

Cynulliad Cenedlaethol Cymru Pwyllgor Amgylchedd a Chynaliadwyedd	National Assembly for Wales Environment and Sustainability Committee
Egwyddorion cyffredinol Bil yr Amgylchedd (Cymru)	General principals of the Environment (Wales) Bill
Ymateb gan Ymddiriedolaeth Natur Cymru	Response from Wildlife Trusts Wales
EB 28	EB 28



In addition to the evidence below, Wildlife Trusts Wales have contributed to, and endorse, Wales Environment Link (WEL) evidence.

SECTION 1 – RECOMMENDATIONS FOR INCLUSION

INTRODUCTION

Despite current policy, strategies and legislation to protect and enhance biodiversity it is in a state of major and continuing decline (Welsh Government’s Nature Recovery Plan¹, the UK National Ecosystem Assessment², State of Nature Report³ etc). For example, the State of Nature highlights that 60% of the 3,148 species that were assessed had declined in the last 50 years and 31% have declined strongly. A new Watchlist indicator assessing the state of 155 priority species showed that numbers had declined by 77% in the last 40 years.

Wales, along with other nations, have failed to hit its national and international agreed commitments and **non-statutory targets** (See Environment Strategy for Wales⁴) to:

- halt biodiversity loss by 2010, agreed under the Convention on Biological Diversity (CBD)(**The Environment and Sustainability Committee held an inquiry into that failure**⁵) and
- ensure that 95% of all international sites are in favourable conservation status (FCS) by 2010 and 95% of Sites of Special Scientific Interest (SSSI) in FCS by 2015 – with all sites being in FCS by 2026⁶. (**NB. A rapid review in 2006 judged that conservation features at only 47% of Welsh (SSSIs) were in favourable condition**⁷)

It is worth noting that the decline of biodiversity is not because traditional conservation efforts have failed. This decline is due to the enormous scale of the challenge caused by;

- the failure to sufficiently integrate nature conservation into Government policy areas such as agriculture and economic development
- a lack of significant long-term funding
- a lack of leadership to gain the political momentum to tackle the issues causing the decline in biodiversity and
- a lack of accountability and no consequences for the failure to meet non-statutory targets.

We welcome Welsh Government’s intentions to tackle some of these issues. The Environment Bill is an opportunity to reinforce the ‘Resilient Wales’ goal of the Well-being of Future Generations (WFG) Act. It can give a new statutory driver to recover biodiversity and restore the services that we need from it. However, in order to achieve this goal, we believe that there are a number of key elements missing from the Bill – namely:

- statutory biodiversity targets;
- mechanisms for delivery for action to halt the loss of biodiversity and to restore it;
- consequence’s for not delivering on the above; and
- sufficient independent scientific advice/ consultation

Statutory independent scientific advisory panel

Part 1 of the Bill proposes

- new biodiversity duties (Clause 6(1) and 7(3)) for public authorities and Welsh Ministers
- the creation of a number of new reporting commitments, biodiversity lists, a State of Natural Resources Report, Area Statements and a National Natural Resources Policy and

¹ Draft Nature Recovery Plan <http://gov.wales/docs/desh/consultation/140910-nature-recovery-plan-consultation-en.pdf>

² UK National Ecosystem Assessment <http://uknea.unep-wcmc.org/>

³ State of Nature Report <http://www.wildlifetrusts.org/news/2013/05/22/state-nature-60-uk-species-decline-groundbreaking-study-finds>

⁴ Environment Strategy for Wales (2006) <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

⁵ Committee Report on the Inquiry into Biodiversity (2010) <http://www.assembly.wales/Laid%20Documents/CR-LD8384%20-%20Sustainability%20Committee%20Inquiry%20into%20biodiversity%20in%20Wales-31012011-208859/cr-ld8384-e-English.pdf>

⁷ From 2006 CCW Rapid Review of SSSI in Wales - As reported in the UK NEA - Chapter 20: Status and Changes in the UK’s Ecosystems and their Services to Society: Wales downloaded from <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

- NRW and/or Welsh Ministers to implement the policies or Area Statements and encourage others to take such steps.

However, many of these processes have very few consultation requirements (if any). For example, there is no duty for Welsh Government to consult on the National Natural Resource Policy (CL9) even with NRW. This detracts from greater scrutiny and may constitute an inappropriate manner of rulemaking contrary to the **Aarhus Convention**⁸ which provides the right to participate in environmental decision-making. This states that “**Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it**”.

To increase accountability and transparency, we **recommend** that

- the Bill sets up an **statutory independent scientific advisory panel** – a **Biodiversity Commission** - to advise on all the new requirements in Part 1 of the Environment Bill and WFG Act Resilient Wales Goal. In practice would be the **Welsh Biodiversity Strategy Board** thus requiring little new resources. However, as these groups include environmental NGOs, amongst others, Welsh Government should compensate NGO participants for their time and associated expenses.
- The Commission should be chaired by a **new independent Biodiversity Commissioner** who should report to the Wellbeing and Future Generations Commissioner.
- The Commission and Commissioner have the same rights and responsibilities as the other Commission and Commissioners.

As biodiversity and ecosystem services are our life support systems, biodiversity at least requires a position on a par with the other Commissioners.

Biodiversity targets

We **recommend** that the Environment Bill has an opportunity to make statutory the **current commitments under the Environment Strategy for Wales (p36)**⁹ and the **EU Biodiversity Strategy**¹⁰, namely :

1. To ensure that all **designated sites** are truly in favourable conservation status (FCS) by 2026 (or have the management in place by 2026 to allow FCS to be achieved)
2. **A headline target for 2020:** "Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss.";
3. **2050 vision:** “By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.”

Targets two and three could be implemented by a **15% increase in biodiversity by 2050** with interim targets set every five years. We would also **recommend** that the Bill require NRW to implement the Lawton Review¹¹ - Making Space for Nature - by Sir John Lawton. This report into protected sites found that they need to be **‘better, bigger, more and connected’** to secure wider ecological resilience.

The Environment Strategy for Wales foreword was given by the then Minister for Environment, **Carwyn Jones AM**, where he pledged his “**ongoing commitment to delivering the vision set out in the Strategy**” (e.g. halting the loss of biodiversity by 2010, and FCS by 2026). We hope that this is still the case, and that the revised targets will be put into the Environment Bill.

Whilst setting targets is relatively easy, monitoring and measuring against the targets will be more difficult. There is currently a monitoring system in place for designated sites. Regarding species and habitats, we already have a lot of information and we are developing a set of indicators to measure progress towards the Resilient Wales Goal which should be used to monitor and measure the Biodiversity targets – thus no duplication of effort is required. This indicator(s) may be based on one or more of

⁸ Aarhus Convention - <http://ec.europa.eu/environment/aarhus/>

⁹ <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

¹⁰ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

¹¹ <https://www.gov.uk/government/news/making-space-for-nature-a-review-of-englands-wildlife-sites-published-today>

- the biodiversity list required under Clause 7 of the Bill (NERC Act section 42 list),
- the Watchlist Indicator from the State of Nature,
- the Red Lists for threatened species
- Welsh Government Sustainable Development wild bird lists and index and or
- Living Planet Index

Also, this reporting and monitoring can be improved over time as better data (and data on more groups of species) becomes available. By 2050 we would have also 35 years of State of Natural Resources Reports. Progress towards the targets could be reported in the new Wellbeing Plans, National Natural Resources Policy and State of Natural Resources Report, thus no new reporting mechanism is required.

Why? Statutory targets help drive political change, prioritise action and direct funding. For example,

- Environment Bill includes targets to reduce greenhouse gas emissions by 80% by 2050. In announcing this commitment, the Minister Carl Sargeant AM stated **“Including statutory targets will allow us to better evaluate progress, provide certainty to help drive investment...and confirm achievable targets to work towards”**.
- Section 3 of the Waste Measure 2010¹² sets targets for Local Authorities in respect of recycling and makes those that do not meet them liable to a **financial penalty**. For every 1% missed from Welsh Government targets, Local Authorities get fined £400,000¹³. Statutory targets in waste helped take recycling from a less than 10% in 2000 to a Wales average of 54.3% today. The Minister Carl Sargeant AM stated **“We are still the only UK government that has set statutory recycling targets and this focus is delivering results”**¹⁴.

Recently, the Minister wrote to Local Authority Chief Executives asking them to maintain their ecological expertise so that they could undertake their forthcoming duties (WFG Resilient Wales Goal) and their existing duties (NERC Duty) let alone the new duties under the Environment Bill. We believe that the response that the Minister received was broadly ‘give us more money’. However, we are aware that the Sustainable Development Grant from Welsh Government to Local Authorities is in many cases being used, almost exclusively to meet waste targets with little or no money spent on, or hypocathed to, biodiversity – leading to ecological jobs being lost or under threat.

Welsh Government has highlighted the benefits of statutory waste targets¹⁵ including providing more green jobs and increasing skills as well as ensuring that everybody can contribute. We believe that these outcomes and more can be achieved through setting biodiversity targets – see the EU Report on the **Economic benefits of Natura 2000**¹⁶ and the DEFRA report on the **Benefits of Sites of Special Scientific Interest**¹⁷. The DEFRA report has estimated that every £1 spent on maintaining SSSIs, it delivers £8 worth of benefits to the economy and society - this is likely to be an underestimation. These reports highlight the significant **multiple benefits** including economic benefits from restoring our most precious sites and biodiversity. However, as previously noted only 47% of Welsh SSSIs are in favourable condition.

Therefore, we **recommend** that the Bill set consequences for non-delivery of the targets.

General Binding Rules

We are disappointed that the General Binding Rules have not been included within the Bill – but acknowledge they are proposed as a possible experimental measure (CL22). We support the use of General Binding Rules in order to tackle offences such as diffuse pollution which has a significant adverse impact on biodiversity including both nationally and internationally designated sites such as SSSIs. General Binding Rules could help tackle poor environmental practice and diffuse pollution which is currently outside current regulatory system – particularly poor land management practices in rural locations.

The scale of poor land management practice is, as evidenced by NRW¹⁸, the reason why many water bodies fail the Water Framework Directive in Wales. General Binding Rules have the potential to bring equity and proportionality

¹² The Waste Measure 2010

http://gov.wales/topics/environmentcountryside/epq/waste_recycling/legislation/measure2010/?lang=en

¹³ See Capital Times [https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

[Times/Documents/Capital%20Times%20June%202015%20English.pdf](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

¹⁴ <http://www.letsrecycle.com/news/latest-news/wales-hits-record-54-recycling-rate-201314/>

¹⁵ http://gov.wales/topics/environmentcountryside/epq/waste_recycling/zerowaste/?lang=en

¹⁶ http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf

¹⁷ <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005>

¹⁸ <http://naturalresources.wales/media/1785/water-strategy-for-wales.pdf>

to regulation for relatively minor, but widespread, poor practice. They have the potential to encourage more sustainable land management practices and key environmental outcomes.

This model has been used to great effect in Scotland enabling resources to be freed up to concentrate on serial offenders.

Stronger Wording

In many places the Environment Bill uses weak language which in turn could create weak policy or get-out clauses. Examples include:

- ‘consider the appropriate scale...
- ‘Promote and engage...
- ‘take account of all relevant evidence and gather evidence in respect of uncertainties
- Take account of...
- Seek to achieve
- Have regard to
- For contributing
- They consider relevant
- As it appears to them
- Reasonably practicable
- otherwise have an adverse effect on the exercise of the public body’s functions

We would like stronger language used such as ‘give effect to...’, ‘must ensure’, ‘achieve’, ‘deliver’. However, we are unsure of the legal definitions and would **recommend** that the Committee to look into the definitions of the above wording and suggest appropriate language that will clearly **drive action** to recovery nature.

SECTION 2 – SPECIFIC COMMENTS ON THE BILL

CL2 (a) Natural resources

Natural Resources are partly defined as ‘animals, plants and other organisms’. The Explanatory Memorandum states that the list does not include description of scale at which individual components exist such as habitat or landscape. The list is supposed to be building blocks of ecosystems. However, biological diversity (biodiversity) is the basis of ecosystems. Therefore, we **recommend** that ‘animals, plants and other organisms’ should be changed to ‘biodiversity’. This will also have the effect of creating consistency within the Bill (e.g. CL6 – Biodiversity and resilience duty) and external commitments such as the EU Biodiversity Strategy to halt the loss of biodiversity by 2020. The term ‘Biodiversity’ is consistent with the Explanatory Memorandum as it does not imply scale but is *the* building block of ecosystems.

CL5 - General purpose of NRW

We have previously evidenced a number of concerns regarding NRW’s purpose to the Committee. Principally, a reduction in ecological expertise and that NRW ‘**has a wider statutory purpose**’ putting perceived socio-economic considerations ahead of environmental protection.

As Wales’ **Statutory Nature Conservation Body** (SNCB), NRW is required to show clear, strong and strategic leadership on the natural environment as well as protecting **and enhancing biodiversity**. Therefore, we would like to see the re-establishment of NRW’s primary responsibility, the protection and enhancement of the environment including biodiversity.

As such, based on legal advice obtained by RSPB, we **recommend** ‘*seek to*’ should be omitted as it is weak language. In addition, WTW **recommend** that the general purpose of NRW, to align with the WFD Act and their role as the SNCB, should include, ‘The Body must;

- achieve, deliver and champion the **Resilient Wales Goal** of the Well-being of Future Generations Act.
- apply the ‘**Sandford Principle**’ “*If it appears that there is a conflict between economic, social or environmental purposes, NRW shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.*”

CL3 - Sustainable management of natural resources

CL (1) - As the general purpose of NRW (CL 5 of the Environment Bill) is to achieve sustainable management of natural resources as defined by CL3 – we **recommend** that CL3(1) 'sustainable management of natural resources should include;

- ensuring the maintenance and enhancement of biodiversity (as per the CL7 list of the Environment Bill – currently NRW are not charged with this duty).
- ensuring that the EU Biodiversity Strategy is achieved in Wales
- ensuring that all statutory designated sites are favourable condition by 2026 and implement the Lawton Review – Making Space for Nature
- ensuring Wales has a coherent and resilient ecological network
- the 'Sandford Principle'
- adaptation to climate change

We also **recommend**, based on legal advice obtained by the RSPB that in CL3(1)(a+b) 'promotes is' replaced by 'contributes to'

CL3(2) - The resilience of ecosystems appears to be explained later under principles of sustainable management (CL4). The Explanatory Memorandum gives a purposive approach to interpretation – which gives the objective a potentially very wide remit. This then can deliver tensions within the interpretation of the Bill between e.g. windfarms on peatland delivering a resilient climate via renewable energy but degrading peatland adding to climate change. Therefore, the use of the Sandford principle, in CL5, gets around those tensions.

The Environment Bill or the Explanatory Memorandum should also clarify that 'ecosystems' is based on the CBD definition: "a dynamic complex of plant, animal and microorganisms and their non-living environment interacting as a functional unit".

In order to make sure that there is consistency within the Bill on biodiversity, that the Bill delivers for biodiversity and based on legal advice obtained by the RSPB be we **recommend** that the objective is strengthened by being changed to "*The objective is to maintain, enhance and restore biodiversity and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting the needs of present generations of people without compromising the ability of future generations to meet their need*"

CL4 – Principles of sustainability management of natural resources

CL4(a) require NRW to "Manage adaptively, by planning, monitoring and reviewing action", however there is no requirement to act following review. Therefore, we **recommend** a change that requires NRW to act following review, assisted by the Biodiversity Commission and Commissioner.

The Bill should recognise the importance of biodiversity – the building block of ecosystems - as well as ecosystems. Therefore, we **recommend**, based on legal advice obtained by RSPB, that "*The condition of biodiversity (species and habitats) within ecosystems*" is added to section 4(g). We also **recommend** this section should include the management of ecosystems '*within the limits of their functioning*', the precautionary principle and considering the effect of management decisions '*on adjacent and other ecosystems*'.

CL6 Biodiversity and residence of ecosystems duty

The duty states "*A public authority must **seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions***".

While this duty is stronger than the existing duty to "*have regard to the purpose of conserving*" biodiversity (s. 40 NERC Act 2006) it still leaves a lot of unanswered questions, namely:

- **What is the mechanism for delivery of action?**
- **What will this legislation require public bodies to do differently?**
- **What are the deliverables**
- **What are the consequences for non-delivery?**
- **Is 'so far as consistent with the proper exercise of those functions' a get out clause?**

The only mandatory action under this Clause is to publish a report on what Public Authorities have done to comply with the duty before end of 2019 and before the end of every third year thereafter. We **recommend** earlier and more frequent reporting is needed. Indeed, **there are very few mandatory requirements** to do anything other than produce reports, statements, or policies within this Part 1 of the Bill. What we need is to enable action,

monitor and report against such action, and for there to be clear consequences for non-compliance (e.g. similar to the recycling targets).

We believe that duty could be stronger – therefore we **recommend**

- CL6(1) changed to – (a) *A public authority must maintain, enhance and restore biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversity and the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.*
(b) A public authority achieve the ‘sustainable management of natural resources’ and apply the ‘principles of sustainable management of natural resources’ which have been given meaning by section 3 and 4 respectively of the Environment (Wales) Act 2016.
- CL6 (2) includes ‘*The condition of biodiversity (species and habitats) within ecosystems*’.
- CL6 (5) should be changed to
 - (a) *“A public authority to which subsection (1) applies must publish an annual report on what it has done to comply with the duty in that subsection in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty. This report should be produced following consultation with the Biodiversity Commission and Commissioner and NRW”*
 - (b) *A public authority to which subsection (1) applies should have sufficient ecological expertise and allocate appropriate resources to deliver their new duty.*

In the case of local authorities, **as per the Minister letter to Local Authorities recently**, we **recommend** that CL6(5)(b) should require them to have sufficient staff and resources to implement their duties under Land Use Planning and the new Biodiversity Duty (e.g. Biodiversity Enhancement Officers and Planning Ecologists). Other Public Authorities should be required either have their own ecological experts, or at the very least, to have access to ecological expertise (e.g. local Wildlife Trusts or Biodiversity Enhancement Officers acting as paid consultants via a Service Level Agreement).

We **recommend** that the Bill include **consequences for non-delivery**, such as penalties e.g. 1% of public authorities budget is deducted annually and put into a Welsh Nature Fund.

CL7 – Biodiversity lists and duty to take steps to maintain and enhance biodiversity

Welsh Ministers are to publish a list of living organisms and types of habitat which are of principal importance for the purposes of maintaining and enhancing biodiversity (the ‘list’). This list is likely to be the current NERC section 42 list. However, the Bill does not appear to

- a) Require Welsh Ministers to consult with anyone other than NRW – however, it is not clear if CL4 (c) requires NRW to consult with external organisations such as environmental NGOs.
- b) Require other public authorities to maintain and enhance the biodiversity on the list (currently they don’t even have to regard to the list).
- c) Detail how Welsh Ministers will a) take such steps as appear to them to be reasonably practicable to maintain and enhance features on list b) encourage other to take such steps.

Similar to CL6, the duty still leaves a lot of unanswered questions. **Therefore, we recommend that**

CL 7(1) be changed to - *The Welsh Ministers must, in consultation with NRW and the Biodiversity Commission, prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of conserving, enhancing and restoring biodiversity in relation to Wales”*

CL7(2) *Before publishing a list under this section the Welsh Ministers must consult the NRW and the Biodiversity Commission as to the living organisms or types of habitat to be included in the list*

Section CL7(3) be replaced by “Without prejudice to section 6 and in consultation with NRW and the Biodiversity Commission

- a) *the Welsh Ministers must, maintain, enhance **and restore** the living organisms and types of habitat included in any list published*
- b) *all public authorities must, maintain, enhance and restore the living organisms and types of habitat included in any list published under this section.*
- c) *Welsh Ministers and public authorities must publish an annual report on what it has done to comply with the duty in CL7(3)(a+b) in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty.”*

We **recommend** that the Bill include **consequences for non-delivery**

CL8 – Duty to prepare and publish state of natural resources report

There is no detail on the content report. We are also concerned about the capacity for NRW to solely report on and prepare reports on the state of the natural resources in Wales. We are concerned that it will be difficult

- for NRW to report objectively on their own performance or be critical of other public bodies
- for NRW to report on the state of natural resources given the significant loss of ecological expertise within the organisation.
- To report using data that comes from environmental NGOs whose funding is not secure and, or the significant amount of voluntary recorders that are organised through environmental NGOs

Therefore, we **recommend** that NRW should consult with, and co-produce, the State of Natural Resources Report with the Biodiversity Commission and Commissioner. We **recommend** that Environmental NGOs, and long term scientific studies (e.g. guillemots on Skomer), are properly funded to deliver the required data. In addition, we **recommend** that the report should highlight the obstacles to the targets and duties within the Bill being achieved.

Clarity is required on how SoNaRR will deliver sufficient monitoring and reporting on the marine environment, given the paucity of baseline data. We seek clarity on how Wales' **marine environment** will be monitored and reported on to improve the current data and meet the 2020 target of Good Environmental Status under the Marine Strategy Framework Directive.

CL9 - National Natural Resources Policy (NNRP)

There is no duty to consult on contents of policy, even with NRW. In addition, the duties are weak as they only require; "Welsh Ministers must take such steps as appear to them to be reasonably practicable to implement the policy" and "Welsh Ministers must encourage others to take such steps"

We **recommend** that

- Welsh Ministers consult with, and co-produce, the NNRP with the NRW and the Biodiversity Commission and Commissioner.
- all Public Bodies should be required to implement, and report on, the NNRP

WTW would like clarification on whether the NNRP will include **marine** resources or is it the Welsh Government's intention to only include marine resources within the Wales National Marine Plan (WNMP)? Also, how will the NNRP be integrated within current and emerging marine policy?

CL10 - Area Statements

There is no duty for NRW to consult on Area Statements – the geographical area they cover, the number of Area Statements in Wales or the content of the statement.

NRW can ask other public bodies to provide information or other assistance in preparing area statements (CL 14). Public bodies must oblige unless it is incompatible with their own duties or would "*otherwise have an adverse effect on the exercise of the public body's functions*". The latter point could be used as a get-out clause, leaving the system open to abuse, if the public body stated that they don't have the time or resources to comply with the request. Also, while NRW are tasked with implementing the area statements but there is currently no requirement for Welsh Ministers to implement them.

We **recommend** that

- NRW consult with, and co-produce, the Area Statements with the Biodiversity Commission and Commissioner.
- there needs to be better controls on what constitutes having an 'adverse effect'
- a general duty is included for all public authorities (including Ministers) to take account of, and implement, area statements.
- the Bill includes the same requirements on public bodies to cooperate with the WFG Commissioner and that there are consequences from a refusal to co-operate?

It is not clear within the Bill whether Area Statements would pertain to the Welsh **marine** area or if this is solely fulfilled by the WNMP. If the latter is the case WTW would seek clarity in how terrestrial Area Statements would interact with the WNMP and how the land – sea interface would be managed.

CL 12 Directions to Implement Area Statements

The Bill does not give Welsh Ministers the power to direct themselves to address the Area Statements e.g. putting resources into achieving the area statements. Therefore, we **recommend** that the Bill is amended to allow Welsh Ministers to direct themselves.

CL22 - Power to suspend statutory requirements for experimental schemes

We support powers that allow NRW to achieve sustainable management of natural resources. However, we are concerned that this clause could open the door to practices that will have a negative impact upon the environment especially as statutory requirements could be suspended for up to 6 years. For example,

- trialling biodiversity offsetting which has been shown to lead to a net loss of biodiversity¹⁹.
- the case study within the Policy Intent Statement to enable NRW on behalf of Welsh Ministers to suspend the 'balancing duty' between forestry operations and nature conservation.

Therefore, we would **recommend** that, prior to suspending statutory requirements, NRW and Welsh Ministers consult with the Biodiversity Commission and Commissioner. Also, that the power to suspend statutory requirements for experimental schemes should include a requirement to monitor the impact of suspension of the statutory requirements and to revoke the suspension if it is suspected that undue damage is being caused.

CL57 - Charges for Carrier Bags

The single-use carrier bag charge was introduced as a type of 'green levy' to enable behaviour change by encouraging a reduction in the usage of plastic bags because they have a significant negative impact upon the environment due to:

- The use of **natural resources** in production - plastic bags are made from polyethylene, a product of petroleum, which is a non-renewable resource.
- They are not **biodegradable** and take hundreds of years to breakdown - when they do eventually breakdown, it's into a "plastic dust" which contaminates wildlife, the soil and the water, the towns and countryside, the oceans and the seas.
- Plastic bags are responsible for the **suffocation** and deaths of animals through unintentional digestion or inhalational - animals mistake them for food and can die as ingested plastic bags obstructed their digestive systems.
- **Entrapment** – many terrestrial animals and marine life get entangled in plastic bags and starve to death as a result.

The justification for the inclusion of 'bags for life' and minimum charging on all types of carrier bag is well made in the explanatory memorandum. However, **we are disappointed that, given the significant environmental harm caused by plastic bags, the Environment Bill calls for the proceeds of the carrier bags to go to 'any good cause' rather than 'environmental good causes'**. We believe that legislation that reduces the number of environmentally harmful carrier bags produced (and littered) should benefit organisations that work to protect the environment. Without such link, there is no connection between cause and effect and does not re-enforce attitude and behavioural changes. The possible adverse effect of the inclusion of social criteria (any good cause) would be to create a new social norm that would associate buying plastic bags with 'doing good'.

We could not imagine if a Health (Wales) Bill was introduced and included a levy on junk food in order to reduce the levels of obesity in Wales, it would legislate that the money raised be spend on 'any good cause' rather than 'health initiatives to combat obesity and associated health issues'. Spending a 'junk food levy' on pollution prevention would do little to challenge people to consider the impact of junk food on obesity levels.

We also disagree with the explanatory memorandum that just because sellers have an existing relation with non-environmental charity is sufficient justification for not requiring them to apply the net proceeds to purposes that will benefit the environment. This requirement does not 'cut across existing relationships', it merely alters them – if a seller has an existing relationship with a charity there are many other ways that relationship can flourish (being their charity of the year, staff volunteering or salary sacrifice, in-store promotion days such as bag packs). In addition, the current proposals enable sellers give to 'good causes' outside Wales rather than requiring the proceeds to be kept in Wales. Whilst social issues may be more emotive and attractive in the public eye for charity giving, environmental charities have a much greater wider social and economic reach that is often gone unrecognised.

Therefore, we **recommend** that the Bill enact Schedule 6 of the Climate Change Act as amended by the Waste (Wales) Measure 2010 which requires the sellers to apply the net proceeds to purposes that will benefit the environment. However, the Bill should make it explicit that the proceeds are used to help the Welsh environment or we will continue to see biodiversity loss and species extinction in Wales.

¹⁹ Curran et al 2014 Is there any empirical support for biodiversity offset policy?

http://ec.europa.eu/environment/integration/research/newsalert/pdf/biodiversity_offsetting_habitat_386na3_en.pdf

It is worth noting that environmental charities have a direct (and indirect) social and economic impact, as well as contributing to the natural environment. Projects (often based in some of the most deprived areas of Wales) have delivered much wider benefits. This is the basis of our very successful partnership with the Co-operative Food.

The **Welsh Wildlife Heroes** campaign is run by Wildlife Trusts Wales and funded entirely by the money collected from the single-use carrier bag charge in The Co-operative food stores in Wales. This funding is being used by the six Wildlife Trusts in Wales to focus the **Welsh Wildlife Heroes** campaign towards:

- Empowering the people of Wales, especially in **Communities First** areas, to become wildlife heroes by working with them to create wildlife friendly gardens, improve the greenspace within their community and school as well as increasing their access to the environment.
- Supporting native species and improving habitats for some of Wales's rarest and most endangered wildlife.

We would therefore like to invite the Committee to visit a Welsh Wildlife Hero community event to show you how the single use carrier bag levy is helping both Welsh communities and the environment.

CL 72 – 76 Marine

The definition of 'harm' is defined too narrowly and we **recommend** that it should instead say "an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects" to bring it in line with Article 6(3) Habitats Directive.

Currently Welsh Ministers can only serve a site protection notice if "harm" to a European Marine Site (EMS) has occurred or is likely to occur. We **recommend** that this process should be triggered also where "harm may occur".

It is unclear under CL74 as to how the cost will be recovered for damage to an EMS as there is no legal basis for a criminal offence and therefore no legal requirement for cost recovery.

Under CL 74 5B (2) and 5B(4)(c) there is reference to "take steps" we **recommend** that this wording to be strengthened as this current wording still allows for harmful activity to take place within EMS.

CL77 – 81 Marine

WTW welcome the proposal under CL78 to introduce further charges for marine licencing and the associated monitoring activities under the licence, interpretation of results of monitoring and costs of dealing with the licence. We also welcome the proposals under CL79 for the licencing authorities to seek a deposit and where necessary charge supplementary fees for the work undertaken.

However, we are concerned that these proposed charges will not be fully equivalent to cost recovery. We would **recommend** full cost recovery to ensure that the marine teams of both the Welsh Government and NRW are sufficiently resources to fulfil all of their functions.

It is also unclear within Part 6 of the Bill if the fees and charges that taken under the marine licencing duties will be reinvested within the Welsh Government and NRW marine departments or if they will be available to other departments? We **recommend** the need for these fees to be directly reinvested back into the marine departments to support future marine work including licencing.

We **recommend** that the proposal under part 6 is improved to enable an increase in the **evidence base** for the marine environment to inform future licencing decisions and activities in the marine environment (e.g. marine energy or mineral abstraction). This could be achieved via a mechanism within the Bill for the licencing authority to charge a fee or levy to contribute towards research/evidence gathering. The Bill could also provide a statutory duty for developers to release data on the marine area to the public domain once the outcome of the plan or project has been determined. These or similar mechanisms would aid the marine regulator and competent authorities in combating the paucity of data within the marine environment, this would in turn reduce the risk of damage to sensitive marine systems.