particularly concerned about the lack of information on the conservation status of Sites of Special Scientific Interest (SSSIs). It was claimed that many sites were damaged or degraded and that sites were not being managed appropriately or protected. This report addresses these claims in the light of evidence received from a wide range of bodies on the following topics:

- the monitoring of protected sites;
- targets for protected sites;
- possible changes to the existing legal framework;
- barriers to agreeing management agreements;
- enforcement mechanisms; and
- an adaptive approach to site management.

The report only considers designations whose main purpose is the conservation of nature and focuses primarily on SSSIs. Marine protected areas are not covered.

Monitoring

NRW's 2020 Baseline Assessment of Protected Sites was the first full assessment since 2003. We would not regard a gap of 17 years as satisfactory even if information on the condition of every site was provided. The fact that NRW was unable to determine the condition of about half of the listed sites because of insufficient evidence is a strong indicator that something is very wrong with the way monitoring is conducted.

We conclude that monitoring of protected sites should be a statutory function of NRW. We conclude that the Common Standards Monitoring approach continues to be appropriate. We recognise that this sort of monitoring is heavy on resources and are strongly of the view that imposition of the statutory duty must be accompanied by an increase in funding sufficient to enable NRW to carry out a monitoring programme in which every site is monitored at least every six years. The outcomes of the programme should be reported annually.

We have concluded that it is important to keep a clear distinction between features monitoring and site assessment. They have different purposes, could be done on different time scales, involving different techniques carried out by different people.

Targets for Protected Sites

The IEPAW considers that it would be extremely challenging to set outcome-focused targets for protected sites such as a target for improved conditions of protected features. We feel that some proposals for targets provided in the evidence may be better regarded as aspirations. We do, however, support targets for protected areas that:

- can be clearly defined;
- have a reasonable chance of being achieved within the prescribed timeframe; and
- can be met by outputs that can be measured in some way.

We believe that considerable thought needs to be given to defining targets that will drive action towards meeting the overall aim of a network of protected sites in favourable condition. This will take time and we would not expect to see these targets being finalised until sometime after the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill becomes law. We agree that the need to address the biodiversity crisis is urgent and that, ideally, biodiversity targets would have been in place in time to help meet the 2030 deadline but can see no benefits in setting targets to meet this deadline if this means that insufficient time is spent on defining them.

One target that could be introduced more quickly, however, is a target on the monitoring of SSSIs. We believe that setting such a target would be useful in holding the Welsh Government and NRW to account.

Target setting will not achieve anything unless the targets are accompanied by the appropriate actions needed to meet them. We think it will be essential for the Welsh Government to ensure that a strategic costed action plan is put in place setting out the work that is needed to bring SSSIs into favourable condition.

Changes to the existing legal framework for protected sites

We agree that the notification process for SSSIs can be time-consuming and resource intensive. It is also inflexible and ill-suited to addressing changes in biodiversity resulting from climate change. Although the legislation now includes provisions to make changes to the content of a notification and to add to or enlarge it, these also require formal notification. We are not convinced, however, that the situation would be improved by further legal amendments. It may be that, in due course, a more fundamental review of the law on SSSIs should be undertaken. At present, however, we think that any changes to the law to simplify the notification procedures would counter-productive because they would be likely to alienate landowners.

The inability to control activities outside of an SSSI that might have a detrimental effect on the features for which it was notified was raised as a serious concern and led several respondents to propose giving SSSIs the same legal protection as is afforded to Special Areas of Conservation (SACs). Although we can see the benefits in doing this, we do not think it would be appropriate in every situation. As noted in the evidence, SSSI consent can be acquired quickly, whereas SAC consents take much longer and the process is more onerous. We are encouraged by the statements in the latest edition of Planning Policy Wales that there is a presumption against any development in an SSSI that it is not necessary for the management of the site and, furthermore, that there is a presumption against development not within the SSSI but likely to damage it. We suggest that any decision to overrule this presumption should only be made on the basis of a favourable environmental impact assessment.

For activities that require authorisations other than planning permission there may be a case for extending the provisions for appropriate assessment although we do not think that this would necessarily require a change in the law. Section 28G of the Wildlife and Countryside Act (WCA) requires statutory undertakers to take reasonable steps to further the conservation and enhancement of notified features. This duty, coupled with the general duty on public bodies under Environment (Wales) Act to seek to maintain and enhance biodiversity, could be used to ensure that the impact of activities outside an SSSI do not inadvertently cause damage.

Management and Management Agreements

The IEPAW considers that the power to enter into a Land Management Agreement (LMA) with respect to any land provides NRW with the necessary legal mechanism to enable it to work with landholders to conserve and/or restore SSSIs. We agree, however, that these powers have not been used as fully as they need to be.

Taken together, LMAs and the Sustainable Farming Scheme could, in theory, go a long way towards conserving and restoring protected sites. Success, however, will depend on a number of factors identified in the evidence to this report, namely:

- knowledge of the current conservation status of the SSSI;
- the development of good working relations between NRW and landholders so that the benefits of management actions can be fully understood;
- the availability of a suitable number of qualified and experienced NRW staff to work with landholders;
- a large enough pot of money to ensure that LMAs and/or other forms of payment can be made wherever this is deemed necessary.
- a sufficient incentive for landholders to consider it worthwhile entering into some sort of management agreement.

We are not at all surprised that NRW have hardly used their powers to make a Management Scheme and we would not criticise them for this. We can see the potential benefit of a Management Scheme as a means of persuading a reluctant landholder to engage in discussions about proposed management. The option of issuing a Management Notice would then be the final incentive to induce compliance. But we believe these devices should only ever be used as a last option. Management of an SSSI is more likely to be successful if the landholder is a willing participant. Furthermore, the procedures for both Management Schemes and Management Notices follow those for notification of a site with the result that it may take months for them to be confirmed and even longer should the landholder choose to appeal the Management Notice.

Enforcement Mechanisms

The IEPAW agrees with NRW that a targeted approach to enforcement is the best way to deal with offences. Prosecutions can be time-consuming and costly and should be reserved for the most serious offences, especially repeat offences. The most important thing is for any damage to be repaired where possible and for it to be avoided in the future.

We think that the NRW presently has limited scope to deal with offences, and we broadly agree with its suggestions for new powers. In particular, we strongly support the idea of amending the Environmental Civil Sanctions (Order) Wales 2010 to include offences under the WCA. If NRW had these powers, it would be able to require a landholder to restore damage on a site without the need for a successful prosecution. We also support NRW's suggestion that it should be given powers of entry to carry out management on third party land, and recover costs, in those cases where it is unable to enter into an LMA.

Adaptive Approach to Site Management

The IEPAW agrees that current legal framework for protected sites does not best equip them for adaptive approaches. We also agree that the existing protected sites need to be integrated withing a network of sites designed to assist nature recovery. We have no doubt that flexibility and the ability to change management practices to meet changing circumstances will be necessary.

We agree that the current legal framework for SSSIs is not fit for future needs; indeed, it can make it almost impossible to achieve desired outcomes. In summary we think that the main barriers to adaptive management of SSSIs are:

- prescriptive approach to notifying features.
- notification based on current status rather than future prospects.
- protracted process of notification
- need for renotification of any variation to SSSI details
- reliance on a list PDOs as basis for management requirements
- over-emphasis on preventing damage or loss rather than positive management.

The current set of SSSIs was not put together with a view to creating a connected network. We agree that sites should be big enough to provide the protection provided either alone or in connections with other sites. Targets for connectivity may help drive the creation of more sites but, without the necessary information on the current status of sites, it will be difficult to determine where action is most needed. Monitoring of sites is a necessary prerequisite and will become essential for informing the need for adaptive management in the future. SSSI management has to be attuned to the purpose of the SSSI. If that purpose is to be allowed to change with time, there must be flexibility in the way a site is managed.

We acknowledge that the nature conservation bodies have acted to improve the protected areas network. The revised Guidelines are to be welcomed and should ensure a more flexible approach to site selection in the future. Unfortunately, 97 per cent of the SSSIs in Wales were notified before the 2013 revision. Some even pre-date the 1989 Guidelines and were selected on the basis of internal NCC guidance.

We do not think there is any prospect of fundamental change to the legal regime for SSSIs in the short term. But all is not lost. Having a management statement for each SSSI which sets out the future aspirations for the site is an important first step. The fact that NRW has powers to enter into a LMA in respect of any land is also welcomed and we would encourage NRW to use this power to provide protection for SSSIs from potentially damaging off-site activities. The inclusion of specific actions on SSSIs in the Sustainable Farming Scheme should also enable better approaches to management.

Conclusions

The Welsh Government aspires to transform the protected site series so that it is better, bigger, and more effectively connected. Unfortunately the legal framework is not ideally suited for meeting the Government's aspirations. The various protected site designations available in Wales were not designed to be complementary to each other and none of them was intended to provide for recovery from a biodiversity crisis. Any attempt to employ them to do this will have to take account of the limitations inherent in their legal and policy frameworks.

Perhaps the most fundamental issue is that none of them caters for all biodiversity. The SSSI series was never intended to be a mechanism for comprehensive all-encompassing nature conservation. There has been an emphasis on the rare, vulnerable and endangered species and on particular natural habitats. Sites are designated for the special features they contain rather than for their overall contribution to conservation of biodiversity. Furthermore, there has never been a policy to protect every interesting area. Sites for notification as SSSIs are selected as representative examples within a defined Area of Search; under European law, SACs have been designated as a representative proportion of the UK's contribution to its European biogeographic region.

In an ideal world, we would like to see the SSSI replaced by a new protected area designation with sites being selected not just on the basis of their intrinsic features but also on how well they fit within the jigsaw of connections that will make up the network. They would then be subject to individually tailored ongoing management designed to keep them fit for purpose as conditions change in the future. There would be little, if any, need to denotify sites.

Unless and until this happens, however, we conclude that the single most important requirement is not for a change in the law relating to protected areas but a much greater willingness to devote sufficient resources to provide for effective management of sites now and for ongoing monitoring to enable decisions to be made on future management.

Recommendations

Resources

Recommendation 1: The Welsh Government should assess the resources required for NRW to carry out its functions in relation to protected sites, including monitoring of site condition and entering into management agreements, and ensure sufficient funding is provided specifically for this work. We also recommend that NRW being required to account for the use of these resources.

Monitoring

Recommendation 2: The Welsh Government should use the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill to introduce a statutory duty for NRW to monitor SSSIs and report on the condition of features for which a site is notified. The duty should require NRW to develop and implement a monitoring programme that provides for all SSSIs to be monitored regularly. We further recommend the Welsh Government provide guidance on the frequency of monitoring. This will depend on the nature of the features to be monitored but we think it should be at least once every 6 years.

Recommendation 3: The Welsh Government, working with NRW, should consider including self-monitoring of sites in any management agreement including those agreed under the Sustainable Farming Scheme. Information obtained in this way could contribute to the monitoring report. It would also provide an opportunity for owners and occupiers to become more involved in ensuring the condition of notified features is restored and enhanced.

Recommendation 4: NRW should normally share monitoring data with those responsible for managing the relevant SSSI.

Targets

Recommendation 5: The Welsh Government should use the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill to introduce a

target that the condition of all SSSIs is determined by 2030 in order to provide a baseline for assessing progress towards nature recovery. If this target is not included in the forthcoming Bill, it should be given priority in the list of targets to be proposed for inclusion in secondary legislation.

Recommendation 6: The Welsh Government should ensure that the need to bring all biological SSSIs into favourable condition as soon as possible is a guiding principle in the development of specific biodiversity targets to be included in secondary legislation.

Recommendation 7: The Welsh Government should use the Environment (Principles, Governance and Biodiversity Targets)(Wales) Bill to introduce a requirement for the production of a strategic, costed action plan setting out the work needed to bring SSSIs into favourable condition. This action plan should be produced by, or in conjunction with, NRW within 2 years of enactment. It should:

- prioritise those features/sites most in need of action;
- include key milestones towards achieving favourable condition.

Recommendation 8: The Welsh Government, working with NRW, should regularly and transparently review progress with implementation of the action plan and take action where necessary to keep it on track. A detailed report on progress made should be included in the NRW's Annual Report and implementation of the action plan should be a key performance indicator for NRW.

Protecting Protected Sites

Recommendation 9: The Welsh Government should take action to ensure that activities outside of but potentially impacting SSSIs are not permitted if they are likely to adversely affect the condition of the SSSI. Depending on the nature of the activities, there are several ways in which this might be achieved. We

recommend the Welsh Government considers the merits of the following possible mechanisms for achieving this

- extending the requirement for an environmental impact assessment in all applications for planning consent for any development that might adversely affect an SSSI.
- in those situations where planning permission is not required, extending the provisions for appropriate assessment set out in the Conservation of Habitats & Species Regulation 63 (1) – (4) to all activities on SSSIs carried out by, or authorised by statutory undertakers under sections 28H and 28I of the Wildlife and Countryside Act.

Recommendation 10: The Welsh Government should encourage the designation of buffer zones around SSSIs under sections 28B & 28C of the Wildlife and Countryside Act.

Recommendation 11: NRW should make greater use of their powers to enter into section 16 management agreements not only to protect existing notified features but also to enhance the biodiversity value of a site through positive management.

Recommendation 12: NRW should make greater use of their powers to enter into section 16 management agreements with landowners outside of SSSIs. Where appropriate such agreements could be used to secure compliance with planning conditions.

Recommendation 13: The Welsh Government should urgently revise TAN 5 Nature Conservation and Planning which should clearly state that there is not a hierarchy of protected sites.

Enforcement

Recommendation 14: The Welsh Government should require NRW to publish a register of enforcement actions.

Recommendation 15: The Welsh Government in the next Senedd Term should amend NRW's powers of entry under the Wildlife and Countryside Act section 51 to enable them to go onto land to carry out required management and/or restoration works and to be able to recover the cost of those works where possible.

Recommendation 16: The Welsh Government should consider adding a provision in the legislation to allow NRW to recover costs in relation to incident response at protected sites, similar to the 'polluter pays' principle for water pollution offences under the Water Resources Act 1991.

Recommendation 17: The Welsh Government should consider amending the Environmental Civil Sanctions (Wales) Order 2010 to include offences under the Wildlife and Countryside Act not least because this would give NRW the power to seek a restoration order in response to an offence that causes damage to a SSSI.

Adaptive Management

Recommendation 18: The Welsh Government should work with NRW to develop a programme for assessing the contribution of protected sites as corridors in a wider connected network of land contributing to nature recovery. This programme should be led by NRW. The programme should encompass the use of new technologies. Third party bodies should be encouraged to participate where appropriate.

Recommendation 19: The Welsh Government should ensure NRW instigate a strategic review of SSSI designations in Wales with a view to ensuring the notifications accurately reflect the potential for the site to contribute to nature

recovery both in terms of the features included and the area of land covered. Where a need for more SSSIs is identified the site selection process should primarily consider the need for ecological coherence.

Recommendation 19: The Welsh Government, working with NRW, should take action to ensure the SSSI site selection process is applied so that greater emphasis is given to the need for ecological coherence by taking account of how a given site functions in the wider environment. The potential value of sites that might not otherwise meet selection criteria should be taken into account for the same reasons.

Table of Abbreviations

ALGE	Association of Local Government Ecologists
BBNPA	Brecon Beacons National Park Authority
BSBI	Botanical Society of Britain and Ireland
CBD	Convention on Biological Diversity
CC	Coed Cadw
CSM	Common Standards Monitoring
E(W)A	Environment (Wales) Act
FUW	Farmers' Union of Wales
IEPAW	Interim Environmental Protection Assessor for Wales
INCC	Initiative for Nature Conservation Cymru
IROPI	Imperative Reasons of Overriding Public Interest
JNCC	Joint Nature Conservation Committee
LMA	Land Management Agreement
LNR	Local Nature Reserve
NCB	Nature Conservation Body
NCC	Nature Conservancy Council
NFFN	Nature Friendly Farming Network
NFUC	National Farmers Union Cymru
NGO	Non-Governmental Organisation
NNR	National Nature Reserve
NP	National Park
NRW	Natural Resources Wales
NT	National Trust
OECM	Other Effective Area-based Conservation Measures
PC	Plantlife Cymru
PCNPA	Pembrokeshire Coast National Park Authority
PDO	Potentially Damaging Operation

PPW	Planning Policy Wales
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SFS	Sustainable Farming Scheme
SINC	Site of Importance for Nature Conservation
SNPA	Snowdonia National Parks Authority
SoW	Schedule of Works
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TAN	Technical Advice Note
UA	Universal Action
UKELA	United Kingdom Environmental Law Association
WCA	Wildlife and Countryside Act
WEL	Wales Environment Link
WTSWW	Wildlife Trust of South and West Wales
WTW	Wildlife Trusts Wales

1.Introduction

For the last 75 years protected sites have been the main means of conserving biodiversity. Of the many types of statutory protected area designations available in Wales, the Site of Special Scientific Interest (SSSI) takes pride of place. Notification as an SSSI means that the conservation of the site is taken into account in planning decisions. It also enables Natural Resources Wales (NRW) to impose restrictions on the use of the land and to enter into management agreements with landholders. Terrestrial Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are also SSSIs but with additional protection for listed habitats and species.

Welsh SSSIs have been described as the jewel in the crown of Welsh wildlife because they are chosen as the best of their type. Unfortunately, they do not always enjoy the attention that would be expected given such an accolade.

In the summer of 2022, the Interim Environmental Protection Assessor for Wales (IEPAW) received two submissions about the management and protection of protected sites in Wales. They were particularly concerned about the lack of information on the conservation status of SSSIs. Natural Resources Wales (NRW)'s 2020 Baseline Evaluation Project¹ to assess the quality of all protected sites stated that they were unable to determine the condition of around half of the features of all sites (for example habitat quality or number of species) due to insufficient evidence. Of the features they were able to assess, 20 per cent were in a favourable condition, 30 per cent in an unfavourable condition and 50 per cent not in a desired state. The submissions claimed that many sites were damaged and degraded; that sites were not being managed appropriately or protected; and that nature continued to decline in Wales. One submitter also considered that the suite of powers available to NRW to protect and secure appropriate management for terrestrial protected sites was not being applied to its full potential.

¹ <https://naturalresources.wales/evidence-and-data/research-and-reports/protected-sites-baseline-assessment-2020/?lang=en>

In response to these submissions, the IEPAW decided to investigate further, with the intention of producing a report to Welsh Ministers which would:

- assess whether the existing legal framework is functioning correctly;
- identify areas where the existing legal protection may not be delivering the intended benefits;
- identify potential gaps in the existing legislation; and
- identify areas where the practical application of the legislation may be impeded.

The report begins with an overview of the legal framework for the suite of protected site designations available in Wales before going into specific details of the law relating to SSSIs, SACs and SPAs. This is followed by an analysis of the evidence we received together with information obtained from stakeholders and through wider research into the relevant literature including recent policy developments. We conclude with a statement of our conclusions and recommendations.

1.1 Approach Taken

To assist in scoping the report, the IEPAW convened an Expert Forum at Ynyshir Nature Reserve in November 2022 to discuss concerns about the functioning of legislation concerning protected sites in Wales. This was followed by a Call for Evidence launched in December 2022.

The Call for Evidence stated IEPAW's intention to restrict the initial scope of the report to those designations whose primary purpose is the protection of biodiversity, SSSIs, SACs and SPAs. It was not intended to include protected/designated landscapes at this stage. Although some of the submissions had also referred to Marine Conservation Zones, it was decided to limit the investigation to terrestrial sites only.

2 Legal Framework for Protected Sites in Wales

2.1 Introduction

There are over 30 different types of protected area in the Wales providing for the conservation of wildlife and/or landscape, most of which have statutory status.² This section looks at the history of the most significant statutory designations. The terrestrial protected site designations have very different origins which reflect scientific knowledge and socio-economic thinking at the time of enactment. Although the legislative framework has been amended over the years, the designations still retain distinct differences in the purpose, level and strength of protection.

2.2 Site of Special Scientific Interest

The SSSI has a chequered history.³ It started, in 1949,⁴ as nothing more than a notification to planning authorities of the presence of scientific interest on a site. In 1981⁵ it was transformed by amendments in the Wildlife and Countryside Act (WCA) into a protected site designation imposing restrictions on owners and/or occupiers⁶ of land. The SSSI notification specified the features that made the site of special interest and a list of potentially damaging operations (PDOs) also known operations likely to damage those features. Once the notification was confirmed, the intention was that the landholder would not carry out any of these operations without the consent of the Nature Conservancy Council (NCC). In practice, however, the level of protection afforded by the Act proved to be far from satisfactory for a number of reasons and had to be amended to remove some of the loopholes enabling landowners to avoid having to comply.⁷ Despite these changes, the regime still relied heavily of the voluntary

² For a review of the range of protected area categories see Bishop et al 1997 'Protected areas for the future: models from the past' *Journal of Environmental Planning and Management* 40(1) 81-110.

³ Galbraith C & Stroud D provide a time line showing key stages in the evolution of the SSSI in England in *Think Piece on the Effectiveness of Protected Areas in England* Natural England Research Report NECR412 (2022) available at <https://publications.naturalengland.org.uk/publication/4937362194038784>

⁴ Under the National Parks etc. Act 1949 s. 23.

⁵ WCA s.28. The change was made to comply with the UK's obligations under the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) which required parties to 'take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of wild flora and fauna species'.

⁶ Hereinafter referred to as landholders.

⁷ Amendments made by the Wildlife and Countryside (Amendment) Act 1985 s. 2.

cooperation of the landowner until 2000 when sweeping changes were made, designed to improve the notification process and, more importantly, to provide for the management of notified sites.⁸

In many respects the revised SSSI designation is equipped with the legal measures necessary to ensure that landholders manage their land in accordance with the appropriate management needs and that third parties respect the designation. As is addressed later in this report, however, in practice, the system is far from perfect. The main issues of concern are:

- the site selection process;
- the notification process;
- the resource implications;
- the fact that planning permission can override the scientific interest.

2.3 Nature Reserve

National and Local Nature Reserves (NNRs and LNRs) were the first protected site designations.⁹ The purpose of a nature reserve has been modified over the years and it is now defined as land managed for a conservation purposes with or without an additional recreational purpose.¹⁰ Conservation includes enabling or facilitating the recovery or increase of features of special interest.¹¹ As originally envisaged, NNRs were not SSSIs. Only sites that were managed for conservation purposes could be declared as NNRs and further protection could be provided, if necessary, through byelaws. However, over 95 per cent of NNRs in Wales are now notified as SSSIs. Management is provided directly by NRW, through partnership agreements with them or by an approved body. LNRs are nature reserves established and managed by local authorities.

⁸ Section 28J gives NRW powers to formulate a management scheme for an SSSI. If the landholder does not comply and refuses to enter into a management agreement, s. 28K provides that NRW can issue a management notice requiring specified work to be carried out.

⁹ Established under the National Parks etc. Act 1949 ss 15 and 21 respectively.

¹⁰ Amendments added by the Natural Environment and Rural Communities Act 2006 s. 107.

¹¹ Provision introduced by the Conservation of Habitats and Species (Amendment) Regulations 2012 Regulation 25 SI 2012/1927.

2.4 National Park

The National Park (NP) designation was created by the National Parks etc. Act 1949 with the dual purposes of preserving and enhancing the natural beauty of extensive tracts of countryside, promoting public enjoyment thereof and providing opportunities for open-air recreation. A caveat on these two purposes was added by the Countryside Act 1968 which provided that when enjoyment and conservation purposes could not be reconciled, conservation should take priority. The Act also expanded the conservation purpose to conserving and enhancing natural beauty, wildlife and cultural heritage. National Park Authorities are required to prepare and publish a National Park Management Plan setting out priorities for the future management of the area. In Wales, National Park Authorities must have regard to the State of Natural Resources Report and the relevant Area Statements.

2.5 European Conservation Designations

Under the European Habitats Directive Member States have to submit proposals for SACs so as to contribute proportionately to a network of sites hosting listed habitats and/or species of European importance (Natura 2000). Member States must take steps to avoid the deterioration of habitats and the disturbance of species in SACs. Any plan or project not directly connected with or necessary for site management that is likely to have a significant effect thereon, either individually or in combination with other plans or projects, must undergo an appropriate assessment of its implications for the site in view of the site's conservation objectives. Approval can only be granted where it is shown that there will be no adverse impact on site integrity. The only exception is if the plan or project has to be carried out for imperative reasons of overriding public interest (the so-called IROPI test) in which case it can go ahead provided compensatory measures are taken to protect the overall coherence of Natura 2000. These reasons are not limited to concerns over human health and public safety but include other reasons of a social or economic nature. The Directive amended the Birds Directive so that these same wider exceptions are allowed in respects of SPAs.

Where there are priority habitats, defined in the Directive as being in danger of disappearing, the social and economic exception does not apply.

Provisions for the protection of SACs and SPAs are contained in the Conservation of Habitats and Species Regulations as amended following the UK's exit from the EU.¹² Terrestrial SPAs and SACs are generally notified as SSSIs and, for the time being at least, also enjoy protection through the appropriate assessment process.

SACs and SPAs now constitute the UK National Site Network.¹³ Although they are no longer part of Natura 2000, they are part of the Emerald Network of Areas of Special Conservation Interest set up under the Bern Convention, the objective of which is the long term survival of the species and habitats requiring specific protection measures under the Convention.¹⁴

2.6 Ramsar Sites

The UK is a Contracting Party to the Ramsar Convention.¹⁵ Ramsar Sites are wetlands of international importance designated for containing representative, rare or unique wetland types or for their value in conserving biological diversity. Most UK Ramsar Sites have been notified as SSSIs. The UK Government and the devolved administrations have issued policy statements relating to Ramsar Sites which extend to them the same level of protection as afforded to SPAs and many of them are actually designated as SPAs.

¹² Conservation of Habitats and Species Regulations 2017 SI 2017/1012 amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 SI 2019/579.

¹³ For a summary of sites in the network see <https://hub.jncc.gov.uk/assets/a3d9da1e-dedc-4539-a574-84287636c898>.

¹⁴ For further information see <https://www.coe.int/en/web/bern-convention/emerald-network>.

¹⁵ Convention on Wetlands of International Importance especially as Waterfowl Habitats.

3 Planning Law and Policy

Designation as an SSSI, SAC or SPA does not automatically guarantee that a site will not be damaged by future development. Planning consent exempts a landholder from the need to seek permission to carry out damaging activities. For SSSIs the decision on whether to grant planning permission will be made in the light of information about the site in question. For SACs and SPAs there is a more onerous consenting process which may lead to refusal of consent or consent being given subject to compensation measures.

3.1 Planning Policy Wales

Planning Policy Wales (PPW) sets out the Welsh Government's policies with respect to protected sites.¹⁶ The latest edition, PPW 12, places considerable importance on the need to avoid damage to protected sites, reflecting the enhanced attention being paid to dealing with the biodiversity crisis.

With respect to SSSIs, WCA s.28G imposes a duty on all public bodies, including planning authorities, to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features for which an SSSI has been notified.

The fact that damage to an SSSI can be caused by development within it, adjacent to it or even at some distance is emphasised. This is an important statement given that the policy goes on to state that there is a presumption against any development in an SSSI that it is not necessary for the management of the site and, furthermore, that there is a presumption against development not within the SSSI but likely to damage it.

¹⁶ PPW 12 paras 6.4.2 – 6.4.31. Available at <https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf>.

The PPW policy on SACs and SPAs repeats the requirements set out in the Habitat Regulations and also makes the point that Ramsar sites should be treated as if the Regulations applied to them.

3.2 TAN 5 Nature Conservation and Planning

Technical Advice Notes (TANs) are designed to supplement the PPW. TAN 5¹⁷ sets out information on protected sites in Wales and explains the policy that local planning authorities must have regard to when preparing development plans and making decisions on individual planning applications. Unfortunately, it has not been updated since 2009 and refers to PPW 2 which was published in 2002.

¹⁷ Available at <https://www.gov.wales/technical-advice-note-tan-5-nature-conservation-and-planning>.

4 Status of Protected Sites in Wales

There are more than 1000 SSSIs in Wales covering about 12 per cent of the land. There are 95 SACs and 21 SPAs in Wales including marine and cross-border sites.

The purpose of NRW's 2020 Baseline Evaluation Assessment¹⁸ was to assess the quality of the protected sites evidence base and identify the relative health of the key species and habitats. It was the first time that an exercise had been undertaken on this scale since 2003. The review focused on monitoring features on terrestrial and freshwater protected sites.

The evidence on each feature was reviewed and, where possible, given an indicative condition assessment category. The results showed that NRW currently had insufficient evidence to determine the condition of around half of the features on these sites (condition classed as unknown). Of the features that were assessed the condition state was as follows:

- 50 per cent not in a desired state
- 30 per cent in unfavourable condition
- 20 per cent in favourable condition.

An assessment of the state of nature in Wales has been undertaken since 2013 by non-governmental organisations (NGOs). Their latest State of Nature report¹⁹ states that 18 per cent of species (663 out of 3897) are at risk of extinction. There has also been a 20 per cent decline since 1994 in the abundance of 380 terrestrial and freshwater species that have been carefully monitored over that time. The distribution of species has also changed. There has been a decrease in the distribution of 42 per cent of flowering plants and, at the same time, an increase in the distribution of a different 40 per cent.

¹⁸ See note 1 above.

¹⁹ State of Nature Wales 2023 <https://stateofnature.org.uk/wp-content/uploads/2023/09/TP26053-SoN-Wales-summary-report-v10.pdf> pagespeed.ce.Ucl3aoHAY6.pdf.

5 Monitoring of Protected Sites

The way in which protected sites are being monitored was one of the aspects of their management investigated by the IEPAW. This section sets out the requirements for monitoring and how it is being carried out before going on consider the evidence raised on this topic.

5.1 Common Standards Monitoring

The Joint Nature Conservation Committee (JNCC) takes the lead in identifying standards for the monitoring of protected sites in pursuance of its statutory duty to:

establish common standards throughout the United Kingdom for the monitoring of nature conservation and for research into nature conservation and the analysis of the resulting information.²⁰

A common approach to feature condition assessment was deemed necessary for comparative purposes and to facilitate aggregation of condition assessments across protected areas to provide whole country and UK-scale assessments. This is required for reporting purposes, for example, country assessments, UK Biodiversity Indicators, international obligations, and assessing progress towards targets from local to global scales.

Common Standards Monitoring (CSM) was developed by an interagency working group comprising the JNCC and the four country nature conservation bodies (NCBs) to provide an agreed approach to the assessment of condition on statutory sites designated through UK legislation and international agreements. CSM monitoring has been used for SSSIs, SPAs, SACs and Ramsar sites.

The first statement on CSM was made by the JNCC in 1998, and the system became operational in 1999. The standard initially included a requirement that the condition of all SSSIs should be reported on every 6 years with an interim report produced between

²⁰ s.34 Natural Resources and Rural Communities Act 2006.

full reports. The original statement on CSM was replaced in 2019 and revised in 2022.²¹

The Common Standards are divided into the following categories used for the assessment of protected features in SSSIs:

Favourable: SSSI is being adequately conserved and is meeting its conservation objectives, however there is scope for enhancement of these sites.

Unfavourable recovering: SSSI is not yet fully meeting the conservation objectives, but all the necessary management measures are in place. Provided that the recovery work is sustained, the SSSI will reach favourable condition in time.

Unfavourable no change: SSSI is not meeting the conservation objectives and will not reach favourable condition unless there are changes to the site management or external pressures. The longer the SSSI remains in this poor condition, the more difficult it will be, in general, to achieve recovery.

Unfavourable declining: SSSI is not meeting the conservation objectives and will not reach favourable condition unless there are changes to the site management or external pressures. The site condition is becoming progressively worse.

Part destroyed: Lasting damage has occurred to part of the special conservation interest of an SSSI such that it has been irretrievably lost and will never recover. Conservation work may still be needed on the residual interest of the land.

Destroyed: Lasting damage has occurred to all the special conservation interest of the SSSI such that it has been irretrievably lost. The land will never recover.

²¹ <https://jncc.gov.uk/our-work/common-standards-monitoring/>.

The JNCC has published a Common Standards Monitoring Guide with separate guides for each of the specific habitat types and the relevant features for which they will typically have been designated as a protected site.²²

The report of the first 6-year review of CSM²³ reported on 57 per cent of the total features in SSSIs. Although this means not every SSSI was reported on, it was the biggest survey of SSSIs undertaken at that time. According to the 6-year review requirement, further reviews should have been carried out in 2011 and 2017, but these were not forthcoming. It is notable that the current version of the CSM no longer includes detailed provisions on reporting arrangements and there is no longer a requirement for a review every 6 years.

5.2 Statutory Duty to Report

5.2.1 Protected Sites

The Birds Directive requires Member States to report on the implementation of measures every six years.²⁴ The results of CSM of SPAs formed the basis of UK-wide assessment of the status and trends of birds for which these sites are protected. The last report to the EU was made in 2019.²⁵ There have also been three reviews of the UK SPA network undertaken at roughly decadal intervals covering data from the 1980s, 1990s and 2000s respectively.²⁶

Similar requirements for reporting apply to SACs²⁷ and, again, CSM is used to make the assessments of the condition of protected habitats and species.²⁸ Reports must still be published on a six-yearly cycle following Brexit.²⁹

²² <https://jncc.gov.uk/our-work/common-standards-monitoring-guidance/> .

²³ <https://hub.jncc.gov.uk/assets/15967de5-9da9-4d1f-b067-a8e76549bdca> .

²⁴ Birds Directive Article 12 as amended.

²⁵ The reports are available at <https://jncc.gov.uk/our-work/article-12-and-17-reports/> .

²⁶ <https://hub.jncc.gov.uk/assets/d1b21876-d5a4-42b9-9505-4c399fe47d7e>. The IEPAW together with OEP and ESS are currently investigating a submission alleging the failure to fully implement the outcome of these reviews which will not, therefore, be considered further in this report.

²⁷ Habitats Directive Article 17.

²⁸ The UK's 4th Article 17 Report was submitted in 2019 and is available at <https://jncc.gov.uk/our-work/article-12-and-17-reports/> .

²⁹ Conservation of Habitats and Species Regulations 2017 (2017/1012) Regulation (9A) inserted by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019/579.

The duty to ensure that necessary surveillance of the conservation status of habitats and species is carried out on an ongoing basis rests with Welsh ministers. A strategic approach to this surveillance was produced by the JNCC in consultation with the devolved nature conservation bodies.³⁰ NRW's duty in relation to surveillance of SACs and SPAs requires it to:

- a) assess how and to what extent surveillance of the conservation status of each relevant habitat type and species is to be carried out, having regard to:
 - i. whether a habitat or species is a priority natural habitat type or priority species; and
 - ii. the conservation status of the habitat or species; and
- b) advise the appropriate authority (Welsh ministers) as to the need for such surveillance.³¹

This statutory duty is defined by the conservation status of the habitats and species across their whole range and is not a duty specifically in respect of protected sites.³² Furthermore, the surveillance duty does not amount to a duty to monitor either the extent or condition of SACs and SPAs.

There is no comparable legal requirement to monitor and report on the status of SSSIs. NRW has powers to enter land to assess the condition of notified features³³ but it does not have a specific statutory function to monitor SSSIs. It carries out CSM of protected sites in accordance with guidance provided by the JNCC but it is not obliged to do this.³⁴

³⁰ *The UK Terrestrial Biodiversity Surveillance Strategy: UK Habitats Directive Surveillance Approach*. In 2020 JNCC replaced this strategy with an updated *Terrestrial Biodiversity Evidence Strategy*. For further details see <https://jncc.gov.uk/our-work/the-uk-terrestrial-biodiversity-surveillance-strategy/>.

³¹ Conservation of Habitats and Species Regulations, Regulation 50(4).

³² Written evidence from NRW.

³³ WCA s51.

³⁴ See note 23 above. Site assessment of some sort or other is, however, a requirement for SACs and SPAs.

5.2.2 State of Natural Resources

The Environment (Wales) Act 2016 (E(W)A) imposes a duty on NRW to report on the state of natural resources in Wales, including habitat types of principal importance.³⁵ However, once again, this does not specifically require the monitoring of protected sites. NRW may, of course, carry out assessments relevant to its work and has done so in providing the recent baseline evaluation.

³⁵ E(W)A s. 7.

6 Analysis of Evidence - Introduction

An Expert Forum was held in November 2022 to gain initial insights into the issues related to the scope of the investigation.³⁶ Participants were asked to consider the following points:

- the reasons why 80 per cent of the features assessed in the 2020 Baseline Evaluation were found not to be in a favourable condition;
- are there legislative changes that could be made to improve the condition of protected sites? If so, what?
- the 2020 Baseline Evaluation was unable to determine the condition of about half the features of the sites due to insufficient evidence. Would any legislative changes improve the ability to determine the condition of protected sites? If so, what?
- does the guidance or processes for protected sites need to be improved? If so, how?
- does enforcement need to be improved? If so, how?

Following the Expert Forum and building on the report of that discussion, a Call for Evidence was issued on 9th December 2022 with responses requested by 20th January 2023.³⁷ This sought views and evidence on the following:

- the monitoring of protected sites;
- targets for protected sites;
- possible changes to the existing legal framework;
- barriers to agreeing management agreements;
- enforcement mechanisms; and
- an adaptive approach to site management.

The IEPAW received evidence from the following respondents:

- Association of Local Government Ecologists (ALGE)
- Brecon Beacons National Park Authority (BBNPA)

³⁶ See Annexes 2 & 3 for briefing paper for, and record of discussions at the Expert Forum.

³⁷ See Annex 4 for the letter from the IEPAW issuing the Call for Evidence.

- Botanical Society of Britain and Ireland (BSBI)
- Coed Cadw (CC)
- Farmers' Union of Wales (FUW)
- Joint Nature Conservation Committee (JNCC)
- National Farmers Union (NFU)
- National Trust (NT)
- Natural Resources Wales (NRW)
- Nature Friendly Farming Network (NFFN)
- Pembrokeshire Coast National Park Authority (PCNPA)
- Plantlife Cymru (PC)
- Royal Society for the Protection of Birds (RSPB)
- Snowdonia National Parks Authority (SNPA)
- UK Environmental Law Association (UKELA)
- Wales Environment Link (WEL)
- Wildlife Trust of South and West Wales (WTSWW)
- Wildlife Trusts Wales (WTW)

The format of responses varied. Most addressed the questions set out above, with or without further commentary but some only addressed the proposed scope of the report as set out in the Call for Evidence namely

- whether the existing legal framework is functioning correctly;
- areas where the existing legal protection may not be delivering the intended benefits;
- potential gaps in the existing legislation; and
- identify areas where the practical application of the legislation may be impeded.

All evidence received has been taken into account in this analysis but it is arranged in sections addressing each of the questions posed.

The Call for Evidence had sought responses on SSSIs, SACs and SPAs. Some responses encouraged us to consider other statutory designations as well, particularly NNRs and LNRs together with non-statutory local wildlife sites or Sites of Importance for Nature Conservation (SINCs) so these are also referred to in the Report. While landscape protection is not considered in detail, the role of the National Parks (NP) designation in providing protection for biodiversity is also touched on.

7 Monitoring

The question posed in the Call for Evidence was:

Should there be a statutory duty to monitor protected sites? If so, as resources are finite, what is the best way of the key players contributing to an integrated monitoring strategy and facilitating a team Wales approach? Is focusing on monitoring features the right approach or should there be more sites based consideration and a more balanced methodology?

7.1 Overview

In summary, the evidence received:

- showed strong but not universal support for a statutory duty to monitor protected sites;
- showed differing views on the relative advantages and disadvantages of features-based and site-based monitoring;
- showed support for NRW as the lead organisation for monitoring but with suggestions for wider engagement with other bodies and/or landholders;
- expressed concerns over the resources needed for monitoring;
- referred to the use of new technologies and partnership approaches to monitoring; and
- commented on the need for, and possibilities with respect to, integrated approaches to monitoring and reporting.

7.2 A Statutory Duty to Monitor Protected Sites

There was considerable support for the introduction of a statutory duty to monitor sites.³⁸ Some respondents had reservations, however. It was noted that in the Baseline Evaluation Project lack of staff resources was given as a reason for there being insufficient evidence to assess the status of sites in 40 per cent of cases.³⁹ On the one

³⁸ Discussion at the Expert Forum; written evidence from RSPB, BBNPA, PCNPA, WTW, WTSWW, BSBI, ALGE, CC, NFFN, NT, NRW.

³⁹ UKELA.

hand it was felt that statutory monitoring would only be successful if there were sufficient resources for it to be implemented properly.⁴⁰ On the other hand, others suggested that a lack of statutory monitoring requirements led to insufficient resources (including people) being devoted to monitoring.⁴¹

The farmers' unions⁴² were not in favour of statutory monitoring. The FUW felt that, given the urgency of restoring habitats, priority should be given to action rather than surveying. The JNCC was also opposed to it because it would not allow the flexibility to respond to immediate situations and technological advances, especially under a continued threat of climate change. In terms of timing, it was suggested that SSSIs should be monitored at least every 5 years.⁴³

As a possible alternative to a statutory duty to monitor, it was noted that there may be other means of ensuring that NRW carries out appropriate monitoring. For example, NRW could be made accountable with respect to monitoring protected sites condition through performance management. It was stated that protected site condition had once been included in the measures used to judge performance but had subsequently been removed.

7.3 Approach to Monitoring

Responses on the methodology to be used for monitoring covered what should be monitored, how it should be done, who should do it and on what time scale. The purpose of monitoring was discussed in the Expert Forum and the need to be clear about what is being monitored and why was highlighted. The discussion centred on the difference and importance of monitoring features and/or wider considerations such as connectivity.

⁴⁰ ALGE, NRW.

⁴¹ PPNPA.

⁴² NFU, FUW.

⁴³ CC, WEL.

NRW explained that their current approach to protected site monitoring focuses on the condition of protected site features. Their terrestrial protected sites monitoring programme for SACs, SPAs and SSSIs delivers a light-touch, targeted assessment of 4000 features including SSSI features. Previously the programme only covered 300 SAC features. NRW stated that their approach allows them to target available resources most efficiently but acknowledged that at least 70 per cent of species and habitats will remain unmonitored on a five-year programme cycle due to limited resources.

The CSM approach was the subject of comment in some responses. NRW stated that CSM ‘is in effect our national minimum standard for monitoring’. CSM provides a condition assessment of the individual features at the whole site level. Some respondents thought that CSM provided a suitable method for monitoring that can provide standards on what is achievable regionally. It was suggested, however, that there was a need to increase the number of monitoring plots per site.⁴⁴ The WTSWW commented that the obvious weakness in the CSM approach is that insufficient attention is given to factors which are or could influence a feature. CSM provides a snapshot of the condition of a feature at a selected point in time. The RSPB also pointed out that consideration of the spatial and temporal scale of the monitoring is also necessary if the designated feature to be monitored involves a species.

No one contributing evidence to this report questioned the need to monitor protected sites. Monitoring is an important management tool. There does, however, appear to be some confused thinking about the purpose of monitoring. We received mixed messages in response to our Call for Evidence on whether monitoring effort should focus on assessing the status of designated features on a notified site or if there should be a wider assessment of the role of the whole site as part of a network. On the one hand, there were concerns that wider site based assessments would not devote sufficient attention to the designated features – it would be more like surveyance rather

⁴⁴ SNPA.

than monitoring. On the other hand, it was felt that the contribution of SSSIs to connectivity was an essential function of the network which should be assessed.

7.3.1 Features-Based and Site-Based Approaches to Monitoring

A number of respondents⁴⁵ clearly stated that a features-based approach to monitoring protected sites is the correct methodology to promote nature recovery, adding considerable value to the protected site network across Wales. The NT felt that site-based methods, in the absence of feature monitoring cannot form the basis of a monitoring strategy.⁴⁶ The WTSWW noted that in order for adaptive management to be responsive and successful, a features-based approach is critical to provide the most appropriate focus for site management. The WTSWW also noted that the feature can often include the whole site. They went on to state that if the key habitat features on a site are favourable, then it is safe to assume the overall site is favourable and is being managed correctly. The NFU held a different view. In their experience, sites designated on the basis of multiple features may be assessed as unfavourable even though other features are in good condition. Other respondents⁴⁷, however, were concerned that assessing a site just against its notified feature meant that the condition of other features is not considered. Sites might therefore be assessed as favourable at the detriment of these other features which could be improved with suitable management. The UKELA felt that focusing monitoring on the features for which a site is notified can detract from the more holistic approach to management. The RSPB noted that although a features-based approach is the most effective monitoring methodology, features are intrinsically linked to the habitat and other features. With this in mind, they emphasised the fact that these factors should be captured in the overall site conservation objectives and contribute to the overall site monitoring programme.

⁴⁵ NT, WTSWW, RSPB, JNCC, NFFN.

⁴⁶ They noted that although 'survey', 'surveillance' and 'monitoring' are used interchangeably in everyday speech, monitoring has a specific meaning. Monitoring was described as a series of observations to test if a feature meets a predetermined standard. This was different from a survey (observations with no standard in mind) or surveillance (a series of surveys).

⁴⁷ SNPA.

Although respondents were generally positive about the features-based approach to site monitoring, a number of respondents⁴⁸ also noted that there are some weaknesses in the overall methodology. The BBNPA noted that while they understand why the features-based approach is used, it is very resource intensive and can often result in an impeded understanding of a site's overall condition. The ALGE expressed the view that a features-based approach should be the bare minimum standard and ideally there should also site-based monitoring where it is necessary and applicable. They also noted that where the data are available, landscape-scale monitoring considerations should be taken into account (e.g., ecosystem resilience).

Several respondents⁴⁹ expressed the view that site-based monitoring should be used in circumstances where it provides a distinct advantage over a features-based approach or should be used in conjunction with a features-based approach to attain the best outcome for protected sites. The BBNPA thought that a site-based approach might be more suitable where there is a need to deliver a rapid assessment to check that management is functioning satisfactorily. They suggested that reintroducing Site Integrity Monitoring for all sites might enable NRW to use CSM more effectively. This was described as a rapid assessment method to check that the desired and agreed management prescriptions are in place and a site's physical fabric is suitable (as opposed to focusing on ecological outcomes).

It was suggested that site-based recording alongside features monitoring can be useful for large SSSIs where a protected feature extends across several landholdings. If monitoring data is recorded against the individual landholders, it is easier to identify where action needs to be taken to address any failings.⁵⁰

One respondent felt particularly strongly about the introduction of site-based monitoring protocols, stating that replacing CSM protocols with site specific monitoring programmes would be beneficial for a number of reasons.⁵¹ They expressed the view

⁴⁸ WTSWW, BBNPA, ALGE.

⁴⁹ NT, BBNPA, WTSWW, ALGE, RSPB, NFFN.

⁵⁰ NT, RSPB.

⁵¹ SNPA.

that the CSM methodology is too rigid and prevents accurate assessment of complex sites. Instead, they suggested that tailored monitoring programmes can and should be implemented by NRW's existing monitoring team. They acknowledged, however, that this approach requires an initial increase in staff resources. They went on to suggest that the way site-based monitoring is currently conducted could be improved by site specific targets based on all features of the designated site, rather than just assessing the site against its primary feature.

On the other hand, it was noted by the NT that site-based methods, in the absence of feature monitoring (which looks at attributes and important factors) cannot, by definition, form the basis of a monitoring strategy. PC was also very concerned about a move away from features monitoring, believing that there was a strong body of evidence that a feature-based approach worked to protect species. It also noted that monitoring of protected sites needs to be carried out at different scales. At minimum, feature condition should be monitored across the whole site and at the level of each landholding. This would identify the need for, and assign responsibility for, the delivery of options at the management level. A particular problem noted was that because many of the protected sites are designated on the basis of multiple features, if one is found to be failing, then the whole site is assessed as unfavourable. It was, therefore, suggested that the focus should be on a change to an assessment band for each feature instead.

Some participants at the Expert Forum suggested that features monitoring should be carried out within a buffer zone around the site whilst others went further in suggesting that connectivity should be a factor in monitoring/surveillance. In particular, it was noted that the response to the nature and climate crises requires evidence through monitoring to inform action at a range of spatial scales, i.e., sites, networks, regions and the national scale.

The importance of technology in monitoring, including, for example, eDNA, GIS, high-resolution aerial photography and remote monitoring from aerial or satellite imaging in

monitoring was raised in the evidence.⁵² It was felt, however, that the deployment of digital innovations should only supplement on-the-ground monitoring.⁵³ On site methods referred to included comparative surveillance monitoring, using standard methodologies and representative sampling of sites.

The WTSWW appreciated that any approach to monitoring or surveillance must inevitably rely on evidence which is limited by available resources, including time and scientific knowledge. They thought that, on sites designated for some of our most globally important species, rigorous and expensive monitoring is essential to ensure ongoing protection. For most features, however, it should be possible to adopt simpler approaches, for example, regular visits by a competent and experienced expert, possibly provided by one of the Wildlife Trusts or other competent NGOs but resourced by NRW or Government.

A number of respondents felt that there is potential for a more coordinated focused strategy for scoping and delivering management planning in protected site networks across Wales.⁵⁴ NRW thought that a more integrated, collaborative and wider partnership approach to monitoring for nature recovery and ecological resilience will be critical to make effective use of resources.

The need for a partnership approach to monitoring was also raised in the Expert Forum. It was noted that a Wales-wide team approach had been discussed, although not necessarily in the context of legislative change. In the Call for Evidence there was a specific question about the best way of facilitating such an approach in monitoring protected sites. NRW commented on ministerial desire for a Team Wales delivery model for monitoring and data collection which would involve a range of organisations, including charities and skilled volunteers. NRW felt that this could lead to complexity if linked to any statutory duty. They suggested that such statutory duties may be better

⁵² Suggested by PC which felt that its use should be explicitly included in legislation.

⁵³ WTW. They stated that aerial photography, in particular, can be incredibly useful to see the spread of plants and also referred to the incorporation of eDNA as being useful to determine what species are present in a given community.

⁵⁴ NT, RSPB, BBNPA, WTSWW, PCNPA, WTW, NRW, ALGE.

focussed on requirements to publish a monitoring plan that provides a clear statement about joint responsibility for delivery and collaboration across Wales with the publication of data capable of determining condition.

There was a consensus that NRW should take the lead with monitoring to ensure consistency, integrity, transparency and accountability in practices. Some respondents considered that the assessment of the condition of protected areas should be carried out exclusively by NRW. Others felt that skilled partners like the NT, the RSPB and the Wildlife Trusts could help deliver condition monitoring data collection through contractual/consultancy arrangements.⁵⁵ It was also noted by the PCNPA that National Parks may be in a unique position to assist with SSSI monitoring. The strong case for keeping NRW as the lead was based on the fact that they have the local expertise and knowledge already in place to enable staff to deliver a rapid monitoring approach. The RSPB thought that NRW should also be responsible for assessing and assuring that data provided had been collected by persons with appropriate expertise and was in line with appropriate methodologies before assigning the final condition category for the designated feature or unit of a protected site.

Evidence on issues relating to the resourcing of monitoring was provided by participants at the Expert Forum and by respondents to the Call for Evidence. In the Expert Forum it was suggested that there was a risk of collecting lots of data and/or focusing on concerns that could not be easily monitored. This could be addressed by recognising that the value of monitoring lay in having data that were ‘good enough’ which would require having the right people, in the right place, at the right time. A key concern was the need to ensure that protected sites monitoring is prioritised by NRW, and that the organisation is funded sufficiently to undertake this work effectively. It was also noted that expertise within NRW may limit effective monitoring and there was a need to invest in skills.

⁵⁵ NT, RSPB, BBNPA, WTSWW, PCNPA, WTW.

Evidence from respondents to the Call for Evidence echoed these concerns. It was noted that, depending on the techniques adopted, effective and efficient monitoring will require resources for the purchase and operation of specialist instruments and/or desk-based/on-site monitoring by skilled staff. In the wider context of declining resources for NRW and the public sector more generally, resourcing is a key issue for monitoring protected sites.

Great importance was attached to the need to establish and maintain good working relationships between landholders and NRW local staff. One respondent claimed that there was a strong case for using the same local staff to deliver a rapid monitoring approach as those who will liaise with the land managers/graziers over management. This would be a more efficient use of time and would provide a good opportunity to discuss with land managers what 'favourable condition' would look like and how this could be achieved. However, it was suggested by the RSPB that a more detailed and quantitative assessment would be needed every few years, to make sure that CSM is being applied consistently across the country. This would require monitoring teams to collect information about the drivers and pressures affecting features condition; the condition of the features; and the type and effectiveness of management and other measures. It was suggested that it would be advantageous to have different members of staff other than the monitoring team to undertake this assessment.

Several comments were made on the role of land managers in site monitoring. It was suggested that one means of achieving efficiency would be to focus on landholders 'on-site' monitoring without frequent professional monitoring. It was emphasised that good liaison needs to be maintained or developed with SSSI landholders to ascertain whether they are already undertaking monitoring, so that there is not a duplication of effort. For example, as noted in WTW's response, Wildlife Trusts may already be undertaking monitoring for their own purposes the data from which could be used to support the overall monitoring efforts.

WTW also noted that gathering monitoring data is only the start of the process and emphasised the need for a protected site management database administered by

NRW. They understood that NRW had created one, but presently it is only being used internally. They argued that external organisations who manage land should have access. WEL advocated sharing data with land managers as well as between government organisations. There was also a suggestion that the latter should include government organisations across the UK, not just the sharing of data between Welsh Government and NRW. It was noted that there does not appear to be a single, centralised location where all reporting relevant to the individual designated sites is accessible.

7.4 IEPAW's Views on Monitoring

NRW's 2020 Baseline Assessment of Protected Sites was the first full assessment since 2003. We would not regard a gap of 17 years as satisfactory even if information on the condition of every site was provided. The fact that NRW was unable to determine the condition of about half of the listed sites because of insufficient evidence is a strong indicator that something is very wrong with the way monitoring is conducted.

NRW have made it clear that limitations on resources have strongly influenced their monitoring programme. A key question for IEPAW is whether the situation would be improved if NRW were put under a statutory duty to monitor protected sites. It might be the case, as suggested in the evidence, that NRW do not devote sufficient resources to monitoring because they do not have to do it. Making it a statutory duty will not necessarily lead to better quality monitoring data, however, unless NRW are able to devote the necessary resources to it. There is a danger that, if NRW are not given more resources, compliance with a statutory duty to monitor will result in other areas of their work suffering because funds are diverted. One thing that is clear to us, however, is that without the provision of sufficient resources there would be no point in imposing a statutory monitoring duty.

We do not think that the question of whether there should be a statutory duty to monitor protected sites can be answered without also considering the purpose of that monitoring. Our Call for Evidence touched on this by asking whether focusing on

monitoring features is the right approach or if there should be more site-based consideration. As discussed below, we conclude that both purposes are important. We next considered whether the same monitoring techniques should be applied to obtain information both on the status of features and the wider contribution of a site in a connected network.

The CSM is a well-tested way of carrying out protected site monitoring but it requires substantial resources. The JNCC⁵⁶ have suggested that it could be used more widely for assessments beyond protected areas. We do not think it likely that sufficient resources would be made available to extend its use in this way. We note that the JNCC refer to the use of new monitoring techniques, for example, Earth Observation and eDNA, to enhance the suite of tools available and possibly offsetting resource limitations. They also suggest that partner organisations, such as NGOs and environmental consultancies might be encouraged to use CSM so that data can be shared. These suggestions for the use of new technology and the involvement of partners were echoed in the evidence we received.

We fully support the development of new monitoring techniques and the involvement of partners in wider assessment at a site level and beyond, but we are not convinced that they would be suitable for features monitoring on many SSSIs.

We have concluded that it is important to keep a clear distinction between features monitoring and site assessment. They have different purposes, could be done on different time scales, involving different techniques carried out by different people.

For protected sites, there is a fundamental relationship between landholders and the NRW. Under the present legislation, management of SSSIs is for the purpose of protecting the features for which the site has been notified. Features-based monitoring

⁵⁶ JNCC (on behalf of the Common Standards Monitoring Inter-agency Working Group¹). 2022. A Statement on Common Standards for Monitoring Protected Sites (2022). JNCC, Peterborough. Available at <https://hub.jncc.gov.uk/assets/0450edfd-a56b-4f65-aff6-3ef66187dc81>

of an SSSI is, or should be, an integral part of the way the land is being managed. Not only can it provide evidence of whether NRW-approved management practices are having the desired effect, it can also indicate whether or not the landholder has been complying with NRW conditions. Failure to meet these conditions can lead to sanctions. For this reason alone, we conclude that the onus for determining the status of the features must rest with NRW. In some situations, remote sensing may provide useful information but there must be some element of ground truthing.

We do not think it is appropriate to allow third parties to undertake this monitoring unless under contract with NRW as their agents. There may be merit, however, in allowing the landholder to carry out monitoring on behalf of NRW. The landholders of a number of SSSIs in Wales are environmental NGOs including the Wildlife Trusts and the RSPB for example. They doubtlessly have the skills to monitor the features they are managing. It should be possible for them to enter into an arrangement with NRW to carry out this monitoring in accordance with a scheduled programme. This would lessen the burden on NRW resources.

One of the concerns raised in the evidence was that monitoring data are not widely available and are not generally shared with the landholders. We think that reports on the condition status of features should be shared with the landholder of the SSSI not least to inform any changes in management that might be required. The wider public also have a right to be kept informed about the condition of protected sites. We appreciate that most SSSIs are privately owned so personal information will have to be kept confidential but there needs to be some form of reporting. At the very least NRW's Annual Report should include information on the number of sites that have been monitored, what sort of features were notified in them, and what condition these were in.

The situation is different for wider assessments in which the whole of a notified SSSI site is considered in terms of its connectivity with other sites. We can see greater potential for the use of new technologies for this sort of assessment. We also think that many different organisations could, and should, be involved in providing data for

this. It is here that the idea of a partnership has greatest potential. We agree that, whoever is obtaining data, the lead organisation for analysing and reporting on this should be NRW. The condition of features on SSSIs will be just one aspect of the overall picture.

We conclude that monitoring of protected sites should be a statutory function of NRW. We conclude that the CSM approach continues to be appropriate. We recognise that this sort of monitoring is heavy on resources and are strongly of the view that imposition of the statutory duty must be accompanied by an increase in funding sufficient to enable NRW to carry out a monitoring programme in which every site is monitored at least every six years. The outcomes of the programme should be reported annually.

NRW are already under a duty to report on wider assessments so that there is no need to change the legislation to allow for this. There is a need, however, to establish a clear monitoring/assessment programme based on a partnership approach. We conclude that this should be established by Welsh Government and led by NRW. We note that the JNCC has recently published guidance on the design of integrated monitoring programmes involving a number of partners.⁵⁷

Many of the issues covered in this section have also been raised elsewhere in the UK. In 2023, the House of Lords Environment and Climate Change Committee⁵⁸ drew similar conclusions in its report on addressing the 30 by 30 challenge. They recommended that it should be a statutory duty for Natural England to monitor SSSIs and make the resulting data available to the public. They also recommended the introduction of whole site monitoring in addition of feature-based monitoring and the use of voluntary contributions to data collection and monitoring as part of policy.

⁵⁷ <https://data.jncc.gov.uk/data/13297db4-eb2f-40e4-8dbf-82864a4cc148/jncc-report-758.pdf> .

⁵⁸ Recommendations 8, 10 and 12, HL report
<https://publications.parliament.uk/pa/ld5803/ldselect/ldenvcl/234/234.pdf> .

8 Targets for Protected Sites

8.1 Introduction

The UK Biodiversity Indicators⁵⁹ include an indicator on the extent and condition of SSSIs and the Wellbeing of Wales Indicators⁶⁰ include an indicator on areas of healthy ecosystems in Wales (measured by the extent of semi-natural habitat in Wales). These provisions provide useful indicators of progress but do not set targets per se.

Proposals for statutory targets on biodiversity in Wales have been called for by environmental organisations for many years, including during the passage of the E(W)A.⁶¹ Concrete proposals for such targets are included in the draft Environment (Principles, Governance and Biodiversity Targets) Bill discussed below.

8.2 Evidence on Targets

Statutory targets for protected sites were raised as a concern at the Expert Forum in response to a general question about possible legislative change. The question posed in the Call for Evidence was:

Should there be a targets on the quality and connectivity of protected sites? If so, what should the targets cover?

8.2.1 Overview

In summary, while there was general support for the introduction of statutory targets for protected sites, there was a range of views on the appropriate focus of these targets.

⁵⁹ <https://jncc.gov.uk/our-work/ukbi-c1-protected-areas/> .

⁶⁰ <https://www.gov.wales/wellbeing-wales-national-indicators> .

⁶¹ See for example, WEL Statutory Targets for Biodiversity. Environment (Wales Bill) July 2025; available at <https://business.senedd.wales/documents/s43441/Paperper cent 203per cent 20Saesnegper cent 20ynper cent 20unig.pdf> .

8.2.2 Support for and Concerns about Statutory Targets

The majority of respondents either explicitly stated or implied in their wording that there should be legally binding targets for the quality and connectivity of protected sites.⁶² NRW were in favour of the opportunity provided by Recommendation 8 of the Welsh Government's Biodiversity Deep Dive⁶³ to develop primary legislation to set overarching nature recovery targets and noted that the then Climate Change Minister (Julie James, MS) stated an intention to set 'legally binding nature targets', underpinned by a new strategic biodiversity action plan.⁶⁴ The RSPB were of the view that the promised primary legislation should include a requirement for a long-term and interim targets for protected site condition. The details should be set in secondary legislation, with flexibility for them to be tightened and made more ambitious if needed. It was noted that there is already a statutory duty to maintain and enhance biodiversity and the development of targets for quality and connectivity of protected sites would be key in delivering this duty.⁶⁵

At the Expert Forum, however, several issues and concerns about targets and target setting were raised and these were echoed in the responses to the Call for Evidence. The issues raised included:

- Who targets are for – Welsh Government or everyone?
- Target setting should not be rushed.
- Targets should be flexible enough to respond to the challenges of climate change.
- Creating targets for protected sites is challenging because, given their site-specific needs, they are difficult to monitor and there is significant subjectivity involved in determining their management.

⁶² NT, BBNPA, WTSWW, BSBI, Coed Cadw, PCNPA, RSPB, JNCC, WTW, ALGE, NRW, NFFN.

⁶³ Recommendation 8: to embed nature recovery in policy and strategy in public bodies in Wales available at <https://www.gov.wales/biodiversity-deep-dive-recommendations-html>.

⁶⁴ Statement in Senedd on January 30 2024 on launch of Environmental, Principles, Governance and Biodiversity Targets White Paper.

⁶⁵ ALGE.

- It is not clear what targets would deliver and how they could be objectively determined given the broad range of features that can underpin protected status.
- Concerns about the government's lack of success at meeting targets.
- Fears that target setting can lead to shifting baselines.
- Targets must be generally agreed and achievable within the timescales set.
- Appropriate monitoring techniques, including the use of technology would be required and appropriate resources would need to be made available to measure progress on targets.

8.2.3 The Nature of Statutory Targets for Protected Sites

There were a number of suggestions for what a protected sites target should cover many of which related to the condition of features. These include:

- Targets should be explicit and clear, with an overarching aim for all protected sites to be in favourable or favourable recovering status by 2030.⁶⁶
- Targets based on both the quantity and quality of protected sites features⁶⁷
 - the target for quantity could cover the size, range and distribution of habitats and species in favourable condition;
 - the target for quality might cover abundance and frequency of key species and considerations on the mobility of species and habitat beyond the designation itself.
- There should be specific targets for both the area and for the number of SSSI features that should be in favourable condition and for the area and number of features that are showing demonstrable signs of recovery and are on track towards favourable condition.⁶⁸
- There should be site specific targets rather than generic ones and these should include interim and longer-term targets for a range of metrics.⁶⁹

⁶⁶ NT.

⁶⁷ WTSWW.

⁶⁸ RSPB.

⁶⁹ NFFN, RSPB.

- Targets should be determined according to whether the species features are mobile or require a larger area than the protected site itself.⁷⁰

There were also suggestions on the protected sites network including:

- There should be explicit, clearly defined targets relating to increasing the size the protected site network across Wales.⁷¹
- The sites network needs to be strengthened and expanded, with targets made to make the wider landscape matrix more nature-friendly to ensure connectivity and resilience. These targets would need to focus on more than protected sites given that further connectivity will be provided through the wider agricultural landscape. It was acknowledged that these targets would be more difficult to set than targets on the quality of SSSIs.⁷²

Some respondents commented on the wider use of targets outside of protected sites including:

- Nature recovery targets reflect the DECCA (Diversity, Extent, Condition, Connectivity, Adaptability) framework for ecosystem resilience.⁷³
- Targets for protected sites should be introduced alongside species targets and/or targets on ecosystem health.⁷⁴
- If there are targets focused on ecosystems, not just individual species and features, there will need to be integrated monitoring with the necessary accompanying technology.⁷⁵

⁷⁰ PCNPA.

⁷¹ NT, RSPB, WTW, ALGE, NFFN, WTSWW.

⁷² BSBI, RSPB, ALGE.

⁷³ BBNPA.

⁷⁴ Expert Forum.

⁷⁵ Expert Forum.

8.3 IEPAW's Views on Targets

The IEPAW considers that it would be extremely challenging to set outcome-focused targets for protected sites such as a target for improved conditions of protected features. We feel that some proposals for targets provided in the evidence may be better regarded as aspirations. We note, in this respect that the draft Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill does not contain the headline target that had been proposed in the White Paper on the Bill published in January 2024, namely to

*reverse the decline in biodiversity with an improvement in the status of species and ecosystems by 2030 and their clear recovery by 2050.*⁷⁶

The Government's response to the consultation on the White Paper stated the intention to replace it with a nature positive mission statement.⁷⁷

We do, however, support targets for protected areas that:

- can be clearly defined;
- have a reasonable chance of being achieved within the prescribed timeframe; and
- can be met by outputs that can be measured in some way.

We believe that considerable thought needs to be given to defining targets that will drive action towards meeting the overall aim of a network of protected sites in favourable condition. This will take time and we would not expect to see these targets being finalised until sometime after the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill becomes law.⁷⁸ We agree that the need to address the biodiversity crisis is urgent and that, ideally, biodiversity targets would have been

⁷⁶ <https://www.gov.wales/environment-principles-governance-and-biodiversity-targets-white-paper> .

⁷⁷ Government Response to the White Paper available at https://www.gov.wales/sites/default/files/consultations/2024-07/environmental-principles-governance-and-biodiversity-targets-white-paper-our-response_0.pdf . Welsh Government has subsequently replaced this with a biodiversity target-setting framework: *A 30by30 Framework for Wales*; published 18 June 2025. Available at <https://www.gov.wales/sites/default/files/pdf-versions/2025/6/4/1750329014/30by30-framework-wales.pdf> .

⁷⁸ Section 6C(5) of the E(W)A requires the Welsh Ministers to lay draft regulations before the Senedd within 3 years of the Bill receiving Royal Assent.

in place in time to help meet the 2030 deadline but can see no benefits in setting targets to meet this deadline if this means that insufficient time is spent on defining them.

One target that could be introduced more quickly, however, is a target on the monitoring of SSSIs. We believe that setting such a target would be useful in holding the Welsh Government and NRW to account.

Target setting will not achieve anything unless the targets are accompanied by the appropriate actions needed to meet them. We think it will be essential for the Welsh Government to ensure that a strategic costed action plan is put in place setting out the work that is needed to bring SSSIs into favourable condition.

9 Changes to the Existing Legal Framework for Protected Sites

9.1 Introduction

The legal framework for SSSIs has its foundations in the National Parks and Countryside Act 1949 but has been subject to various amendments since to try to improve the way it functions so as to protect rare and endangered species and vulnerable habitats. Change was also necessary to accommodate developments in European Union law in the early 1990s. Almost all terrestrial SACs and SPAs have been notified as SSSIs but they are also further protected under the Conservation of Habitats and Species Regulations⁷⁹ as amended following the UK's exit from the EU. The IEPAW was interested in hearing views on whether further changes to the legal framework for protected sites were desirable.

9.2 Evidence on Changes to Existing Legal Framework

The question posed in the Call for Evidence was:

what changes should be made to the existing legal framework, if any, to ensure there is an improvement in the overall condition of protected sites? For example, could any legal mechanisms used for Special Areas of Conservation (SAC) benefit other protected sites categories?

9.2.1 Overview

Several of the responses to the Call for Evidence felt that legislative reform to support the protection of protected sites was a priority.⁸⁰ Many of the suggestions for changes related to topics covered elsewhere in this report including the setting of targets, the introduction of a duty to monitor sites, enforcement and resourcing. The other main issues raised were

⁷⁹ SI 2017/1012 as amended by SI 2019/579

⁸⁰ NT, WTSWW, RSPB, JNCC, WTW, NRW CC, PC, UKELA.

- The complexity of the framework of legislation, powers and different consent requirements and the confusion this creates around who is responsible for what.
- The need for the designation process for SSSIs to be more efficient and flexible to allow for adaptive management.
- The relationship between SSSIs and SACs.
- The way the law operates at the boundaries of SSSIs.
- Concerns that activities outside of protected sites are not adequately regulated to ensure protection of protected sites or to ensure the maintenance of wider biodiversity interests.
- The need for the law to be extended to allow monitoring and management of offsite activities that affect protected sites.

There were several suggestions for a review of the current legal framework. The NFU thought that there should be a review of current designations to consider whether they are all required, especially the separate regime for SPAs. Another suggestion, however, was, in effect, to add more sites by upgrading the protection afforded to non-statutory local wildlife sites such as SINCs.⁸¹ PC welcomed a review but were emphatic that any amendments to the legal mechanisms should seek to clarify the current situation and not cause further confusion. In particular, it would be important to ensure no perverse outcomes or loopholes/gaps in protection are inadvertently created.

9.2.2 SSSI Notification and Consenting

There were concerns that the process of designation SSSIs is over-complicated and can take too long. It was suggested⁸² that a statutory deadline for decisions on the designation of new SSSIs should be introduced in order to make the process of designation faster. This could be done by imposing a duty on NRW to carry out the functions of designation, classification, listing or notification of protected sites 'in a timely manner' or within a 2 year time period.⁸³ It was noted, however, that additional

⁸¹ WTW, ALGE.

⁸² Discussion at Expert Forum

⁸³ RSPB

resources would have to be allocated to meet this requirement. It was also questioned whether we should be targeting resources on new sites or ensuring existing sites were up to standard.⁸⁴

Several respondents referred to the inflexibility of the current designation system which made it difficult to respond to shifting conservation paradigms and the need to respond to changes in climate. This lack of flexibility makes it difficult to keep SSSIs dynamic and adaptive and to support ecosystem resilience. This was seen as a particular problem where a site is notified for tightly defined species and/or habitats which does not allow for unavoidable change. There was support for amending the legislation to allow a more adaptive approach not least because this would better reflect the range of tools available to meet the obligation in the E(W)A to deliver the sustainable management of natural resources.⁸⁵ An alternative approach might be to introduce decadal reviews of conservation objectives for sites to ensure these reflect and respond to current drivers, evidence and best practice.⁸⁶ It was claimed that this would provide more flexibility to respond to climate change and the nature emergency in the long term.⁸⁷

It was noted in the Expert Forum that, at present, if NRW wants to vary any notification details for existing sites, for example to take account of changes due to climate change, the full notification process is required, which is time consuming, lengthy and resource heavy. This was particularly significant at the time because there was a large backlog of changes needed for SSSIs through renotification to ensure they remained fit for purpose. There were also concerns over inappropriate application of the powers to denotify a site. The inclusion of such a power was recognised to be useful to rectify errors but it was strongly emphasised that denotification should not be used where SSSI features are in poor condition because of neglect and lack of investment.

⁸⁴ Discussion at Expert Forum

⁸⁵ RSPB, NRW, JNCC.

⁸⁶ NT.

⁸⁷ JNCC.

NRW provided information on denotifications since 2000.⁸⁸ There were 16 partial denotifications most of which related to the removal of buildings or to rectify cartographical errors. There were four full denotifications of biological SSSIs made for the following reasons:

- Decline in the special feature to below the national minimum standard for SSSI selection at the site and where features had moved to neighbouring SSSIs (2003).
- Special interest lost due to the construction of Cardiff Bay Barrage (2004).
- Site originally notified before the 1989 Guidelines for selection, where subsequent assessment found it did not reach the qualifying standard for SSSI and on investigation of feasibility for restoration no evidence was found to suggest the site could become of SSSI standard (2006).
- Site originally notified before the 1989 Guidelines for selection, where subsequent assessment found it did not reach the qualifying standard for SSSI; populations of species of interest improved nationally but declined at this site (2012).

It was also claimed that the site selection process did not encompass the full range of species and habitats that needed to be protected. Two particular examples were given: ancient woodland, only 17 per cent of which has been notified in SSSIs⁸⁹ and ruderal features, i.e., species and habitats that are the first colonisers of disturbed lands.⁹⁰ There were also concerns that sites with the potential for restoration that would not meet the qualifications for selection in their present state, e.g., degraded peatland, could not be notified.⁹¹

⁸⁸ NRW's response to IEPAW questions regarding protected sites; received 16 August 2024.

⁸⁹ CC were concerned that half of the entire ancient tree and woodland ecosystem in Wales is in the form of "trees outside woods", in hedgerows, wood pasture etc, and the other half is mostly in small fragments, with only 17 per cent of ancient woodland in Wales being designated under SSSI protection. They expressed the view that all ancient woods in Wales should be protected.

⁹⁰ PC.

⁹¹ UKELA

NRW pointed out that revisions to JNCC's guidelines for site selection⁹² are resulting in many qualifying but non-notified features with no legal status and limited protection. They, therefore, had a backlog of changes requiring renotification. They noted that NatureScot has the ability to amend SSSI citations by adding or removing natural features at any time without the need for a full renotification process.⁹³

It is not just the notification process that raised concerns. It was argued at the Expert Forum that there was a need for reform of the arrangements for consenting. It was suggested that we should consider opportunities to streamline consenting requirements and make the process more consistent and efficient for all involved.

A concern was also raised over the legislation relating to management agreements under E(W)A s.16. One respondent noted that there is no mechanism for making payments to a third party who delivers the required management, such as a grazier or another conservation body, where these are not deemed to hold an interest in the land. The landowner might face few expenses themselves, whilst the grazier has significant costs to meet and spends a considerable amount of time looking after the livestock.⁹⁴

9.2.3 Extension of SAC Protection to Other Designations

There was considerable support for the suggestion⁹⁵ that the system of prior assessment of plans and projects likely to have significant effects on the conservation status of SACs and SPAs should be extended to all SSSIs. The assessment process for SACs was considered to be advantageous, and it was noted that it includes consideration of the impacts of activities that occur outside SACs. The RSPB further proposed that the legal objective of favourable conservation status should be extended to SSSIs and to biodiversity conservation in the wider countryside overall.

⁹² JNCC is in the process of revising the guidelines relating to different habitat types and species groups. For further information see <https://jncc.gov.uk/our-work/guidelines-for-selection-of-sssis/#part-2-species-chapters>.

⁹³ Powers under Nature Conservation (Scotland) Act 2004 s.8.

⁹⁴ PCNPA.

⁹⁵ Expert Forum, CC, WEL, RSPB, PCNPA, WTW.

A note of caution about extending the SAC/SPA regime was raised, however. It was pointed out that SSSI consent can be acquired quickly, whereas SAC consents take much longer and the process is more onerous.⁹⁶ Nevertheless, it was acknowledged that inconsistency between the two consent mechanisms can lead to practical problems for SSSIs because work to protect an SSSI may be prevented if this conflicts with SAC features.

It was also claimed by WTW that a small number of terrestrial SACs have not been notified as SSSIs and that this needs to be addressed.

9.2.4 Wider Protection

One of the advantages of the SAC/SPA approach is that it takes account of activities undertaken outside the protected site where these are likely to impact negatively on the protected features. Several comments were made about the way the law operates to protect SSSIs, or rather not protect them, from actions outside the site.⁹⁷ It was noted that work on land adjacent to a SSSI does not require formal SSSI consent even though such work could indirectly affect SSSIs. One response called for legal mechanisms to enable interventions beyond the boundaries of SSSIs.⁹⁸ Specific suggestions for legislative change to address this gap in protection included:

- a duty to identify and include key features to monitor within a buffer zone around protected sites;⁹⁹
- cohesion between the conservation objectives of the SSSI and the surrounding areas;¹⁰⁰
- a duty to ensure that management of land adjacent to a SSSI is complementary to ecological requirements within the SSSI;¹⁰¹

⁹⁶ Expert Forum.

⁹⁷ NT, BBNPA, WTSWW.

⁹⁸ CC.

⁹⁹ WTSWW, SNPA.

¹⁰⁰ BBNPA.

¹⁰¹ BBNPA.

- making it an offence to neglect an SSSI.¹⁰²

The issue of the law related to action beyond the boundaries of SSSIs was linked to broader concerns for connectivity and landscape approaches to ecological resilience. The NT argued for clear legislation relating to external factors that can affect protected sites, including nitrogen deposition and sewage pollution in rivers. They thought it would be important to ensure all of the legislation relating to protected sites is joined up and applied to ensure a cohesive approach. Another suggestion was to focus on developing super NNRs.¹⁰³ WTW suggested that more attention should be paid to the role of Area Statements across Wales, including clarification of their role in adding resilience and joining up protected sites.

9.2.5 Planning and Development

A number of respondents felt there was a need for increased recognition of protected sites throughout the planning and development process as there have been examples of SSSIs being directly damaged from external developments.¹⁰⁴ The WTSWW considered the planning system to be one of the key mechanisms for preventing damage to protected sites and thought it was crucial that the current planning law is fully implemented to ensure adequate protection. They expressed concern that development is more likely on a site whose condition is assessed as unfavourable which means that failure to secure appropriate management of sites can lead to a weakening of their protection and status. They also noted that it is vital that currently designated protected sites are brought into favourable conditions as quickly as possible to ensure inappropriate development cannot take place. Furthermore, they argued that, if in the course of planning consideration, it transpires that a proposed site is worthy of SSSI notification, it should, as a matter of Welsh Government policy, be treated as if it were notified.

¹⁰² RSPB.

¹⁰³ RSPB.

¹⁰⁴ NT, WTSWW, CC.

9.2.6 Effective Use of Current Legislation

Some respondents emphasised the need to ensure that current powers are being utilised correctly.¹⁰⁵ The WTSWW noted that although the current legal framework addresses the protection of protected sites, albeit imperfectly, the enforcement of this legal framework has seldom been applied and there have been very few fines or convictions.

Although the majority of respondents emphasised the urgent need to bring in legislative changes that support the protection of protected sites, there were two respondents¹⁰⁶ who were very clearly against bringing in any new legislation and could not see what benefit would be gained from doing so. The FUW felt that increasing legal requirements may simply reinforce a lack of management and freeze any attempts to actively engage with the sites. They noted that there is already a complex framework of legislation, powers and different consent requirements, alongside confusion around who is responsible for what, and concerns around resourcing and enforcement. Both the NFU and the FUW suggested that, instead of legal measures, there needs to be an increase in the development of positive relationships and trust between farmers and land agents, an increase in the overall expertise, fair funding, and adequate time to develop plans to help proactively manage the protected site network across Wales.

9.3 IEPAW'S Views on Changes to Existing Legal Framework

We agree that the notification process for SSSIs can be time-consuming and resource intensive. It is also inflexible and ill-suited to addressing changes in biodiversity resulting from climate change. Although the amended s. 28¹⁰⁷ now includes provisions to make changes to the content of a notification and to add to or enlarge it, these also require formal notification. We are not convinced, however, that the situation would be improved by further amendments of the existing legislation. It may be that, in due course, a more fundamental review of the law on SSSIs should be undertaken. At

¹⁰⁵ NT, WTSWW, RSPB.

¹⁰⁶ FUW, NFU.

¹⁰⁷ WCA s. 28A-C.

present, however, we think that any changes to the law to simplify the notification procedures would counter-productive because they would be likely to alienate landowners.

The inability to control activities outside of an SSSI that might have a detrimental effect on the features for which it was notified was raised as a serious concern and led several respondents to propose giving SSSIs the same legal protection as is afforded to SACs. Although we can see the benefits in doing this we do not think it would be appropriate in every situation. As noted in the evidence, SSSI consent can be acquired quickly, whereas SAC consents take much longer and the process is more onerous. We are encouraged by the statements in PPW 12 that there is a presumption against any development in an SSSI that it is not necessary for the management of the site and, furthermore, that there is a presumption against development not within the SSSI but likely to damage it.¹⁰⁸ We suggest that any decision to overrule this presumption should only be made on the basis of a favourable environmental impact assessment.

For activities that require authorisations other than planning permission there may be a case for extending the provisions for appropriate assessment although we do not think that this would necessarily require a change in the law. WCA s.28G requires statutory undertakers to take reasonable steps to further the conservation and enhancement of notified features. This duty, coupled with the general duty on public bodies under E(W)A s.6 to seek to maintain and enhance biodiversity, could be used to ensure that the impact of activities outside an SSSI do not inadvertently cause damage.

¹⁰⁸ See section 3.1 above.

10 Management and Management Agreements

10.1 The Legal Regime for Management of SSSIs

The management of protected sites is crucial to their condition and the conservation of the features for which they were designated. The daily management of sites relies on the actions of land managers and the legal framework for protected sites includes provisions to help ensure those activities are planned and carried out in accordance with the management needs identified by NRW.

The revised WCA s.28 requires NRW to include a statement of its views on the management of a site in the notification for an SSSI. It is also possible, under s.28J, for it to formulate a management scheme for the conservation and/or restoration of features but this must be done in consultation with the landholder. If the landholder fails to give effect to a management scheme and the site is being inadequately managed, NRW has powers under s.28K to issue a management notice requiring compliance in those cases where it has been unable to conclude a management agreement with the landholder. If necessary, NRW can enter onto the land to carry out the required work and recover costs from landowner.

Section 51 of the WCA provides powers of access to NRW for a number of purposes in relation to protected sites including:

- to determine whether or not to offer to enter into a management agreement for the site;
- to formulate a management scheme for the site; and
- to prepare a management notice for the site.

10.2 Management Agreements

NRW has powers under s.16 of the E(W)A to enter into management agreements with landholders of protected sites for a variety of purposes. The section permits NRW to make a Land Management Agreement (LMA) with any person who has an interest in land in Wales about the management or use of the land, if doing so appears to it to

promote the achievement of any objective it has in the exercise of its functions¹⁰⁹. The pursuance of the sustainable management of natural resources in Wales is one such objective. The definition of ‘natural resources’¹¹⁰ includes all the features that can be protected by SSSI notification. Section 28E of the WCA, which sets out the duties of landholders of any land within a SSSI, states that they should not carry out any operation specified within the notification unless certain conditions are fulfilled. One such condition under s.28E(3)(b) is that ‘the operation is carried out in accordance with the terms of an agreement under s.16 of the E(W)A’.

Section 16 LMAs may be made to:

- (a) impose on the person who has an interest in the land obligations in respect of the use of the land;
- (b) impose on the person who has an interest in the land restrictions on the exercise of rights over the land;
- (c) provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons;
- (d) provide for any matter for which a management scheme relating to an SSSI provides (or could provide);
- (e) provide for the making of payments by either party to the other party or to any other person;
- (f) contain incidental and consequential provision.

Prior to the introduction of the 2016 Act, management agreements for protected sites could be made under the National Parks Act s.16 and the Countryside Act s.15.¹¹¹

¹⁰⁹ E(W)A s.5(2) defines the purpose of NRW as the pursuit of sustainable management of natural resources.

¹¹⁰ E(W)A s.2.

¹¹¹ National Parks Act s.16 applied to agreements for nature reserves; Countryside Act s.15 extended the provision to SSSIs. E(W)A Schedule 2 removes the provisions for these agreements.

10.3 Status of Management Agreements

When NRW was established, 403 s.15 agreements with an expiry date later than the 31 March 2013 were in place.¹¹² NRW subsequently entered into 228 s.15 agreements with a commencement date between 1 April 2013 and 21 March 2016. At this time management agreements were typically running for at least five years. As of 9 July 2024 there were 19 s.15 agreements still in existence. NRW has also agreed 570 s.16 LMAs commencing on or after 21 March 2016 of which 311 were still active as of 9 July 2024.

NRW has entered into 16 Nature Reserve Agreements under National Parks Act s.16 commencing on, or after, 1 April 2013. No new s.16 Nature Reserve Agreements with a commencement date of later than 18 June 2021 have been recorded. There were a total of 19 s.16 Nature Reserve Agreements still active as of 9 July 2024.

10.4 Evidence on Management and Management Agreements

The question posed in the Call for Evidence was:

are there any barriers to agreeing management agreements? If so, how could these be overcome?

Comments on the powers available to NRW to provide for the management of sites were also included in the responses to this question.

10.4.1 Overview

In summary, the evidence received suggested that the main barriers to agreeing management agreements were

- lack of financial resources;
- lack of suitably qualified and experienced staff in NRW;
- lack of incentive; and

¹¹² Information provided by NRW 16 Aug 2024.

- concerns over transition to the new Sustainable Farming Scheme (SFS).

It was also noted that management agreements are in place for only a small proportion of sites and that NRW is not making full use of its powers to propose management schemes and issue management notices.

10.4.2 Barriers to Management Agreements

A lack of resources was identified in the evidence as the main reason why there were relatively few management agreements for SSSIs.¹¹³ NRW may have the authority to create, support and implement management agreements but without adequate funding they are unable to use these powers to their full extent. Respondents noted that it is unlikely that these problems will be resolved unless NRW is better resourced.

Direct funding for management agreements was not thought to be the only barrier to be overcome however. It was claimed that there was a lack of suitably qualified and experienced staff in NRW to facilitate the development and implementation of management agreements.¹¹⁴ It was noted, in particular, that there were too few land agents and environmental officers in NRW and that those who were present were so over-stretched in terms of workload that they were unable to effectively facilitate management agreements across all the sites that would benefit from them.

Engagement in a management agreement is voluntary and landholders will only participate if there is an incentive for them to do so. It was noted that the number of new management agreements entered into tended to fluctuate with the available resources and compatibility with alternative agri-environment funding schemes. It was suggested that farmers have often favoured agri-environment schemes because they offer more generous financial incentives.¹¹⁵ There were concerns that the objectives and requirements of these schemes were not necessarily attuned to the particular

¹¹³ NT, BBNPA, WTSWW, PCNPA, RSPB, ALGE, NRW, PC, NFFN.

¹¹⁴ WTSWW, PCNPA, RSPB, ALGE, NFFN.

¹¹⁵ NFFN.

need of a given SSSI.¹¹⁶ Furthermore, both NRW and the NFU noted that many farmers were hesitant to enter into new management agreements because of the uncertainty surrounding funding. The transition to the new SFS <https://www.gov.wales/sustainable-farming-scheme-guide> from the Basic Payment Scheme had resulted in reluctance by farmers to enter into a five-year s.16 agreement, in case they would be disadvantaged in the future under the new funding scheme. NRW thought that until there was more certainty around the broader legislative and funding landscape for agriculture, farmers would be less likely to look favourably on agreements or schemes that may appear to exclude them from the broader reforms happening in the sector.

10.4.3 Overcoming the Barriers

Several respondents stated that, in order to resolve the financing issue, there must be significant reinvestment and resourcing through fiscal measures to provide finance and staff to support management agreements.¹¹⁷ This funding would have to be consistent and long term rather than just plugging a short term gap. It was noted that financial shortfalls had often been plugged with short term funding packages which could undermine the pace and scale at which Wales is able to achieve its long-term goals.¹¹⁸

There were concerns that the role of the landholder in managing SSSIs is undervalued.¹¹⁹ Management agreements take a lot of time to establish and take a considerable amount of the landholder's time, so entering into the management agreements must provide an advantage for them in the long term. Funding to offset expenses and loss of income may not provide enough incentive. It was suggested that there may need to be higher s.16 payments, agreed for longer time periods, in order to provide landowners with a sufficient income in the long term.¹²⁰ Another suggestion

¹¹⁶ NFFN, PC.

¹¹⁷ BBNPA, NFU, WTSWW, CC, WTSWW, NRW.

¹¹⁸ BBNPA, NRW.

¹¹⁹ WTW, WTSWW.

¹²⁰ NFU.

was to provide tax relief to SSSI landholders as one way to support the financing of management agreements.¹²¹

Even if there were sufficient funding for NRW to be able to offer more management agreements, it was thought that uptake would be low unless relationships between NRW and landholders were improved. The NFU noted that in order to achieve success, NRW needs to ensure that there is a network of officers available to re-establish the positive working relationships with farmers at the local level and then prioritise the delivery of positive management through properly funded management agreements. WTW similarly noted that one barrier that could be removed is for local NRW staff to get to know all the landholders of SSSIs in their patch and begin building a positive relationship with them, without which they thought adequate management of SSSIs will not be possible.

The overall conclusion drawn from the evidence is that management agreements need to be based on a long-term, on-going positive relationship between NRW and land managers and that payments and incentives should be specific to the site (a reason for not relying on payments under agri-environment schemes).

10.4.4 Content of Management Agreements

Some comments were focused on the relationship between monitoring arrangements for SSSIs and the management of these sites. It was noted that monitoring is essential to trigger management actions to improve the management of a protected site. It was suggested that monitoring data should be shared with land managers and that site management should be informed by recommendations made by NRW following the results of site condition monitoring. There was also a suggestion that where monitoring data show that the condition of a site is static or declining NRW must take steps to address this through a management agreement or use of other powers.¹²²

¹²¹ BBNPA.

¹²² RSPB.

It was also suggested that there should be a protected site management database administered by NRW that is accessible to the voluntary sector. NRW told us¹²³ that they utilise an internal database for the purposes of storing and analysing information pertaining to SSSIs and their management. As this contains sensitive personal information it is not directly accessible to the public. They went on to say that relevant data could be shared under licence with stakeholders who require access to support conservation management action.

There were some specific suggestions about the content of management agreements. One suggestion was to include interim targets in management agreements to track the direction and rate of habitat recovery.¹²⁴ Another suggestion was to introduce an outcomes-based approach to management agreements.¹²⁵ It was also noted that actions should be site-specific and that the techniques outlined in the agreement needed to be tailored to the skills and resources of land managers.¹²⁶

It was also suggested that management agreements should take into account the wider habitat block that the SSSI features sit in (thinking beyond designated boundaries), in order to resource appropriate management responses.¹²⁷

10.4.5 NRW Powers

It was claimed that NRW do not make sufficient use of their powers to manage sites. There were concerns that no management agreement was in place for most SSSIs. It was stated that in 2017, only 5.47 per cent of SSSIs were covered by management agreements¹²⁸ even though 67.1 per cent of sites were identified as being in need of management action.¹²⁹ Evidence was also provided that in 2023-2024 NRW paused

¹²³ NRW's response to IEPAW questions regarding protected sites, received 16 August 2024.

¹²⁴ SN.

¹²⁵ NT.

¹²⁶ SN.

¹²⁷ NT.

¹²⁸ RSPB quoting from the State of Natural Resources Report at <https://naturalresources.wales/evidence-and-data/research-and-reports/state-of-natural-resources-report-sonarr-for-wales-2020/?lang=en>.

¹²⁹ RSPB quoting from <https://www.whatdotheyknow.com/request/525403/response/1261404/attach/html/3/ATI%2016140a%20Response.pdf.html>.

the signing of new and renewed LMAs and annual payments under the Grant in Aid scheme.¹³⁰ NRW, however, pointed out that they had signed 115 management agreements in 2021, the highest number since 2013. Furthermore, the total cost of agreements was relatively low: 97 per cent of LMAs in the 13 years to 2023 had a total cost of less than £50,000 spread over five years.

A LMA can be made in respect of any land, not just that within a protected site. NRW told us, however, that as of February 2023, they only had internal governance arrangements in place to allow them to be used for protected sites although a working group had been set up to put in place governance arrangements to enable them to use their s.16 for conservation purposes outside of protected sites.

NRW also confirmed that it had exercised its Management Scheme powers only once, in 2015 and that it had never exercised its Management Notice powers.¹³¹

10.5 IEPAW Views on the Management of SSSIs

The IEPAW considers that the power to enter into an LMA with respect to any land provides NRW with the necessary legal mechanism to enable it to work with landholders to conserve and/or restore SSSIs. We agree, however, that these powers have not been used as fully as they need to be.

We appreciate that there would have been some reluctance on the part of landholders to enter into new agreements until the terms of the new SFS had been confirmed. The SFS has now been published.¹³² In addition to a universal action to maintain semi-natural, or newly created habitats to benefit grazing livestock and wildlife (UA5), UA7 is a universal action to improve the management of designated sites, including SSSIs, by working with the Welsh Government and NRW to develop management plans and agreed schedules of work (SoWs). There is a possibility of including a buffer area around a designated site to be decided on a case-by-case basis. The overall aim is

¹³⁰ Letter from NRW to the Wales Land Management Forum.

¹³¹ Annex 1 to NRW's response to IEPAW questions regarding protected sites; received 16 August 2024.

¹³² See <https://www.gov.wales/sustainable-farming-scheme-2026-scheme-description-html#175201>.

for all designated sites in the scheme to be under effective management by the end of 2030. In addition to the universal actions there are also several relevant optional actions including enhanced habitat management, the creation of new habitats and the implementation of SoWs.

Taken together, LMAs and the SFS could, in theory, go a long way towards conserving and restoring protected sites. Success, however, will depend on a number of factors identified in the evidence to this report, namely:

- knowledge of the current conservation status of the SSSI;
- the development of good working relations between NRW and landholders so that the benefits of management actions can be fully understood;
- the availability of a suitable number of qualified and experienced NRW staff to work with landholders;
- a large enough pot of money to ensure that LMAs and/or other forms of payment can be made wherever this is deemed necessary;
- a sufficient incentive for landholders to consider it worthwhile entering into some sort of management agreement.

In our view, the most important part of the revised s.28 is the requirement for a management statement to be included in the notification papers. This then paves the way for the options available for delivering the management needs. In some cases, the list of PDOs coupled with the requirement for consent to carry them out may be all that is needed. In others, especially where positive management actions are required, the preferred option might be to negotiate an LMA.

We are not at all surprised that NRW have hardly used their powers to make a Management Scheme and we would not criticise them for this. We can see the potential benefit of a Management Scheme as a means of persuading a reluctant landholder to engage in discussions about proposed management. The option of issuing a Management Notice would then be the final incentive to induce compliance. But we believe these devices should only ever be used as a last option. Management of an SSSI is more likely to be successful if the landholder is a willing participant.

Furthermore, the procedures for both Management Schemes and Management Notices follow those for notification of a site with the result that it may take months for them to be confirmed and even longer should the landholder choose to appeal the Management Notice.¹³³

¹³³ s.28L provides for an appeal to the Welsh Government.

11 Enforcement Mechanisms

11.1 Introduction

The legislation on SSSIs includes several criminal offences as listed in Table 1. Unless otherwise noted these are all carry the possibility of an unlimited fine on conviction.

Table 1 Criminal Offences

Offence	Penalty	Section Number
Carrying out a potentially damaging operation without NRW consent	Summary conviction or indictment	s.28P(1)
Damage caused by the activity of a statutory undertaker	Summary conviction or indictment	s.28P(2-3 & 5A)
Third party damage with knowledge that the area is within an SSSI	Summary conviction or indictment	s.28P(6)
Third party damage without knowledge that the area is within an SSSI	Summary conviction subject to level 4 fine	s.28P(6A)
Failure to comply with a Management Notice	Summary conviction or indictment	s.28P(8)

NRW's enforcement and sanctions policy outlines its 'targeted' enforcement approach.¹³⁴ This involves using a range of enforcement options from providing advice and guidance to criminal sanctions. They apply a tiered approach to enforcement that does not usually involve prosecution.

In their response to the Call for Evidence, NRW provided the following information which illustrates their approach to enforcement. They logged 69 incidents related to protected sites on their incident reporting system in 2021. Of these, 25 were classified as 'high level'. NRW attended 10 of these high level incidents and substantiated and identified offences at five of them. This resulted in two formal warning letters. The other three incidents were dealt with through advice and guidance. NRW attended 14 of the 44 'low level' incidents and were able to substantiate and identify offences at eight of these. This resulted in four formal warning letters. Two incidents were dealt with through advice and guidance. No further action was taken in respect of the other two.

¹³⁴ <https://naturalresourceswales.gov.uk/about-us/what-we-do/how-we-regulate/our-regulatory-responsibilities/enforcement-and-sanctions-policy/?lang=en>.

In its Annual Regulation Report 2022,¹³⁵ NRW reported that 45 enforcement charges were made under WCA but there is no breakdown with respect to these offences so it is unknown how many apply to protected sites. We asked NRW if they could give further details and they provided the information shown in Table 2.¹³⁶

Table 2 Criminal Charges under WCA s28

Section	2022	2023
s.28E(1)	11	13
s.28P	4	2
s.28P(1)	20	29
s.28P(2)(A)	5	1
s.28P(2)(B)	3	1
s.28P(3)		2
s.28P(6)	1	5
s.28P(6A)		1
s.28P(6A) (a)	4	4
Total	48	58

It is also possible for NRW to seek a restoration order from the court where a successful conviction is brought under WCA s28P(1), (2), (3), (6) or (6A).¹³⁷

Natural England is able to use civil sanctions for wildlife offences and damage to SSSIs but this power only applies in England.¹³⁸ In Wales, civil sanctions are not available with respect to these offences.

¹³⁵ <https://naturalresources.wales/about-us/how-we-are-performing/annual-regulation-report-2022/?lang=en>.

¹³⁶ Information provided in written answers to questions from IEPAW 16 August 2024. Note that s28E(1) does not include an offence so the charges listed were presumably brought under s29P(1).

¹³⁷ WCA s31.

¹³⁸ Under the Environmental Civil Sanctions (England) Order 2010/1157 Schedule 5.

11.2 Evidence on Enforcement Mechanisms

The question posed in the Call for Evidence was:

What, if any, changes to the current enforcement mechanisms would achieve better outcomes for protected sites?

11.2.1 Overview

In summary the evidence showed some support for stricter criminal penalties with a greater emphasis on prosecution. However, cost limitations and the evidential problems of criminal prosecution in the context of protected sites were also noted. Nevertheless, it was suggested that some prosecutions were needed to provide a deterrent. There was support for the introduction of civil sanctions for offences with respect to protected sites. It was suggested that the need for enforcement might be avoided in many cases if there were improvements in the clarity of information available to landholders and third parties.

11.2.2 Approach to Enforcement

Most respondents thought that, properly used, enforcement is an important mechanism for site protection.¹³⁹ The RSPB was concerned, however, that despite the range of tools available to NRW these are not currently being used effectively and there are very few prosecutions. WTW said that they found it difficult to understand whether the lack of application of enforcement mechanisms was a consequence of policy or a lack of resources.

It was noted that enforcement should be fair and proportionate to the offence committed.¹⁴⁰ WTW were in favour of a targeted approach that centres on repeat offenders and those blatantly or purposefully breaking the rules but also felt that there

¹³⁹ BBNPA, WTSWW, RSPB, CC, PCNPA, ALGE. NFU, however, was of the view that you cannot regulate sites into favourable condition. Instead the emphasis should be on working with people to resolve issues through management agreements.

¹⁴⁰ CC, NFFN.

was a need for an increase in prosecutions which were considered to be so rare at present that they had little deterrent effect.

It was suggested at the Expert Forum that there was the need to increase the accountability of NRW for its enforcement approach and action. It was said that at the time this relied on NRW's Annual Regulation Report, Welsh Government remit letters and Senedd scrutiny mechanisms but there seemed to be few calls for evidence on NRW performance.

11.2.3 Use of Criminal Sanctions

A first point of note at the Expert Forum was the need for an appropriate evidence base for enforcement measures through diligent monitoring. It was also said that without regular site visits most of NRW investigations were a response to concerns reported to them¹⁴¹ although NRW told us that this was not the case.¹⁴²

Based on their experience in Pembrokeshire, the PCNPA had concluded that there are not many situations where enforcement action has been needed against a landholder. Where it has been necessary this is often because there is a new land manager who is not aware of the SSSI designation. Under s.28Q the owner of an SSSI must notify NRW if they dispose of the land or become aware that it is being occupied by an additional or different occupier. Failure to comply with this duty is an offence. We asked NRW for further information. They told us that, while they were aware of a number of instances where there had been a failure to comply, these were not recorded as a matter of routine. Although there were some instances where this failure led to unconsented activities taking place on SSSIs, they were not aware of any cases

¹⁴¹ Members of the public can report damage to an SSSI using the NRW incident hotline available at <https://naturalresources.wales/about-us/contact-us/report-an-incident/?lang=en>.

¹⁴² We asked NRW whether it was the case that most site investigations were made in response to concerns raised by third parties and what proportion of enforcement actions arise from routine site management visits. They told us that they do not hold data in this format but, based on discussions with relevant operational staff, they estimated that approximately 80 per cent of enforcement actions arise from routine site visits and the other 20 per cent are the result of third party reports. Information provided in written answers to questions from IEPAW 16 August 2024.

over the previous five years where this has been the sole, or primary, reason for damage to an SSSI feature.¹⁴³

The PCNPA were aware of a small number of sites where offences are frequently committed by third parties, including fly-tipping and disturbance of protected species on accessible sites. It seemed to them that NRW was reluctant to use CCTV in these places. NRW noted that the evidential burden in relation to offences by third parties under s.28P(6) and s.28P(6A) is high and often difficult to achieve because of the need to show that the damage was the result of an intentional or reckless act.

11.2.4 Suggestions for Improvement

Some respondents called for increased penalties for offences and it was suggested that penalties for wilful damage to protected site features are not a sufficient deterrent to large operators willing to take the financial risk.¹⁴⁴ WTW also suggested that custodial sentences should be considered for deliberate, significant or repeat offences.

Suggestions were also made for improvements that might lessen the need for enforcement including better guidance for site owners and managers and the public about their responsibilities with respect to SSSIs. The RSPB thought there should be clear information from NRW for protected site owners and managers that sets out their approach to securing appropriate management for sites, specifying the action that will be taken where a site is not being appropriately managed, or damage is occurring.

The NFFN thought that enforcement should be better targeted at repeat offenders and those who blatantly or purposefully break the rules. They were particularly concerned at the suggestion that some farmers factor in financial penalties into their business costs. They called for better enforcement to eradicate such practices.

¹⁴³ NRW'S response to IEPAW questions regarding protected sites 16 August 2024.

¹⁴⁴ WTW, NFFN, RSPB.

The NFFN also felt that regulation and advice needed to be closely linked where land managers were found in breach of regulations. Where there was a management issue, landholders should be given quality advice in order to help them become compliant and given appropriate time to rectify the situation.

It was also suggested that there should be better communication with the wider public, including improved signage.¹⁴⁵ There was a need for NRW to publish clear information about how to report concerns around management of a protected site or potential damage or disturbance; this should include details of necessary evidence to gather and how to submit this to NRW and/or the police.¹⁴⁶

11.2.5 Proposed New Powers

A number of suggestions were made for additional powers and offences including several proposed by NRW in their response to the Call for Evidence.

WCA s.31 gives NRW the power to seek a restoration order from the court, but this can only be triggered following a successful prosecution and is restricted to offences under s.28P(1), (2), (3), (6) of (6A). NRW would like to be able to seek a restoration order in response to any offence that causes damage to a SSSI.

There was considerable support for extending civil sanctions to offences related to protected sites in Wales as a means of providing NRW with a greater range of options for tackling offences which would result in better outcomes for SSSIs.¹⁴⁷

NRW would like their powers of entry under WCA s.51 to be extended to enable them to go on to third party land to carry out required management works and recover the costs of doing so from the landholders. They noted that it is often impossible for them to enter into a LMA for common land because the owner/occupier is unknown. Having

¹⁴⁵ PCNPA, RSPB.

¹⁴⁶ PCNPA. Note that the NRW website does provide information on how to report an incident and the information that needs to be supplied; <https://naturalresources.wales/about-us/contact-us/report-an-incident/?lang=en>.

¹⁴⁷ Expert Forum, CC, RSPB, NRW.

the power to enter onto the land to carry out works themselves could provide a solution to this problem even if they were not able to recover costs in these situations.

The evidential burden in relation to offences by third parties in relation to SSSIs under sections 28P(6) and 28P(6A) is high and often difficult to achieve as NRW needs to be able to show that the offender caused damage to the notified features and that they acted intentionally or recklessly. NRW would like to see the definition of offender culpability under s.28P and s.28P(6A) broadened to include negligence.

NRW would like to be able to recover costs in relation to incident response at protected sites, similar to the polluter pays principle for water pollution offences under the Water Resources Act 1991. They think that this may act as a deterrent and enable NRW to recover costs outside of formal prosecution proceedings.

11.3 IEPAW's Views on Enforcement Mechanisms

The IEPAW agrees with NRW that a targeted approach to enforcement is the best way to deal with offences. Prosecutions can be time-consuming and costly and should be reserved for the most serious offences, especially repeat offences. As noted at the Expert Forum, the important thing is for any damage to be repaired where possible and for it to be avoided in the future.

We also, agree, however, that the threat of prosecution is a useful tool for encouraging compliance. Most s.28 offences carry an unlimited fine. We do not think that the courts are well equipped for putting a financial value on the loss to Welsh society of damage to an SSSI and the same is probably also true of those who cause the damage. We agree, therefore, that more needs to be done to explain to people why the various offences are there.

We think that the NRW presently has limited scope to deal with offences and we broadly agree with its suggestions for new powers. We strongly support the idea of amending the Environmental Civil Sanctions (Order) Wales 2010 to include offences

under the WCA. If NRW had these powers, it would be able to require a landholder to restore damage on a site without the need for a successful prosecution.

We also support NRW's suggestion that it should be given powers of entry to carry out management on third party land, and recover costs, in those cases where it is unable to enter into a LMA.

The introduction of third-party offences was a welcome addition to the law on SSSIs but, as NRW pointed out, it is difficult to use in practice. Not only must the party at fault be identified, they must also be shown to have acted intentionally or recklessly. We are not convinced, however, that adding negligent action would be appropriate for third party actions where the person causing the damage has no interest in the land and therefore no duty of care in respect of it.

The notion that all those with an interest in land should be under a duty of care with respect to safeguarding its biodiversity coupled with the possibility of prosecution for damage caused by neglect is attractive in theory but it raises a number of practical difficulties. It implies that the landholder understood what the duty meant in practice and also that the NRW have the resources to police activities.

12 Adaptive Approach to Site Management

12.1 Introduction

Adaptive management is a process that allows for changes to be made as new information becomes available rather than relying on a fixed static approach. The law relating to protected areas, especially SSSIs, is rooted in the need to set out the nature of the features to be protected and the actions to be taken at the moment the site is notified. In this section we consider whether, and if so, how the present legal regime might be amended to introduce the flexibility needed to enable protected sites to contribute more effectively to the long term maintenance and enhancement of Welsh biodiversity.

12.2 Evidence on Adaptive Approaches

The question posed in the Call for Evidence was:

Please comment on any current or future legal mechanisms which could enable a more adaptive approach to site management leading to better overall condition of a protected site.

12.2.1 Overview

In summary, the evidence was clear that a regime based purely on protection of defined features within protected sites will not be sufficient to address the nature crisis and safeguard biodiversity in Wales. Protected sites must be considered within the context of a wider ecological network. Their value within that network will depend on an adaptive approach to their management rather than a static prescriptive approach.

Unfortunately, however, while there were many comments about what needs to change there were few concrete suggestion as to what legal changes should be made to the legislation for protected sites to make it fit for future purposes.

12.2.2 What needs to change

The following comment from CC sums up the response to this question:

Whatever the mechanism it needs to allow for review of limits of acceptable change that allow for dynamic processes within sites and also allow for adaptation to factors such as climate change, tree diseases, etc.

The RSPB similarly stated that the protected sites framework should be flexible enough to accommodate movement through the network of sites. They were firmly of the view that existing protected sites will remain vital but recognised that there may be potential to develop future mechanisms that provide for more adaptive management and flexibility in a way that will not have an overall detrimental impact on species and habitats.

NRW noted that the policy framework in Wales has moved beyond the core of protected sites and that future legislation must support the networking of nature to build resilient ecological networks. Adaptive management approaches are a keystone in this process. They went on to say that there is more to do in the Welsh legislative and policy landscape to embed the move from prescriptive to adaptive site management including innovation in market-based solutions. The JNCC agreed that reform of protected sites policy would be beneficial, particularly to introduce more flexibility to respond to climate change and the biodiversity crisis.

Three main areas for change were highlighted: the size and number of protected sites, their connectivity and the management regime.

The RSPB and WEL both claimed that larger sites in good condition will support larger species populations and increase the ability of species to shift their range in the face of climate change.

The FUW commented that many protected sites and agri-environment schemes appear to be designed to ‘preserve’ or essentially ‘pause’ a habitat condition, preventing any succession of dynamism. Furthermore, feedback from their members was that some had received no advice on how to manage their sites and/or did not

touch them for fear of repercussions for any activity. NRW agreed that the current legislative framework does not work well for nature recovery because the selection criteria place far greater emphasis on current condition/value than on recovery or restoration potential and because management places far greater emphasis on preventing further loss or damage than on proactive positive management/improvement.

NRW went on to suggest that future legislative change should embrace a move from prescriptive to adaptive management allowing landholders and protected site advisors to respond to changes. They noted that there is already a large backlog of changes needed for SSSIs through renotification to ensure they remain fit for purpose. The requirement for a full notification process in order to vary any notification details, however, makes it difficult for them to keep SSSIs dynamic and adaptive.

There was agreement between respondents that management agreements in the future need to be designed to be flexible enough to take into account the wider habitat and surrounding landscape.¹⁴⁸

12.2.3 How to bring about change

Several respondents referred to the powers and duties available under the E(W)A. The NFU noted that NRW already has powers under s.22 to seek the suspension of regulations for experimental schemes but was unclear to what extent these powers were being used. They thought that this approach might be preferable to seeking legal changes.

Other respondents referred to the statutory duty imposed on public authorities to maintain and enhance biodiversity in the exercise of their functions. It was suggested by the ALGE that the introduction of statutory targets would be key to delivering this duty.

¹⁴⁸ NT, RSPB, NRW.

The introduction of targets for connectivity was considered to be vital for bringing about the necessary changes.¹⁴⁹ PCNPA thought there should be targets for connecting all SSSIs where features are under threat due to the site being too small or subject to adverse external effects. Some respondents also felt that there should be explicit and clearly defined targets for increasing the overall size of the protected site network including an increase in the number and area of individual sites.¹⁵⁰ Several of them thought these targets should have the backing of law.¹⁵¹

The UKELA noted that the cumbersome process of making changes to a notification was not compatible with adaption to change. The BSBI thought that it should be simpler to add features or areas to existing SSSIs if new features appear or guidelines on what qualifies change, for example, because of updated red lists. The RSPB were opposed to any site being de-notified on the basis that features are no longer present whether this is due to climatic or other factors.

There were also suggestions for extending legal protection. For example, the ALGE noted that greater legal protection should be extended to LNRs and SINCs and PCNPA advocated increased protection for SSSIs from off-site developments.

BBNPA suggested making changes to the consenting procedure for carrying out PDOs so that consent could be automatically granted for a wide range of measures that are known to be beneficial to a site's special interest features. They also suggested that NRW should seek long term consenting/assenting arrangements with statutory authorities. The RSPB thought there should be a review of NRW's processes for consenting to ensure a consistent and proportionate approach that provides the necessary safeguards while enabling site managers to efficiently deliver appropriate management activities.

¹⁴⁹ ALGE, CC, NT, RSPB, WTSWW, WTW.

¹⁵⁰ ALGE, NFFN, NT, RSPB, WTW.

¹⁵¹ ALGE, NRW, RSPB.

NRW agreed that adaptive management increasingly needs to be a feature of long term management plans or agreements. They referred to examples of these plans including annual schedules of operations for short term interventions that then require permitting and thought it would be worth exploring the streamlining of such permits over short to medium terms. They agreed there is room for improvement for long term management plans, annual schedules of operations, permits and funding packages to be more streamlined and responsive to site need rather than financial year spending rounds.

NRW placed particular emphasis on the importance of the legislative framework and funding frameworks to work in tandem for nature recovery. They claimed that the public purse alone cannot secure success for protected sites.

There was a note of caution about any changes introduced to provide for adaptation and flexibility which, it was claimed, would need careful, evidence-based and detailed consideration.¹⁵² NRW thought that a new approach might require changes to some permitting regimes to allow for short to medium term interventions and to provide flexibility in their suspension, amendment and revocation. They also emphasised the need for appropriate resourcing for monitoring and management actions.

12.3 IEPAW Views on Adaptive Approaches

The IEAPW agrees that current legal framework for protected sites does not best equip them for adaptive approaches. We also agree that the existing protected sites need to be integrated withing a network of sites designed to assist nature recovery. We have no doubt that flexibility and the ability to change management practices to meet changing circumstances will be necessary.

We agree that the current legal framework for SSSIs is not fit for future needs; indeed it can make it almost impossible to achieve desired outcomes. In summary we think that the main barriers to adaptive management of SSSIs are:

¹⁵² RSPB.

- prescriptive approach to notifying features
- notification based on current status rather than future prospects
- protracted process of notification
- need for renotification of any variation to SSSI details
- reliance on a list PDOs as basis for management requirements
- over-emphasis on preventing damage or loss rather than positive management.

The current set of SSSIs was not put together with a view to creating a connected network. We agree that sites should be big enough to provide the protection provided either alone or in connections with other sites. Targets for connectivity may help drive the creation of more sites but, without the necessary information on the current status of sites, it will be difficult to determine where action is most needed. Monitoring of sites is a necessary prerequisite and will become essential for informing the need for adaptive management in the future.

SSSI management has to be attuned to the purpose of the SSSI. If that purpose is to be allowed to change with time, there must be flexibility in the way a site is managed. A think piece published by Natural England¹⁵³ sets out four overarching management options for SSSIs:

- do nothing and allow systems to respond to climate change without interference;
- maintain the status quo and seek to protect the features for which an SSSI has been notified;
- managed change in which habitats are managed to deliver a more 'desirable' biodiversity outcome; and
- ecological anticipation which might include the designation of new sites and/or buffer zones to allow for unforeseen future changes in biodiversity.

¹⁵³ Galbraith, C.A. & Stroud, D.A. 2022. *Sites of Special Scientific Interest (SSSIs) in England: their historical development and prospects in a changing environment*. NECR414, Natural England. Available at <https://publications.naturalengland.org.uk/publication/4937362194038784> .

We can see the potential for each of these depending on circumstances. For large remote areas the option of doing nothing could be a starting point for re-wilding initiatives. The other options are not mutually exclusive. Maintaining the status quo to safeguard notified features will be essential for some features but this does not necessarily preclude managing sites so that they can deliver other biodiversity benefits. It would be impossible to design a foolproof network of sites for unknown future changes so we think that designating ‘just in case’ sites to provide for unseen eventualities has considerable merit.

In 2024 the NCBs published a joint statement setting out shared principles for an improved protected areas network.¹⁵⁴ The first principle was to be forward looking and adaptable. It was suggested that this may include careful consideration of different ways of responding to threats and pressures such as a ‘resist-accept-facilitate’ approaches. Reference was made to the accompanying legal framework but there were no indications of what this might look like.

Guidelines for the selection of SSSIs were published in 1989 to provide a consistent rationale for the evaluation and selection of biological SSSIs. Part 1 of the guidance sets out six primary general principles for site evaluation and selection: typicalness, fragility, size, diversity, naturalness and rarity. Part 2 provides detailed and specific guidance for different habitat types and species groups. A revision of Part 1 was published in 2013¹⁵⁵ by which time it was clear that the special interest of a site is not necessarily fixed in time. The revision therefore aimed to enable the site selection to cope with dynamic change by introducing a degree of flexibility so that the SSSI series could track changes in the environment. As new areas become of special interest they should be notified and as the interest in others changes they should be reassessed.

¹⁵⁴ *A Joint Statement on Improving the Approaches to Protected Areas in the UK*. Available at <https://data.jncc.gov.uk/data/2f79ed3b-a46c-4084-9df1-ef03c91f6a87/joint-statement-protected-areas.pdf>.

¹⁵⁵ <https://data.jncc.gov.uk/data/dc6466a6-1c27-46a0-96c5-b9022774f292/SSSI-Guidelines-Part1-Rationale-2013.pdf>

The most important change is the addition of ecological coherence as a key principle. Site assessment should include consideration of whether the site forms part of an ecological network. The principle of potential value must also be considered but only in those situations where restoration is both feasible and desirable.

The revised Guidelines are to be welcomed and should ensure a more flexible approach to site selection in the future. Unfortunately, 97 per cent of the SSSIs in Wales were notified before the 2013 revision. Some even pre-date the 1989 Guidelines and were selected on the basis of internal NCC guidance. According to Audit Wales recent report on NRW's approach to the designation of SSSIs,¹⁵⁶ NRW recognise the need to revise their internal guidance for notification, renotification and denotification.

We do not think there is any prospect of fundamental change to the legal regime for SSSIs in the short term. But all is not lost. Having a management statement for each SSSI which sets out the future aspirations for the site is an important first step. The fact that NRW has powers to enter into a LMA in respect of any land is also encouraging and we would encourage NRW to use this power to provide protection for SSSIs from potentially damaging off-site activities. The inclusion of specific actions on SSSIs in the SFS should also enable better approaches to management.

The main stumbling block for moving forward with these initiatives is likely to be resources, however, and we remain concerned that NRW will not have the sufficient financial and staff resources to deliver the necessary management approach across the suite of protected sites in Wales.

¹⁵⁶ <https://audit.wales/publication/protecting-nature-future-generations>

13 Conclusions

The Welsh Government aspires to

*transform the protected site series so that it is better, bigger, and more effectively connected.*¹⁵⁷

The importance attached to protected sites is further emphasised in Welsh Government planning documents. Policy 9 of the Welsh Government's National Plan¹⁵⁸ refers to the importance of protected sites in developing resilient ecological networks and goes on to state that while they are critically important to the long term resilience of our ecosystems, they should not be seen as islands within the landscape, but should instead form the nodes of large-scale resilient and functional ecological networks and green infrastructure.

PPW 12 states that LDPs should ensure that the role of protected sites at the heart of resilient ecological networks is safeguarded.¹⁵⁹ It goes on to state that

*Proposals in statutory designated sites are, as a matter of principle unacceptable, and therefore must be excluded from site searches undertaken by developers. ... Such sites form the heart of resilient ecological networks and their role and the ecosystem services they provide must be protected, maintained and enhanced and safeguarded from development. It will be wholly exceptional for development to be justifiable in such instances.*¹⁶⁰

¹⁵⁷ Objective 1 of the Biodiversity Deep Dive published 2022. Available at <https://www.gov.wales/sites/default/files/pdf-versions/2022/10/1/1664785835/biodiversity-deep-dive-recommendations.pdf>.

¹⁵⁸ Future Wales. The National Plan 2040, Policy 9 Resilient Ecological Networks and Green Infrastructure, p.77 Available at <https://www.gov.wales/sites/default/files/publications/2021-02/future-wales-the-national-plan-2040.pdf>.

¹⁵⁹ Planning Policy Wales para 6.4.3

¹⁶⁰ PPW 12 para. 6.4.15 1(b).

Unfortunately, the legal framework is not ideally suited for meeting the Government's aspirations. The various protected site designations available in Wales were not designed to be complementary to each other and none of them was intended to provide for recovery from a biodiversity crisis. Any attempt to employ them to do this will have to take account of the limitations inherent in their legal and policy frameworks.

Perhaps the most fundamental issue is that none of them caters for all biodiversity. The SSSI series was never intended to be a mechanism for comprehensive all-encompassing nature conservation. There has been an emphasis on the rare, vulnerable and endangered species and on particular natural habitats. Sites are designated for the special features they contain rather than for their overall contribution to conservation of biodiversity.

Furthermore, there has never been a policy to protect every interesting area. Sites for notification as SSSIs are selected as representative examples within a defined Area of Search; under European law, SACs have been designated as a representative proportion of the UK's contribution to its international biogeographic region.

Many SSSIs are small and notifications have been made simply on the basis of the interest within the site without consideration of how the site might fit within a series of networked sites. Although SACs are generally larger and were designed to be part of a network, connectivity was not a necessary consideration in the selection of sites put forward to the European Commission for possible designation.

The revised 2013 Guidelines for Biological SSSIs give NRW more flexibility in selected new sites and in renotifying existing ones. Unfortunately, the legislation requires the full notification process to be gone through in order to vary the specifications or add to or enlarge the SSSI. NRW faces an enormous task in taking this work forward. They are already considering steps for informing their ongoing SSSI programme including

the need to develop a decision making framework to provide criteria for prioritising the order of notifications, denotifications and renotifications.¹⁶¹

Unfortunately, there is also the possibility that using the renotification process to try to enhance the value of existing SSSIs within a network will give rise to tensions with landholders, the very people who need to bring on board to carry out the management. From the outset, SSSI has been viewed by some first and foremost as an infringement of and interference with a landholder's rights rather than as a mechanism for supporting them with management.

In an ideal world, we would like to see the SSSI replaced by a new protected area designation with sites being selected not just on the basis of their intrinsic features but also on how well they fitted within the jigsaw of connections that will make up the network. They would then be subject to individually tailored ongoing management designed to keep them fit for purpose as conditions change in the future. There would be little, if any, need to denotify sites.

Unless and until this happens, however, we conclude that the single most important requirement is not for a change in the law relating to protected areas but a much greater willingness to devote sufficient resources to provide for effective management of sites now and for ongoing monitoring to enable decisions to be made on future management.

¹⁶¹ *Sites of Special Scientific Interest: a Review of the Current Series in Wales*. NRW Evidence Report No 878. Available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://cdn.cyfoethnaturiol.cymru/uahbtlni/nrw-evidence-report-no-878-sites-of-special-scientific-interest-a-review-of-the-current-series-in-wales-pdf.pdf&ved=2ahUKEwj3y4e-0PSQAxU5ZkEAHVr1OgQQFnoECBcQAQ&usg=AOvVaw1X1MOkgVcLF5wPrtPyBf9->

Annex 1 Role of the Interim Environmental Protection Assessor for Wales (IEPAW)

The IEPAW provides members of the public with an independent mechanism to raise submissions about the functioning of environmental law in Wales. The IEPAW advises the Welsh Ministers if the submissions raised fall within the remit of the IEPAW and makes recommendations for any action they consider may need to be taken.

The interim measures are non-statutory and their main purpose is to:

- provide oversight of the functioning of environmental law in Wales; and
- consider systematic issues relating to the working/functioning of environmental law in Wales.

The functioning of environmental law may mean considering whether:

- the law is fit for purpose or still relevant;
- the information or explanatory material on the law is accessible, clear and certain; or
- the practical implementation of the law is effective.

The scope of the interim measures does not cover:

- breaches in environmental law;
- areas of non-compliance with environmental law; and
- issues raised that are covered by another complaints mechanism or process.

The IEPAW's aim is to identify where action may need to be taken to correct functioning issues that will improve environmental outcomes. Its strategic objectives are to:

- provide a service to the public that allows them to make submissions to the IEPAW;
- advise the Welsh Ministers on any action that may be required; and
- contribute to the development of the permanent approach to environmental governance in Wales.

Annex 2 Briefing Paper for Expert Forum on Management and Protection of Protected Sites

Points for consideration by the expert forum:

- The 2020 Baseline Evaluation found that 80% of the features assessed were not in a favourable condition. What do you think are the reasons for this?
- Are there legislative changes that could be made to improve the condition of protected sites? If so, what?
- The 2020 Baseline Evaluation was unable to determine the condition of about half the features of the sites due to insufficient evidence. Would any legislative changes improve the ability to determine the condition of protected sites? If so, what?
- Does the guidance or processes for protected sites need to be improved? If so, how?
- Does enforcement need to be improved? If so, how?

Role of the Interim Environmental Protection Assessor for Wales (IEPAW)

Dr Nerys Llewelyn Jones was appointed as the IEPAW in March 2021 to consider concerns raised by the public about the functioning of environmental law in Wales and to provide advice to Welsh Government Ministers.

This is an interim process that will be in place until a permanent body is established in Wales to oversee compliance with environmental law.

The focus of the IEPAW is on the functioning of environmental law, not on breaches of that law. Its aim is to:

- provide oversight of the functioning of environmental law in Wales;
- consider systemic issues relating to the working or functioning of environmental law in Wales; and
- identify where action can be taken to improve the functioning of environmental law in order to improve environmental outcomes.

The role of the IEPAW does not cover:

- breaches in environmental law;
- areas of non-compliance of environmental law; and
- issues raised that are covered by another complaints mechanism or process.

Submissions received on the management and protection of protected sites

The IEPAW has received two submissions about the management and protection of protected sites in Wales. These protected sites - Sites of Special Scientific Interest;

Special Protection Areas; Special Areas of Conservation; Ramsar Sites and Marine Conservation Zones - are supposed to be the best places on land and at sea for wildlife, and places where the needs of species and habitats are prioritised in the way the sites are restored, protected and managed.

NRW's 2020 Baseline Evaluation project assessed the quality of all protected sites - the first full assessment since 2003. They were unable to determine the condition of around half of the features of all their sites (for example habitat quality or number of species) due to insufficient evidence. Of the features they were able to assess, 20% were in a favourable condition, 30% in an unfavourable condition and 50% not in a desired state. NRW are working on a plan to improve current approaches and a similar freshwater review is planned.

The submissions argued that many sites were damaged and degraded; not appropriately managed or protected; and that nature continues to decline in Wales. Also, one submitter considered that the suite of powers available to NRW to protect and secure appropriate management for terrestrial protected sites was not being applied to its full potential.

As a result the IEPAW plans to produce a report for Welsh Ministers with the following aims:

- Assess whether the existing legal framework is functioning correctly;
- Identify areas where the existing legal protection may not be delivering the intended benefits;
- Identify potential gaps in existing legislation; and
- Identify areas where the practical application of the legislation may be impeded.

Legislation concerning Protected Sites

The submitter has highlighted the following legislation as being relevant to their submission:

Wildlife and Countryside Act 1981 (as amended)

The following sections set out the duties to notify SSSIs and provisions for their management.

- **Section 28:** Sets out duties on NRW to notify any area of land that is of special interest by reason of any of its flora, fauna, or geological or physiographical features and to specify any operations appearing to be likely to damage that flora or fauna or those features.
- **Section 28G:** Duty on all public authorities to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

- **Section 28J:** Sets out that NRW may formulate a management scheme for all or part of a SSSI. NRW can make payments in relation to management schemes.
- **Section 28K:** Management notices: Where it appears to NRW that— (a) an owner or occupier of land is not giving effect to a provision of a management scheme, and (b) as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored, they may if they think fit serve a notice on him (a “management notice”).
- **Section 28N:** Provides power to NRW to compulsorily purchase all or any part of a SSSI where NRW has been unable to satisfactorily conclude an agreement with the owner or manager as to the management of the land, or the management agreement has been breached in such a way that the land is not being managed satisfactorily.
- **Section 28P:** Sets out offences in relation to SSSIs and NRW’s powers to pursue convictions and fines relating to these offences.
- **Section 28R:** Sets out NRW’s power to make byelaws for the protection of a SSSI.

Marine and Coastal Access Act 2009

Part 5 of this Act created a new designation nationally important marine areas - Marine Conservation Zones (MCZs). The submitter highlights the following sections:

- **Sections 116 -123:** Set out powers and duties on Welsh Ministers for the designation of MCZs.
- **Section 123:** Requires Ministers to designate MCZs in order to contribute to the objective of forming a network, to contribute to the conservation and improvement of the marine environment, ensuring representation of the range of features present in the UK marine area.
- **Section 124:** Requires Welsh Ministers to report every 6 years both on the extent to which the overarching objectives for this network are being met, and designation, conservation objectives and management measures of MCZs (including to what extent conservation objectives for a site are being achieved).
- **Section 125:** sets out general duties for public bodies to exercise their functions so as to best further MCZ conservation objectives, and procedure to follow if the exercise of functions come into conflict with conservation objectives.
- **Section 126:** Sets out duties and procedures for public bodies taking decisions that may affect MCZ features.
- **Section 134:** Allows Welsh Ministers to make orders for the purpose of furthering the conservation objectives of MCZs in Wales.

Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) ‘as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019’

These regulations transpose and implement key requirements of the EU Habitats Directive and the EU Birds Directive in relation to protected sites and species and general duties into law in England and Wales. The Habitats Regulations (as amended) include:

- Duties to designate or classify Special Areas of Conservation and Special Protection Areas. Through the Brexit Regulations, these sites are to form a ‘National Site Network’,
- Provisions for management of SPAs and SACs, including:
 - **Reg 20** covering management agreements for SPAs and SACs
 - **Reg 27** which contains the power to make special nature conservation orders
 - **Reg 28** which covers restrictions that can be imposed including stop notices and ability to prosecute if orders are not adhered to
 - **Regs 32, 33 & 34** enable byelaws to be created.

The Environment (Wales) Act (2016)

Sets out Wales’s approach to Sustainable Management of Natural Resources (SMNR) including a duty on public authorities to seek to maintain and enhance biodiversity and promote the resilience of ecosystems (the Biodiversity Duty). Provides powers to NRW to use management schemes on any area of land to achieve SMNR (section 16 agreements).

International conventions

- **The Convention on Biological Diversity:** Requires parties to establish and maintain protected areas contributing to a global network
- **The Oslo and Paris Convention (OSPAR):** Aims to protect the marine environment of the north-east Atlantic, including by establishing marine protected areas
- **The Bern Convention:** Aims to conserve and protect habitats and species and established the Emerald Network of Areas of Special Conservation Interest
- **The Ramsar Convention on Wetlands of International Importance:** Aims to conserve wetlands and provides for the designation of sites of global importance
- **The UN Convention on the Law of the Sea (UNCLOS):** Includes specific provisions in relation to protected sites and measures required both for their conservation and in relation to marine activities that may affect them.

Biodiversity Deep Dive

The Minister for Climate Change recently undertook a Biodiversity Deep Dive which focussed on Wales' approach to implementing the Convention of Biological Diversity (CBD) Global Biodiversity Framework target to protect at least 30% of the land and 30% of the sea by 2030

30 by 30 is one of the targets proposed for the post-2020 GBF and is articulated as follows in the current draft 1 of the post-2020 framework:

*'Ensure that at least 30 per cent globally of land areas and of sea areas, especially areas of particular importance for biodiversity and its contributions to people, are conserved through **effectively and equitably managed, ecologically representative and well-connected systems of protected areas** and other effective area-based conservation measures and integrated into the wider landscapes and seascapes.'*

Recommendations from the Ministerial Biodiversity Deep Dive were published on 3 October (attached at Annex A). The recommendations specifically referring to legislation and improving related guidance include:

- Consider the need for legislation in the next Senedd to reform the statutory purposes, duties and governance arrangements for designated landscape bodies to equip them better to drive nature's recovery. (From recommendation 3)
- Develop strengthened guidance for Policy 9 of Future Wales via the Gwent Levels pilot project for mainstreaming biodiversity, ecosystem resilience and green infrastructure into planning policies within National Natural Resource Management Areas in Wales. (From recommendation 4)
- Develop primary legislation to set overarching nature recovery targets and establish an environmental governance body to be laid as early as possible in this Senedd term, and a suite of more detailed statutory nature recovery targets focussed on achieving environmental outcomes and delivering Wales's contribution to the post 2020 global biodiversity framework.

Annex A: Biodiversity deep dive: recommendations

Objective

To develop a set of collective actions to take immediately to support meaningful delivery of the CBD '30 by 30' goal, recognising the capabilities in Wales and reflecting our duties and approach under the Wellbeing of Future Generations and Environment (Wales) Acts.

1. Transform the protected sites series so that it is better, bigger, and more effectively connected

We will take immediate action to ensure the protected sites is effectively and equitably managed by 2030 by:

- Expanding and scaling up the Nature Networks Programme to improve the condition, connectivity and resilience of protected sites. In addition to supporting action to improve protected sites, the programme also focuses on the active involvement of local communities, creating networks of people in addition to resilient ecological networks.
- A Nature Networks Map outlining key focus areas will be produced. A Protected Sites Portal will be developed and rolled out to allow partners access to NRW protected site data.
- Increase the delivery capacity of the National Peatland Action Programme through a phased approach so that by 2030 the programme will be delivering at a scale capable of reaching the net zero 2050 target of 45,000 ha of peatland restored.
- Providing funding for Local Nature Partnerships to support collaborative partnership action for nature recovery at the local level.
- Tackling the financial and funding barriers to delivery that impede progress towards restoration and/or maintenance of sites on land, freshwater and seas to favourable condition by:
 - Exploring the opportunity to use Section 16 Land Management Agreements as match funding to enable additional sources of funding to be secured supporting more ambitious actions for nature recovery.
 - Reviewing the level of planning fees paid for conservation work which can add a significant cost to delivery.
- Completing the Marine Protected Area network to ensure the shortfalls in the protection of habitats and species of conservation interest are addressed, species and habitats are well-represented and the network is connected and ecologically coherent. This will start with pre-consultation engagement with stakeholders in the next three months.
- Finalising the structured evaluation of potential fishing gear interactions with features of Marine Protected Areas and consult on the necessary management measures needed. Preventing damage to MPA features will help improve the condition and resilience of the network.
- Establish a targeted scheme to support restoration of seagrass and saltmarsh habitats along our coastline
- Create opportunities for marine and freshwater fishers to support nature recovery, and where appropriate undertaking management actions for biodiversity and habitat enhancement.
- Identifying ways to maximise the role of Local Nature Reserves and other habitats not under statutory designation, such as Sites of Importance for Nature Conservation, to deliver for the 30 by 30.
- Ensure protected sites (management, monitoring, designation), land and sea, are a priority for NRW through corporate and future strategies and provide adequate funding.

- Review the SSSI series to inform an accelerated notification programme aligning it with the Nature Network Programme.

In the longer term we will:

- Improve the effectiveness of protection from the damaging impacts of development and other threats / pressures by increasing capacity and capability in relevant public bodies to take effective enforcement action where needed.
- Embark on an ambitious programme of protected site designations with an accelerated notification process to align with and strengthen the nature networks, prioritising those areas where need has already been identified.

2. Create a framework to recognise Nature Recovery Exemplar Areas and Other Effective Area-based Conservation Measures (OECMs) that deliver biodiversity outcomes

In addition to improving the existing protected areas, we also recognise the importance of identifying additional areas that can deliver our nature recovery ambition and alternative solutions to managing these. On the management side we want to establish a series of Nature Recovery Exemplar Areas - existing or new landscape scale collaborations of public, private, voluntary and community actors that come together to manage and restore nature in protected areas and the wider landscape. In addition, we also want to explore the role of a new IUCN defined status of OECM's in recognising areas outside protected sites that can contribute to 30 by 30.

We will take immediate action to:

- Establish an expert working group (and links to the IUCN Protected Area Working Group) to recommend processes and criteria for recognising, monitoring and reporting on existing and candidate OECMs and Nature Recovery Exemplar Areas in Wales. The working group will report recommendations on identification of candidate sites and mechanisms to fund these within six months.
- Links between land and water represent an active area for integrated OECMs, and Dŵr Cymru (November 2022) will host a series of workshops at their annual Water Source conference to explore the enablers and barriers to delivering freshwater catchment scale action. The outputs of the workshops will be shared after the conference in the WaterSource22 Report.

3. Unlock the potential of designated landscapes (National Parks and Areas of Outstanding Natural Beauty) to deliver more for nature and 30 by 30

Our Designated Landscapes, both National Parks and Areas of Outstanding Natural Beauty have a vital role to play in supporting nature's recovery. In the immediate term we will:

- Support the National Parks and AONBS to develop a prioritised action plans for nature restoration embedding these in strategic planning.

In the longer term we will:

- Realign Designated Landscapes priorities to enhance and accelerate nature recovery delivery, supported by updated policy, resources and guidance to build capacity and expertise and to target activity.
- Develop the evidence and mapping tools to enable designated landscapes to baseline, target and monitor areas of high nature value that could be secured as their contribution to 30 by 30
- Ensure Designated Landscapes bodies are funded adequately, sustainably and flexibly to deliver nature recovery at a transformational landscape scale.
- Ensure that the potential designation of a new National Park in northeast Wales affords opportunities for climate change mitigation and nature recovery as key delivery priorities for the new Park.
- Consider the need for legislation in the next Senedd to reform the statutory purposes, duties and governance arrangements for designated landscape bodies to equip them better to drive nature's recovery.

4. Continue to reform land and marine management and planning (including spatial) to deliver more for both protected sites and wider land / seascapes

How we use our land, freshwater and marine habitats both now and in the future can have a significant impact on the condition of sites and the species that are part of them. We will take immediate action to:

- Develop strengthened guidance for Policy 9 of Future Wales via the Gwent Levels pilot project for mainstreaming biodiversity, ecosystem resilience and green infrastructure into planning policies within National Natural Resource Management Areas in Wales.
- Strengthen the policy protection afforded to SSSIs as outlined in Planning Policy Wales 11.
- Explore the possibility of an all-Wales contract to be set up with the Local Record Centres to screen all planning applications.
- Implement a spatial approach to marine planning identifying the ecological constraints and opportunities for different marine activities including renewables.
- To include publishing spatial guidance and using the review of the WNMP to consider introducing spatial planning policies to assist planners, developers and decision makers.
- Investing in skilled advisors to engage farmers with the new scheme and maximise the potential benefits for nature
- Investing in sustainable land management pilots to build knowledge and experience in delivery for species and habitats

In the longer term we will:

- Design the Sustainable Farming Scheme to ensure farmers are rewarded both for providing appropriate management of protected sites and for actions that improve the prospects of nature in the wider landscape and freshwater habitats.
- Develop and enforce minimum standards to prevent further harm, protect the key habitats and ecosystems and facilitate rectification of damage should this occur.

5. Build a strong foundation for future delivery through capacity building, behaviour change, awareness raising and skills development

We recognise that nature recovery will require a society wide approach, and that action to tackle the nature emergency will not be successful if it is not done hand in hand with action to tackle climate change. We will take immediate action to support effective delivery both now and in the future by:

- Integrating the skills and expertise needed for nature recovery (e.g. ecologists, marine planners and biologists etc) into the Net Zero Skills Strategy.
- Include actions to tackle the nature emergency into the overall climate change behaviour change programme.
- Expanding and enhancing capacity and capability building schemes to support the public, third and private sectors to accelerate delivery for nature recovery. This will include a focus on financial resilience and investment readiness.

In the longer term we will:

- Improve education and awareness of the nature and climate emergency and actions individuals and organisations can take.
- Building on the Natur a Ni programme, (and the People's Plan for Nature) increase citizen involvement and participation in actions to address the nature and climate emergencies.

6. Unlock public and private finance to deliver for nature at far greater scale and pace

We recognise that taking effective action to tackle the nature emergency by 2030 will require adequate funding. We will take immediate action to identify appropriate funding sources and the government interventions that may be needed to ensure these deliver for the benefit of Wales by:

- Develop a clear policy position on private investment in nature recovery, identifying the potential opportunities and anticipating the risks, including where these could be mitigated by appropriate government interventions and principles for responsible investment.
- Explore sustainable funding mechanisms and opportunities to support work delivering the marine component of 30 by 30 such as identifying funding

mechanisms from emerging and developing industries, exploring levies and the role of Marine Net Benefit.

In the longer term we will:

- Increase public investment in nature's recover by ensuring the response to the nature emergency is integrated across government departments.

7. Develop and adapt monitoring and evidence frameworks to measure progress towards the 30x30 target and guide prioritisation of action

Effective and affordable monitoring and evidence frameworks are vital if we are to track our progress towards both the 30 by 30 goal and the longer-term nature positive ambition. These frameworks need to be informed by an appraisal of data needs, building on existing good practice and data sets, and identifying what is needed in future. In the immediate term we will:

- Establish a monitoring and evidence task group to continue the work needed to establish robust and appropriate monitoring and evidence frameworks for 30 by 30 and wider nature recovery targets, building on those that are already in place.

8. Embed Nature Recovery in policy and strategy in public bodies in Wales

We will reaffirm our commitment to take corrective action to protect and restore biodiversity and ensuring public bodies across Wales support delivery of this commitment. We will take immediate action to:

- Revise the Natural Resources Policy and our National Biodiversity Strategy (currently the Nature Recovery Action Plan) to reflect deep dive recommendations and post 2020 Global Biodiversity Framework.
- Strengthening delivery of the NRP and Section 6 of the Environment Wales Act to support the mainstreaming of delivery for nature across all Government portfolios and public bodies. This will include:
 - Actions to reduce pressures impacting biodiversity and driving restoration and recovery.
 - Bringing together key Welsh Government policy that affects land use management and setting out how they fit together on the ground integrating with Future Wales and the Wales National Marine Plan.
- Welsh Government and Natural Resources Wales to lead by example through demonstration and exploring further opportunity to ensure that delivering for nature is one of the priority objectives for the Welsh Government Woodland Estate, changing practices where needed that are detrimental to nature.

In the longer term we will:

- Develop primary legislation to set overarching nature recovery targets and establish an environmental governance body to be laid as early as possible in this Senedd term, and a suite of more detailed statutory nature recovery targets focussed on achieving environmental outcomes and delivering Wales's contribution to the post 2020 global biodiversity framework.

Annex 3 Record of Expert Forum on Management and Protection of Protected Sites

This event was hosted by the IEPAW on 16 November 2022 in the Iron Room, Eglwys Fach following a site visit to the RSPB's Ynyshir Reserve. It was agreed that the Chatham House rule would be applied to the discussion, so the record has been edited to remove all names. The only exceptions are the references to specific questions from Nerys Llewelyn Jones.

Attendees

The following organisations were represented at the event:

- Aberystwyth University¹⁶²
- Butterfly Conservation
- Ceredigion County Council
- JNCC
- NRW
- NFU Cymru
- INCC
- UKELA
- Welsh Government
- Wildlife Trusts Wales

Nerys Llewelyn Jones welcomed colleagues. She explained the aim of the expert forum was to discuss the functioning of the legal framework for the management and protection of protected sites in Wales and whether it should be reviewed and if so, how? The views provided in this session would be used to inform a report for Welsh Ministers.

She outlined that her role as the IEPAW was to consider concerns about the functioning of environmental law in Wales. At the time of the meeting, she had received two submissions which raised concerns about the management and protection of protected sites. The concerns raised included that many sites were damaged and degraded were not appropriately managed, and that the powers available protect sites were not fully applied. Natural Resources Wales' (NRW) [2020 Baseline Evaluation had been unable](#) to determine the condition of about half the features of sites due to insufficient evidence. Of the features they could assess, 20% were in a favourable condition, 30% unfavourable and 50% not in a desired state. She clarified that her initial focus was on terrestrial sites rather than marine.

¹⁶² Lynda Warren attended this event prior to her appointment to IEPAW

Nerys Llewelyn Jones said that the IEPAW would make a recording of the discussions to ensure the points were captured but individual wishes regarding the recording would be respected. No one disagreed with that approach.

Nerys Llewelyn Jones said she would like to focus discussions on:

- The reasons why 80% of the features assessed were not considered to be in a favourable condition;
- Could legislative changes be made to improve the condition of protected sites? If so, what?
- Could any legislative changes improve the ability to determine the condition of protected sites? If so, what?
- Does the guidance or processes for protected sites need to be improved? If so, how?
- Does enforcement need to be improved? If so, how?

Monitoring approach

The lack of a mandatory monitoring requirement meant that insufficient resources and people had been allocated to monitor the features of Sites of Special Scientific Interest (SSSIs). There should be a monitoring requirement similar to that which applies to Special Areas of Conservation (SACs).

It was noted that the Ministerial Biodiversity Deep Dive had discussed the value of an integrated monitoring programme and the value of a cross Wales team approach extensively.

Monitoring was fine if you know what and why you're monitoring. However, there was a tendency to produce too much monitoring information that tells you nothing. Producing page after page of monitoring data which isn't valuable and takes up a lot of time isn't effective. There was a risk of a monitoring approach which focused on items that could be easily measured rather than the most important issues. Too much monitoring data could result in key factors and the bigger picture being overlooked. While it was not necessarily a bad thing to have data on everything, the focus should be on overall trends.

It was important to have a conversation about what type of monitoring data was 'good enough'. There also needed to be a focus on how sites were connected as well as the condition of sites as a whole.

We will never fully understand what is going on with the environment, so gathering vast quantities of data is not always the best use of resources.

Nerys Llewelyn Jones asked what key monitoring information should be collected.

Monitoring needed to be done in partnership. Also, it was important to have the right people on the right sites monitoring the right features.

Nerys Llewelyn Jones questioned whether the necessary resources to help with the monitoring were in place.

The Ministerial Biodiversity Deep Dive had already been assessing monitoring data and there was a danger of duplication if this expert forum was to consider that as well.

Nerys Llewelyn Jones asked the group whether the Deep Dive conclusions on monitoring issues were sufficient and there was no legislative element for this group to consider.

It was questioned why everyone was so hung up on monitoring features. It was thought this was probably due to EU influence. Monitoring features was important but not the only issue. There should be more focus on the wider perspective which the current legislation prevented from happening.

It was, however, stressed that at least some monitoring of features was important. There were some species that it was crucial to protect, and that their reduction could indicate wider problems. Lapwings were an example. In response it was said if no lapwings were monitored, it may be that in 50 years' time there aren't any. However, other species may be thriving on the site because its overall condition had been monitored and it may have improved.

It was claimed that the current monitoring approach wasn't working anymore. The SSSI framework had been developed in the 1940s, and the EU framework had then been introduced and overlaid it. The framework had developed in a rather ad hoc, incremental manner and was overly-complex. This was no longer appropriate - particularly in a fast-changing environment policy context. The framework should be more flexible and adaptive. Minor tweaks could be made, but in the longer term it would be necessary to re-design the law.

Legislative changes to improve the condition of protected sites

Nerys Llewelyn Jones asked whether legislative changes could improve the condition of protected sites.

There should be statutory targets related to the condition of protected sites and a ministerial obligation to ensure these were achieved. These would sit alongside the proposed nature recovery targets.

It was questioned whether the main onus for achieving targets should be on the Welsh Government or whether they should be everyone's targets?

It was also questioned whether there should be more collaboration to reach the targets.

It was thought that targets do have power if governments get behind them. The establishment of targets was a way of ensuring a clear priority focus and a way of securing government commitment and spending to achieve the target. Having targets could facilitate cross working and imbed collaboration across relevant government departments to achieve them.

The approach to protecting sites had not worked so far because there had been insufficient prioritisation and resources by Welsh Government and NRW. If those best sites, or exemplars, could not be protected what hope was there for the well-being of other landscapes? There could be great commitments and goals but without good implementation those aspirations would not succeed. If this approach continued it was questioned whether targets would work. The current protected sites were not currently in a good position, so what hope was there that the condition would improve?

It was a shame Dr Kim Owen from Natural England could not attend the expert forum. She had given an excellent presentation to NRW on their Climate Smart project. This involved the use of targets to measure ecosystem health, rather than the numbers of individual species, as well as trying to enshrine the concept of adaptation to deal with climate change. It was important to be adaptive with targets, not prescriptive.

Nerys Llewelyn Jones asked what kind of targets were needed.

It was important to look beyond features and individual species. There should be integrated monitoring with the necessary accompanying technology.

There was some nervousness about monitoring ecosystems health. It was thought that there still needs to be monitoring of the condition of individual species, including whether they were at risk of extinction, although the monitoring of overall site conditions still had a role to play. There was a need to move on from where things currently were but not to lose sight of the value in the current system.

There was also some nervousness about changing legislation as it could risk watering down the current protections. Currently there were not enough people to ensure those requirements were met. For example, NRW only had one entomologist. It was best to focus on meeting the requirements of the current legislation.

It was suggested that this may be because the current legislation was too hard to implement.

It wasn't always best to just monitor certain special species as they were already protected. It was better to monitor the wider picture. Only monitoring particular features risked overlooking other species which could be at risk.

It was important to have strategic targets as well as targets at site condition level which reflect species abundance and changes without losing sight of what that network was supporting.

There was a need to change the legislative framework. No one had ever evaluated all the evidence around what was and was not working. It was important to ensure such evidence was available. It was also important not to rush to make legislative changes. The 30 x 30 recommendations involved extending the SSSI network, but questioned what the benefit would be if the system was not currently working. It was best to consider the different perspectives on areas of common interest. It was important to ensure the necessary research was done and to identify the legislative gaps for different SSSIs for example.

The rationale for some of the protected site requirements was questioned. For example, why was 6 metres or 7 metres set as the buffer zone?

It was commented there needed to be enough people to do the monitoring.

There was evidence that protected sites work. SPA and SAC designations often do a better job than SSSIs designations at protecting sites so there were lessons to be learnt from that. The way SPAs and SACs were monitored was better. What could be done to 'level-up' SSSIs to provide equivalent protection?

It was disturbing that it was only known what was happening with the condition of half the features of the protected sites. It was important to assess what was happening in those sites before constructing a new monitoring regime. NRW would need more resources to achieve this. Providing such resources should be the focus in order to get more data on what the issues were.

It was important to be clear on what the public wanted from protected sites. It would cost millions to fully protect sites but only hundreds of thousands of pounds were available.

The protected sites system did not work for peatlands. It was not possible to designate new peatland areas as a protected site, despite their importance. If sites include peat, they can only be protected if they also contain protected features. Such features do not include peat. Peat was very important for tackling climate change, but biodiversity targets were not appropriate for this type of site. There is a need to make sure that our actions on climate change work together with our actions to preserve biodiversity.

It was noted that the UK Environment Act 2021 had a 10 per cent net gain principle but this did not consider peat and other factors that are important in Wales. As such, the English approach may not work in Wales. There was nothing 'on the shelf' we could take and implement, and there was a risk in trying to set targets too quickly. It was important that any targets were agreed and achievable within the timescales set and had the necessary resources and accompanying monitoring and technological mechanisms.

The idea to have targets assumes that Government was good at implementation, but it is not. The focus needs to be on resolving these issues. Government targets might not be the solution.

Targets for protected sites could be very effective. For example, the waste and recycling targets in Wales had resulted in some of the best recycling rates in Europe. The Peatland Code was also referred to as a success.

It was important to look back at the original purpose for protecting SSSIs. The 1949 legislation provided that sites were to be protected if they were 'scientifically interesting'. This is a very broad criterion that encompassed a wide range of characteristics. The legislation also did not specify protection for such sites. Arguably that spirit could be used as the basis to designate peatlands.

Neil noted that many SSSIs were designated for geological, rather than biological, features. The 50% of features that hadn't been monitored will include these geological features.

It was recommended that there should be a rethinking of the rationale for designating sites. That was not fully done when the original legislation was created in the 1940s. It was considered that the term SSSIs did not mean anything.

The concept of an SSSI was more of a planning tool and a way of notifying local authorities. It was then up to them what they did with it.

There was some nervousness about the prospect of a shifting baseline where targets are lowered over time. This could result in a dive to the bottom for site protections.

The idea that targets do not work was rejected. Instead, they were simply not given enough resources to work. There was a nature crisis, which COP 15 was taking seriously. The insufficient resource justification for not assessing protected sites was rejected. It was considered that appropriate funding models could be found. For example, private finance mechanisms. In the absence of protected sites, matters would be in a worse state.

Nerys Llewelyn Jones asked what in the legislation prevented sites from being properly protected and what could be included in the legislation to help?

The role of protected sites was critical. There was much evidence to support how important these sites were. Amendments to facilitate the use of more management agreements between landowners and managers would be helpful. Such agreements were only in place for a small percentage of sites. Glastir was perceived as a way of protecting sites, but the practical implementation could be too rigid. There were also issues around the new Sustainable Farming Scheme; there needed to be the right type of advice and support for landowners. It was also noted that there were issues with land that is not designated but neighbours a protected site. Would extending the requirements of an SAC site to neighbouring sites provide better protection? NRW could put management agreements in place off-site, but that these were not used extensively.

If there was an assumption that SSSIs were less well protected than SACs, then the protections for SACs could be extended to SSSIs.

Nerys Llewelyn Jones said there may be value in assessing whether SACs, SSSIs or SPAs were more beneficial.

There was nervousness about making the protections for SSSI more like those for SACs. SSSI consent could be acquired quickly, whereas SAC consents took much longer and was a more onerous process.

It was questioned whether it was more of a planning law issue and whether there would be benefit in the good elements of SACs being replicated where possible. Some

of the differences between the different classifications were quite minor. The main difference with an SAC was that a prior assessment was necessary. It should not be perceived that the different protected site classifications formed a formal hierarchy of importance.

It was stated that SACs trump SSSIs, so doing work to protect an SSSI may be prevented if this conflicts with SAC features. It was noted that this hierarchy did not exist in the law but tended to be an assumption that people made. One form of protection should not take precedence over others.

It was questioned whether the right sites were designated at the right scale. Species don't always operate within the boundaries of protected sites. When setting boundaries, it was important to consider what the species need, rather than what land the landowner had available. The wider perspective and habitats, beyond the formal boundaries, should be taken into account.

Nerys Llewelyn Jones asked for comments on the implications of buffer zones around the protected sites.

It was claimed that there were inaccuracies in the list of legislation included in the paper submitted to the Expert Forum. For example, there were differences in management schemes and the management agreements. Management schemes were imposed on landowners whereas management agreements were voluntary. It was noted that there was a focus on voluntary agreements and only one management scheme was in place in Wales. Compulsory purchase was the last resort. Details of the inaccuracies would be passed on to the IEPAW Secretariat as well as details of the management scheme.

The need for better connections between protected sites and with other programmes and accompanying funding, for example, the nature network programme, had been the biggest outcome of the biodiversity deep dive. Ensuring the right funding was available in the right places was important. It was essential for the recommendations from the trees and timber, renewable and biodiversity deep dives to be linked up to avoid silo thinking.

It was valuable to identify the useful elements of SACs. One reason why SACs may be better protected was because the process requirements for making changes was off-putting for developers. While this may have some advantages it was not an ideal way of working. An important element of SACs was that there had to be an assessment of anything that may have an impact, including activities that occur outside the SAC. The big problem with SACs was that they were inappropriate for some UK wildlife as

they were not designed with UK characteristics in mind, but rather EU designated wildlife. However, that should be possible to address. The cumbersome nature of SACs should be addressed. Conducting an 'appropriate assessment' could be long-winded but did not have to be. An implication of the Retained EU Law (Revocation and Reform) Bill 2022 was that Wales could introduce their own tailored mechanisms.

The way NRW was established meant they could not change their processes as quickly as necessary. Licences could take months to change. The Phase I survey was 30 years old and it needed to be urgently reviewed as things had changed so much. A quick win would be increased use of Environmental Impact Assessments (EIA) for tree planting schemes. For example, for land under 5 hectares (which is currently subject to an exemption). This was particularly important with the current pressure to plant more trees.

It was noted that there were thresholds and that the threshold for tree planting in a protected site without an EIA was zero. She confirmed that most tree planting was done through a Glastir management scheme and both Glastir and EIAs used the same processes and checklist. The EIA legislation had been reviewed recently - in 2019, including for forestry, and amendments had been made. She noted that not much planting occurs without an EIA.

There was a backlog in Wales of SSSI designations. She considered there was potential for legislative changes to introduce a statutory deadline by which decisions need to be made. The requirement to meet deadlines for designation of SACs and SPAs had gone following the UK's departure from the EU.

The need for some caution with introducing statutory timescales was highlighted as accompanying additional resources would need to be allocated to meet that requirement. It was questioned whether we should be targeting resources on new sites or ensuring existing sites were up to standard?

There was a feeling among farmers of requirements coming down from above. The partnership approach, for example with the local NRW officer, that used to exist, based on longer-term management agreements should be brought back. Farmers had valuable experience to contribute. It was difficult to know who the local partners were whereas previously this would have been known. It was considered that this relationship-building had been de-emphasised. Farmers were being made to do too much.

It was claimed that this greater partnership approach used to operate during the Countryside Council for Wales (CCW) days.

It was noted that the more experienced land agents were effective in building local relationships.

The current legislation did not have the necessary teeth with regard to certain kinds of planning applications which can result in damage to sites. The precautionary principle was needed to prevent harmful development.

It was said that management agreements seemed to work but were no longer very prevalent. The comment was made that activity generally follows the money.

Enforcement

Nerys Llewelyn Jones asked for views on the protected sites enforcement regime.

The latest NRW Annual Regulation Report - for 2021 - was now available. It covered wildlife, water resources and waste. It referred to the European Protected Species (EPS) regulations. There had been no enforcement action during the reporting period. The Regulators Code steers regulators towards seeking voluntary compliance rather than imposing fines and enforcement undertakings which could cost a lot of money. It was important to work with people to resolve issues. Nerys Llewelyn Jones asked whether the available enforcement mechanisms, leading to prosecution were too costly to implement? There was a need to follow the regulatory principles of repairing the damage rather than taking those responsible to court.

It was asked whether using the civil sanctions would be beneficial?

It was asked who was ensuring that NRW met its obligations? In response, it was said that Welsh Ministers had responsibility for NRW using the Annual Report, remit letters, and Senedd scrutiny mechanisms. It was also said a call for evidence used to be issued on NRW performance, but that no longer seemed to happen. It was questioned whether the EU exit had had an impact on the available mechanisms for raising concerns about NRW?

Did NRW had a clear handle on the condition of sites? How could enforcement be done if the condition of around half the features of protected sites were unknown? It was very strongly held that the matter should be resolved. Convictions required proof beyond reasonable doubt. This made it challenging to meet the evidential threshold.

Most of the NRW investigations were due to concerns reported to them. It was worthwhile considering civil sanctions as an option. There was an opportunity to expand the range of tools available to the regulator.

It was noted that the legislation for water pollution enforcement was quite draconian. Offences were strict liability, so even if a provider tried hard to operate effectively but caused pollution they could be prosecuted. It was recommended considering whether any lessons could be learned from that regime.

It was felt that establishing effective management agreements could be a good way forward. The overarching enforcement gap due to EU Exit needed to be addressed. Challenges were posed by the UK Government's approach to habitat regulations and EIAs. The current state of flux caused by the Retained EU Law Bill was a big threat.

The necessary resources should be provided to meet the needs of the environment. He It was considered that it could be done. The example was given of a recent social care event where the focus was on providing what was needed, rather than whether they had the necessary resources.

Nerys Llewelyn Jones concluded the session and said a call for written evidence would be issued shortly with a mid-January 2023 deadline.

Annex 4 Call for Evidence

Dear colleagues

I'm writing to issue a Call for Evidence on the management and protection of protected sites in Wales.

In my role as the Interim Environmental Protection Assessor for Wales (IEPAW, I have received a number of submissions about protected sites in Wales. As a result, I plan to produce a report on protected sites to Welsh Ministers to:

- assess whether the existing legal framework is functioning correctly;
- identify areas where the existing legal protection may not be delivering the intended benefits, particularly in relation to the protection and enhancement of biodiversity;
- identify potential gaps in existing legislation;
- identify areas where the practical application of the legislation may be impeded; and
- produce draft recommendations for how the law could be improved.

The report scope at this stage only includes terrestrial protected sites: Sites of Special Scientific Interest (SSSIs), Special Protection Areas (SPAs) and Special Areas of Conservation (SAC). It does not include protected/designated landscapes.

NRW's [2020 Baseline Evaluation project](#) assessed the quality of all protected sites - the first full assessment since 2003. They were unable to determine the condition of around half of the features of all sites (for example habitat quality or number of species) due to insufficient evidence. Of the features they were able to assess, 20per cent were in a favourable condition, 30per cent in an unfavourable condition and 50per cent not in a desired state.

In addition the Ministerial Biodiversity [Deep Dive recommendations](#) were published in October 2022. This focussed on Wales' approach to implementing the Convention of Biological Diversity (CBD) Global Biodiversity Framework target to protect at least

30per cent of the land and 30per cent of the sea by 2030. The current draft 1 of the post-2020 framework states: ‘Ensure that at least 30 per cent globally of land areas and of sea areas, especially areas of particular importance for biodiversity and its contributions to people, are conserved through **effectively and equitably managed, ecologically representative** and **well-connected systems of protected areas** and other effective area-based conservation measures and integrated into the wider landscapes and seascapes.’

With this in mind I’m seeking views and evidence on:

- Should there be a statutory duty to monitor protected sites? If so, as resources are finite, what is the best way of the key players contributing to an integrated monitoring strategy and facilitating a team Wales approach? Is focusing on monitoring features the right approach or should there be more sites-based consideration and a more balanced methodology?
- Should there be targets on the quality and connectivity of protected sites? If so, what should the targets cover?
- What changes should be made to the existing legal framework, if any, to ensure there is an improvement in the overall condition of protected sites? For example, could any legal mechanisms used for Special Areas of Conservation (SAC) benefit other protected sites categories?
- Are there any barriers to agreeing management agreements? If so, how could these be overcome?
- What, if any, changes to the current enforcement mechanisms would achieve better outcomes for protected sites?
- Please comment on any current or future legal mechanisms which could enable a more adaptive approach to site management leading to the better overall condition of a protected site.

Please could any written comments or evidence on the above questions be sent to me by **Friday 20 January 2023**. If a little longer is needed just let me know. Please also let me know if you're content for your comments/evidence to be quoted in the final report and attributed to you and/or your organisation. Further information about my role can be found at [Raising a concern about the functioning of environmental law](#).

Many thanks.

Ar rhan / On behalf of

Dr Nerys Llewelyn Jones

Asesydd Interim Diogelu'r Amgylchedd Cymru / Interim Environmental Protection Assessor for Wales

E-bost / E-mail: IEPAW@llyw.cymru / IEPAW@gov.wales

Annwyl gydweithwyr

Rwy'n ysgrifennu i gyhoeddi galwad am dystiolaeth ar reoli ac amddiffyn safleoedd gwarchodedig yng Nghymru.

Yn fy rôl fel Asesydd Interim Diogelu'r Amgylchedd Cymru (IEPAW), rwyf wedi derbyn nifer o gyflwyniadau am safleoedd gwarchodedig yng Nghymru. O ganlyniad, rwy'n bwriadu llunio adroddiad ar safleoedd gwarchodedig i Weinidogion Cymru i:

- asesu a yw'r fframwaith cyfreithiol presennol yn gweithio'n iawn;
- nodi lle nad yw'r amddiffyniad cyfreithiol presennol yn esgor ar y manteision a fwriedir, yn enwedig mewn perthynas â diogelu bioamrywiaeth;
- nodi bylchau posibl yn y ddeddfwriaeth;
- nodi'r ffactorau sy'n ein rhwystro rhag gweithredu'r Ddeddfwriaeth yn ymarferol;
a
- llunio argymhellion drafft ar gyfer sut y gellid gwella'r gyfraith.

Ar hyn o bryd, mae cwmpas y prosiect wedi'i gyfyngu i safleoedd gwarchodedig daearol yn unig, sef Safleoedd o Ddiddordeb Gwyddonol Arbennig (SoDdGAau), Ardaloedd Gwarchodaeth Arbennig (AGAau) ac Ardaloedd Cadwraeth Arbennig (ACAau). Nid yw'n cynnwys tirweddau gwarchodedig/dynodedig.

Gwnaeth prosiect Asesiad Gwaelodlin CNC yn 2020 asesu ansawdd yr holl safleoedd gwarchodedig - yr asesiad llawn cyntaf ers 2003. Nid oedd yn bosibl iddynt benderfynu ar gyflwr tua hanner nodweddion yr holl safleoedd (er enghraifft ansawdd cynefinoedd neu nifer y rhywogaethau) oherwydd nad oedd digon o dystiolaeth. O'r nodweddion yr oeddent yn gallu eu hasesu, roedd 20per cent mewn cyflwr ffafriol, 30per cent mewn cyflwr anffafriol a 50per cent ddim yn y cyflwr a ddymunir.

Yn ogystal, ym mis Hydref 2022, cyhoeddwyd yr argymhellion a wnaed yn sgil yr Archwiliad Manwl Gweinidogol ar Fioamrywiaeth. Canolbwyntiodd hwn ar y ffordd y byddwn ni yng Nghymru yn gweithredu targed Fframwaith Bioamrywiaeth Byd-eang y Confensiwn ar Amrywiaeth Fiolegol i warchod o leiaf 30per cent o'r tir a 30per cent o'r môr erbyn 2030. Mae'r drafft cyntaf presennol o'r fframwaith ôl-2020 yn nodi: 'Dylid sicrhau bod o leiaf 30per cent o ardaloedd daearol ac ardaloedd morol ar lefel fyd-eang – yn enwedig ardaloedd o bwys arbennig o ran bioamrywiaeth a'i chyfraniadau at fywydau pobl – yn cael eu gwarchod drwy fesurau cadwraeth seiliedig ar ardal a thrwy systemau o **ardaloedd gwarchodedig a reolir mewn modd effeithiol a theg**, sy'n **ecolegol gynrychiadol** ac **wedi'u cysylltu'n dda**, a'u bod yn cael eu hintegreiddio yn y tirweddau a'r morweddau ehangach.'

Gyda hyn mewn golwg rwy'n chwilio am farn a thystiolaeth ar:

- A ddylid gwneud monitro safleoedd gwarchodedig yn ddyletswydd statudol? Os felly, gan fod adnoddau'n gyfyngedig, beth yw'r ffordd orau o ennyn cyfranogiad gan chwaraewyr allweddol mewn strategaeth fonitro integredig, a hybu ymagwedd 'tîm Cymru'? Ai canolbwyntio ar nodweddion monitro yw'r dull cywir, neu a ddylid rhoi mwy o sylw i ddulliau seiliedig ar safle a methodoleg fwy cytbwys?

- A ddylid gosod targedau ar gyfer ansawdd a chysylltedd safleoedd gwarchodedig? Os felly, beth ddylai'r targedau eu cwmpasu?
- Pa newidiadau y dylid eu gwneud i'r fframwaith cyfreithiol presennol, os o gwbl, er mwyn sicrhau bod cyflwr safleoedd gwarchodedig yn gwella yn gyffredinol? Er enghraifft, a allai unrhyw un o'r mecanweithiau cyfreithiol a ddefnyddir ar gyfer Ardaloedd Cadwraeth Arbennig fod yn fanteisiol i gategorïau eraill o safleoedd gwarchodedig?
- A oes unrhyw beth yn atal cytundebau rheoli rhag cael eu cadarnhau? Os felly, sut y gellid goresgyn y rhwystrau hyn?
- Pa newidiadau i'r mecanweithiau gorfodi presennol, os o gwbl, fyddai'n cyflawni canlyniadau gwell ar gyfer safleoedd gwarchodedig?
- Nodwch sylwadau ar unrhyw fecanweithiau cyfreithiol presennol neu yn y dyfodol a allai hwyluso ffordd fwy ymaddasol o reoli safleoedd gan arwain at wella cyflwr safle gwarchodedig yn gyffredinol.

A fyddai'n bosibl i unrhyw sylwadau neu dystiolaeth ysgrifenedig am y cwestiynau uchod gael eu hanfon ataf erbyn **dydd Gwener 20 Ionawr 2023**. Os oes angen ychydig mwy o amser gadewch i mi wybod. Rhowch wybod i mi hefyd os ydych yn fodlon i'ch sylwadau/tystiolaeth gael ei ddyfynnu yn yr adroddiad terfynol a'i briodoli i chi a/neu eich sefydliad. Mae rhagor o wybodaeth am fy rôl i yn [Codi pryderon am sut mae cyfraith amgylcheddol yn gweithio | LLYW.CYMRU](#)

Diolch yn fawr.

Ar rhan / On behalf of

Dr Nerys Llewelyn Jones

*Asesydd Interim Diogelu'r Amgylchedd Cymru / Interim Environmental Protection
Assessor for Wales*

E-bost / E-mail: IEPAW@llyw.cymru / IEPAW@gov.wales