

Advice on the process for publishing and updating conservation objectives

STATUS: FINAL DRAFT

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1 Introduction and brief

1.1 Brief

1.1.1 DTA Ecology has been commissioned to provide advice to the Department of Agriculture Environment and Rural Affairs. The advice is relevant to the production and maintenance of conservation objectives as referred to under the Habitats Directive and associated domestic legislation, namely the Conservation (Natural Habitats &c.) Regulations (Northern Ireland) 1995 (as amended)¹, hereafter referred to as the Habitats Regulations.

1.1.2 DAERA have requested advice concerning:

- Clarification of the role of the Natural Environment Division within the Northern Ireland Environment Agency (NIEA) in producing conservation objectives
- Ongoing duties/expectations in terms of maintaining and updating conservation objectives
- Having regard to JNCC standards when producing/updating conservation objectives and comparison with other 'standards' such as those produced under WFD
- Advice on structure and content of our draft updated conservation objectives and supporting advice.

1.2 Sources of Information

1.2.1 In providing this advice reference has been made to:

- EC commission note on setting conservation objectives²
- Natural England Standard Conservation Objectives for European Sites in England³
- JNCC Statement on Common Standards for Monitoring Protected Sites⁴
- RSPB v SoS and BAE Systems in the High Court [\[2014\] EWHC 1645 \(Admin\)](#)
- RSPB v SoS and BAE Systems in the Court of Appeal [\[2015\] EWCA Civ 227](#)

¹ <https://www.legislation.gov.uk/nisr/1995/380/contents/made>

² [EC commission note on setting conservation objectives](#)

³ [Natural England Standard Conservation Objectives for European Sites in England](#)

⁴ [JNCC Statement on Common Standards for Monitoring Protected Sites](#)

2 Clarification of the role of NIEA NED in producing conservation objectives

2.1 The need to produce conservation objectives

- 2.1.1 Conservation objectives are central to a correct interpretation and application of the requirements of the Habitats Directive and Habitats Regulations.
- 2.1.2 There are several references to the term ‘conservation objectives’ within the preamble to the Habitats Directive and they are explicitly referred to within Article 6(3) of the Directive (transposed through regulation 43 of the Habitats Regulations). However, in spite of the central role played by the conservation objectives in meeting the requirements of the regulations, there is no explicit regulatory requirement to produce them.
- 2.1.3 This is not, in and of itself, a problem as the need to produce site level conservation objectives is implicit if the Habitats Regulations are to be fully implemented. By way of example, regulation 43 requires an appropriate assessment to be made ‘*in view the conservation objectives*’. The assessment requirements in respect of new plans and projects cannot therefore be satisfied if conservation objectives are not available.
- 2.1.4 The EC commission note on setting conservation objectives recognises the indirect requirement to produce conservation objectives; it refers to the various references to the conservation objectives, and the concept of such objectives, before concluding:

‘These above mentioned provisions indicate the need for establishing site-related conservation objectives as a necessary reference for identifying site-related conservation measures and for carrying out appropriate assessments of the implications of plans and projects for a site.’

- 2.1.5 The importance of conservation objectives when undertaking a Habitats Regulations Assessment (HRA) of a plan or project, and applying the integrity test, has also been confirmed by the UK Courts in the *RSPB v SoS and BAE Systems* Court of Appeal decision. Here Lord Justice Sullivan explained (emphasis added):

6. The European Commission’s publication, “Managing Natura 2000 Sites”, gives guidance as to the interpretation of certain key concepts in Article 6 of the Habitats Directive. Paragraph 4.6.3 deals with the concept of the “integrity of the site”. This part of the guidance is summarised as follows:

“The integrity of the site involves its ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the site’s conservation objectives.”

7. In view of the CJEU’s decision in Sweetman and the Commission’s guidance there can be no doubt that the Secretary of State was correct when he said in paragraph 22 of the decision that the conservation objectives for the SPA were “fundamental” to his consideration of whether the cull sought by BAES may have: (i) a significant effect on the site, and (2) an adverse effect on the site.

- 2.1.6 The Natural England standard refers to the need for conservation objectives with reference to both assessment and management duties as follows (emphasis added):

More specifically, these Conservation Objectives must support the statutory provisions of the Habitats Regulations. In particular they must expedite the regulatory decision-making procedures required by the Habitats Regulations where European Sites are a necessary consideration. These Objectives are specifically needed by decision-taking and plan-making competent authorities to ensure that new plans or projects proceed without having an adverse effect on the integrity of a European Site unless, in the absence of alternative solutions, there are imperative reasons of overriding public interest and the necessary compensatory measures can be secured.

In addition, these Objectives will have a wider practical purpose in providing a general framework to inform any conservation measures necessary to achieve or restore as appropriate the conservation status of the qualifying features at a site level. They should also inform the selection of measures that may be necessary to prevent their deterioration and disturbance as a result of existing and ongoing activities.

2.2 The link between favourable conservation status, conservation objectives and condition standards

2.2.1 At a high level the overall aim of the Habitats Directive is to maintain or restore habitats and species to a 'favourable conservation status' (FCS). This objective applies at a countrywide level and EC guidance explains that '*the general objective of achieving favourable conservation status for all species and habitats types needs to be translated into site level conservation objectives which define the condition to be achieved by species and habitats within the representative sites*'.

2.2.2 In the UK the *condition* to be achieved through achieving the conservation objectives, at a site level (which indicates the extent to which the site contributes to achieving FCS at a UK level) is understood through UK wide condition monitoring against defined 'standards' to be achieved. A site which is in a 'favourable condition' is considered to be making a full contribution to favourable conservation status at a UK level. As such 'FCS' is translated into site level 'conservation objectives' which are evaluated and applied in light of common 'standards' for monitoring of site condition.

2.3 Responsibility for producing conservation objectives

2.3.1 The situation in terms of responsibility is slightly different in respect of European marine sites and terrestrial sites. In Northern Ireland, as a consequence of a legislative drafting error (which is currently being resolved through an amendment) the responsibility for producing conservation objectives for European Marine Sites falls upon the Secretary of State, and is clearly set out in regulation 28(2)(a) of the Habitats Regulations which reads as follows:

(2) As soon as possible after a site becomes a European marine site, the Secretary of State shall advise the relevant authorities as to—

(a) the conservation objectives for that site, and...'

2.3.2 Similar provisions in respect of European Marine Sites are provided in corresponding legislation within the devolved UK authorities. In other devolved authorities however the role of *advising* other relevant authorities as to the conservation objectives for European marine sites falls upon the appropriate nature conservation body.

Devolved administration	Regulation number	Responsible body
England & Wales	37	The 'appropriate nature conservation body' which is Natural England (England) or Natural Resource Wales (Wales)
Scotland	33	The 'appropriate nature conservation body' which is NatureScot

2.3.3 Whilst the role for advising as to conservation objectives for marine sites is clear, there is no equivalent legally defined responsibility for advising as to the conservation objectives in respect of terrestrial European site in any of the UK regulations.

2.3.4 In practice, the lack of clarification within the regulations of a responsibility to produce conservation objectives for terrestrial sites has not caused unnecessary confusion. It is common practice across the UK for conservation objectives to be produced and maintained by the body with responsibility for the identification and designation of sites and corresponding reporting duties. In England and Wales the term 'appropriate nature conservation body' is used to refer to such bodies who are formally defined in the England, Wales and Scotland regulations as Natural England, Natural Resources Wales and NatureScot respectively, whilst the nature conservation body role for offshore sites is assumed by the Joint Nature Conservation Committee across the UK. The Northern Ireland regulations refer to 'the Department' which is defined in regulation 2 as The Department of Environment.

2.3.5 The Regulations themselves are made by 'the Department', being '*a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to matters relating to the conservation of natural habitats and of wild fauna and flora*'. The Department also has specific statutory duties set out within the regulations requiring them to:

- Issue guidance relevant to the interpretation of the requirements of the Directives
- Publish a six yearly report on the implementation of measures taken for the purpose of giving effect to the Directive – regulation 3ZA
Designate sites – regulations 6 and 7
- Manage and adapt the national site network with a view to contributing to the achievement of the management objectives – regulation 8
- Publish a report on licences granted under regulation 39
- Be a statutory consultee following an appropriate assessment – regulation 43
- Make decisions in respect of imperative reasons of overriding public interest – regulation 44
- Amend and adapt the schedules in respect of species lists – regulation 76
- Amend of adapt Annexes to the Directives – regulation 77

2.3.6 In light of the above, it is entirely logical for the Department, being '*a Department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation*

to matters relating to the conservation of natural habitats and of wild fauna and flora, to also assume the role referred to in the wider UK Habitats Regulations as the 'nature conservation body' in Northern Ireland. Since 1995, this role has been effectively been fulfilled in Northern Ireland by the Natural Environment Division (NED) within the Northern Ireland Environment Agency, which is part of the Department of Agriculture, Environment and Rural Affairs (DAERA). This is entirely reasonable and reflects the absence of a stand-alone nature conservation advisory organisation within Northern Ireland which can be regarded as equivalent to Natural England in England or NatureScot in Scotland.

- 2.3.7 The role of the NED team within NIEA perhaps more closely reflects the roles of the conservation advisers within Natural Resources Wales, where their role as a statutory nature conservation body is separate and distinct from their role as a competent authority.
- 2.3.8 Looking across DAERA as a whole, no other team has an equivalent level of knowledge and expertise in respect of qualifying features of designated conservation sites. On a common sense basis, the provision of advice to relevant authorities as to the conservation objectives for sites is a natural extension of NEDs existing roles.
- 2.3.9 For the avoidance of doubt, there is no basis upon which to argue that *only* NIEA NED can produce conservation objectives. The publication of conservation objectives is necessary to facilitate the application of the Directive and Regulations. In a European context, the responsibility for producing conservation objectives is at a Member State's discretion. Having left the EU such discretion remains and the Department can assign the task elsewhere it may choose, so long as the conservation objectives *are* produced.

2.4 The status of conservation objectives

- 2.4.1 The status of conservation objectives is a nuanced issue. The brief did not specifically request advice on this issue, but some observations are provided here by way of the context within which this advice has been drafted and against which it should be interpreted and applied.
- 2.4.2 As a matter of law an appropriate assessment must be undertaken 'in view of the conservation objectives'. However, the wording of regulation 28 (and corresponding regulations across the devolved administrations) is clear that conservation objectives reflect the 'advice' of the nature conservation body.
- 2.4.3 When making a decision in respect of a plan or project under the Habitats Regulations, it is the competent authority who has the responsibility to apply the legal tests. An appropriate assessment must be made in view of the conservation objectives but the objectives are logically to be treated as 'advice' from the nature conservation body.
- 2.4.4 The role and status of the conservation objectives was considered in detail by the UK courts in the case of RSPB v SoS & BAE systems. Firstly in the High Court and subsequently in the Court of Appeal. At the first hearing the Court ruled at paragraphs 40-41 (emphasis added):

40. Two tentative and one firm conclusion can be drawn from these documents. The first tentative conclusion is that in 2011, Natural England contemplated that conservation objectives for the site would be met if 75% of the population of a species at designation of the site as a special protection area was maintained. The second, even more tentative conclusion, is that in its 2012 guidance, Natural England

was not identifying, as a conservation objective, the maintenance of a minimum number of an individual species on the site: hence the use of the plural, "populations" in the phrase "the populations of the qualifying features". If it had been intended to specify a minimum number for a species, it should have read "the population of each qualifying feature". The third firm conclusion is that, as Natural England recognised in the last paragraph of its explanatory notes, the documents are advisory, not determinative. In this the notice is consistent with Regulation 35(3) of the 2010 Regulations.

41. The conclusion which should be drawn from this is that it was for the Secretary of State to determine for himself what the conservation objectives for the Ribble Estuary site were. No doubt he would have failed to take into account a relevant consideration if he had ignored the advice given by Natural England; but he was not bound by it. The Secretary of State was entitled to determine for himself the size of the cull which would not adversely affect the integrity of the site. He undertook a meticulous analysis of the number of Lesser Black-backed Gulls on the site at designation in 2002 and accepted Natural England's conclusion that it was 4,100 pairs. He concluded that the conservation objective for this species should be to maintain or restore that population above 75% of that at designation.

- 2.4.5 The judgement of Mitting J in the High Court in 2014 was that published conservation objectives are *advisory* in nature, but he extended this to suggest that this advisory status allows a competent authority to effectively determine conservation objectives for themselves. He recognised that, in doing so, they should take into account the published conservation objectives but they are not bound by them. Unsurprisingly, given the lack of ecological expertise held by many competent authorities, this position attracted considerable scrutiny and permission was granted to appeal the decision.
- 2.4.6 A summary of the Court of Appeal decision by Graham Machin, a retired barrister, was published in the Habitats Regulations Assessment Journal in 2015. An extract from the article is provided in Box 1 overleaf:

Box 1: An extract from an article in HRA Journal in 2015 ‘The Ribble Case – order restored’

...Mitting J’s analysis of the statutory scheme differed in several fundamental respects from the broad consensus as to its operation previously shared by courts, lawyers and other professionals. For present purposes I draw attention only to the judge’s interpretation (at paragraph 28) of Regulation 5(1) of the Conservation of Habitats and Species regulations 2010, under which Natural England, as “the appropriate nature conservation body” has a duty to advise “other relevant authorities”, including the Secretary of State, as to the conservation objectives for a European Marine site. Mitting J held that this function “.... is, however, confined to advice. No person or authority is expressly charged with the statutory duty of setting conservation objectives. This has a consequence, as I shall explain.”

The “consequence” became apparent in the second part of the judgment, in which Mitting J considered the Minister’s reasoning. In paragraph 40 he expressed the firm conclusion that Natural England’s published conservation objectives for the SPA were advisory, not determinative, and that (paragraph 41) “it was for the Secretary of state to determine for himself what the conservation objectives for the Ribble Estuary site were..... He concluded that the conservation objective for [Lesser Black-backed Gulls] should be to maintain or restore that population above 75% of that at designation.”

The decision of the Court of Appeal, dated 18th March 2015 ([2015 EWCA Civ 227) consisted of the judgment of Sullivan LJ, with whom Sales LJ and Jackson LJ agreed without further comment of their own. The judgment concentrates on the reasoning of the Secretary of State, finds it legally flawed because it misinterprets the Conservation Objectives provided by Natural England, quashes the Minister’s direction for that reason, and finds it unnecessary to enter into a detailed consideration of Mitting J’s analysis of the statutory scheme. However, this brief overview understates the importance and force of the decision, for three reasons which I will advance under sub-headings used in the judgment.

Conservation objectives (paragraphs 5 – 11)

This is a concise but authoritative statement of the correct approach to conservation objectives drawing on the EUCJ decision in *Sweetman v An Bord Pleanála* (Case C-258/11), The EC’s guidance “Managing Natura 2000 Sites” and the 2004 version of the Joint Nature Conservation Committee’s “Common Standards Monitoring Guidance for Birds”; all appropriately related to Natural England’s conservation objectives for this SPA dated June 2012 and August 2011, both of which were regarded as relevant to the decision of the Minister for reasons explained in paragraph 20.

Discussion (paragraphs 19 – 34)

Both the 2012 and the 2011 conservation objectives were expressed to be “subject to natural change”; and this vital qualification lay at the heart of what the Court of Appeal found to be a misinterpretation by the Minister. He (paragraph 31) “wrongly used a generic threshold which allows for natural fluctuation in the bird populations of the SPA to justify deliberately reducing those populations to, and thereafter maintaining them at, a percentage (above 75%) of the population at designation, which in the absence of a known minimum is simply a proxy for the bottom end of their natural range.”

The same point is made more pithily at paragraph 22: “.... it is difficult to see how a deliberate reduction of the populations of two of the qualifying features to a level above 75% of that at designation could sensibly be said to be in accordance with the objective of maintaining those populations, subject to natural change.”

It is important to note that the Court's reasoning implicitly rejects the view of Mitting J that, provided he had regard to Natural England's advice on conservation objectives, the Minister could decide for himself what the objectives were. This is made explicit in paragraph 21, which reads: *"The 2011 and 2012 conservation objectives are not enactments, and should not be construed as such. However, it was common ground that they mean what they say, and do not mean what the Secretary of State, or for that matter Natural England or the RSPB, might wish that they had said. The conservation objectives must be read in a common sense way, and in context. They are conservation objectives for an area that has been classified as being of European significance under the Wild Birds Directive."...*

2.4.7 This helpful analysis by Mr Machin explains that the Court of Appeal supported a view that the conservation objectives are advisory in nature and are not 'enactments'. The dictionary defines 'enactment' in the following terms:

'the process in a parliament or other law-making body by which the law is agreed upon and made official'

2.4.8 It follows that a competent authority must have regard to the conservation objectives but they must be read in a common sense way, and in context. The Court of Appeal did however implicitly reject the view expressed by the High Court that the flexibility afforded by the advisory nature of the conservation objectives enabled the competent authority to effectively draft their own.

2.4.9 Given they are *advisory* in nature, some discretion is clearly afforded to a competent authority which is not bound by the conservation objectives in a strict legal sense but they must, as a matter of law, have regard to them. The *Wightlink* case⁵ established an important legal principle which is relevant to what it means, in practice, for a competent authority to 'have regard' to the advice of the conservation body. The UK Court ruled that:

'given Natural England's role as the appropriate national conservation body, [the competent authority] was in my judgment bound to accord considerable weight to its advice, and there had to be cogent and compelling reasons for departing from it.'

2.4.10 As such, a reasonable argument could be made whereby a competent authority remains free to depart from the conservation objectives, of which they have been advised, but they must have cogent and compelling reasons for doing so. The grounds upon which a competent authority might depart from the conservation objectives is considered in more detail in section 3.

2.4.11 Finally, it is also noteworthy that neither the High Court or the Court of Appeal challenged the approach whereby a decision-maker had regard to both the 2011 and the 2012 conservation objectives. There was no suggestion that, having been updated in 2012, a decision-maker was somehow precluded from relying on the earlier 2011 conservation objectives, should they find information contained therein which they consider to be relevant to the decision to be taken. This aligns with the underlying advisory status of the conservation objectives.

⁵ R (Akester & Anor) (On Behalf of the Lymington River Association) v Dept for Environment, Food and Rural Affairs and Wightlink [\[2010\] EWHC 232 \(Admin\)](#)

3 Ongoing duties/expectations in terms of maintaining and updating conservation objectives

3.1 Maintaining conservation objectives

- 3.1.1 As a matter of law, an appropriate assessment must be made ‘in view of the conservation objectives’. The Courts have also clarified that an appropriate assessment must be made in light of the ‘best scientific knowledge in the field’⁶. Whilst there is no legal duty to update conservation objectives, it is reasonable to draw an implicit assumption that they must be fit for purpose. If an assessment must be made *both* in light of the best scientific knowledge in the field *and* in view of the conservation objectives, it is implicit that there should be no contradiction between the two; if the conservation objectives do not reflect the best scientific knowledge they must be updated accordingly.
- 3.1.2 In practice this can raise challenges; the rate and pace at which scientific understanding moves forward could result in an ongoing need for conservation objectives to be updated and amended which might be overly burdensome on the public authorities concerned. This has resulted in a considered approach to how conservation objectives are drafted. On the one hand there should be sufficient detail for the objectives to be meaningful, on the other hand it is necessary to ensure that work associated with maintaining the objectives is manageable and proportionate.
- 3.1.3 **There is no formal process for updating conservation objectives.** The advisory status of the conservation objectives means that the conservation bodies have considerable flexibility to update and amend the objectives as they see fit and discretion is afforded to UK conservation bodies in this regard. Having said that, the formal recognition afforded to conservation objectives means that regular updates can present practitioners with perceived ‘moving goalposts’.
- 3.1.4 A helpful source of information in respect of an approach to maintaining conservation objectives, comes from the Natural England Strategic Standard. Whilst not binding with regard to any approach in Northern Ireland, it is a helpful illustration of the approach in England for purpose of comparison and consistency. Principle 9 of the standard reads as follows:

‘9. We will ensure the European Site Conservation Objectives and their Supplementary Advice remain as up-to-date as possible through the ‘continual improvement’ of the information and advice contained within them.

Maintaining the content of conservation objectives and their supplementary advice to make sure the information and advice they provide is as current and as up to date as possible has to be a sustained process which will require ongoing investment. This is critical to not only facilitating an objective and rigorous assessment and decision-making process, but also to ensuring the current status of the qualifying features of European sites is fully and properly taken account of.

Whilst we envisage that the European Site Conservation Objectives as set out in Annex 1 will themselves be unchanged, in order to meet this standard the supporting

⁶ Case C-127/02 Waddenzee Ruling (para 54).

detail and information provided as supplementary advice to the objectives is expected to be subject to periodic review by Natural England. The circumstances when we may do this might include for example, a formal change to the underpinning legal designation of a European Site, or improvements to the best available scientific knowledge and evidence relating to a particular site or a qualifying feature. Similarly, a review may be triggered by an improved understanding of Favourable Conservation Status for features at an UK level as referred to in Principle 2 of this standard.

Where such amendments have been made, we will clearly record why, when and how the content of a European Site Conservation Objective has been updated as an integral part of the documents.'

- 3.1.5 It is noteworthy that the Natural England approach is therefore to provide high level strategic conservation objectives, which they anticipate will largely be unchanged, to 'maintain or restore' standard ecological attributes. For example standard conservation objectives for SACs and SPAs are as follows:

<p>Natural England standard conservation objectives for SACs (with both habitats and species)*:</p> <p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;</p> <ul style="list-style-type: none">• The extent and distribution of qualifying natural habitats and habitats of qualifying species• The structure and function (including typical species) of qualifying natural habitats• The structure and function of the habitats of qualifying species• The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely• The populations of qualifying species, and,• The distribution of qualifying species within the site. <p><i>*conservation objectives for SACs without species features, or with only species features, are amended accordingly but follow the same format.</i></p>
<p>Natural England standard conservation objectives for SPAs</p> <p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none">• The extent and distribution of the habitats of the qualifying features• The structure and function of the habitats of the qualifying features• The supporting processes on which the habitats of the qualifying features rely• The population of each of the qualifying features, and,• The distribution of the qualifying features within the site.

- 3.1.6 In order to meet their own standard for continual improvement, and provide sufficient up-to-date detail to inform an appropriate assessment, they also produce supporting 'supplementary advice' to the conservation objectives which will be subject to periodic review. It is the supplementary advice which provides the site-specific 'sub attributes' and quantitative/qualitative 'targets' which explain what it means to achieve the conservation objectives, and against which the effects of plans and projects can properly be understood in view of the conservation objectives *and* best available scientific information.
- 3.1.7 It is the authors understanding, from informal conversations with staff at Natural England, that a review of supplementary advice for an individual site can be triggered by local staff as well as national staff. Some updates are relevant to the entire suite of designated sites and represent a centrally co-ordinated administrative step; but it is also possible for an update to be triggered on the basis of local knowledge, on an individual site basis.
- 3.1.8 The England approach allows the more formal conservation objectives to be high level and reasonably stable over time, even where scientific understanding moves forward. This aligns with the Commission Note which refers to an expectation that conservation objectives will be 'reasonably stable over time' and that, in most cases, they will need to be long term aims.
- 3.1.9 The 'supplementary advice' provides the more detailed attributes and targets which are subject to periodic review and reflect best available scientific information. For the purpose of HRA, standard wording in all supplementary advice explains its relationship to the conservation objectives as follows:

'You should use the Conservation Objectives, this Supplementary Advice and any case-specific advice given by Natural England, when developing, proposing or assessing an activity, plan or project that may affect this site.'

3.2 Taking account of best available scientific information

- 3.2.1 In England, the supplementary advice therefore explains that, for the purpose of a HRA a decision maker should refer to the conservation objectives, the supplementary advice, AND any case-specific advice provided by Natural England. This provides for a fallback position whereby case-specific advice can override the supplementary advice in the event that it is not up to date with best scientific understanding.
- 3.2.2 Whilst there is no legal duty to *update* conservation objectives, the need for conservation objectives to align with best available scientific information is implicit as the sufficiency of an appropriate assessment must be evaluated in view of both considerations. The UK Government and devolved authorities have discretion in terms of how conservation objectives are maintained but the concept of supporting or supplementary advice which is periodically reviewed has been successfully applied in England alongside a fallback position to rely upon case-specific advice to ensure that all assessment can be made in light of best available scientific advice.
- 3.2.3 The Natural England Standard includes the following by way of clarification that the supplementary advice is provided without prejudice to case-specific advice:

'The supplementary advice to the conservation objectives will also form the basis of Natural England's initial views regarding those attributes considered to be most important to a site's integrity. This will be provided without prejudice to more

detailed advice which is given by Natural England in its role as a statutory consultee and adviser to assist the detailed consideration and assessment of specific activities, plans and projects.'

- 3.2.4 Allowing for case specific advice to override the conservation objectives is an important consideration. Especially recognising the potential for a scenario whereby, in spite of best intentions, the conservation objectives or supplementary advice does not, at the time a decision is taken, reflect best scientific information.
- 3.2.5 DTA Ecology would offer a line of reasoning which might explain the underlying basis for the approach taken in England:
- As a matter of law, an assessment must be made in view of the conservation objectives (Regulation 43(1))
 - The conservation objectives are advisory in nature; they are produced within the intention of assisting decision-makers. They must be read in a common sense way, and in context (refer BAE systems Court of Appeal ruling)
 - A requirement to make an appropriate assessment *in light of best available scientific information* is an established legal principle (refer *Waddenzee* para 54)
 - Where advisory conservation objectives do not reflect best available scientific information a competent authority should exercise their discretion to interpret the conservation objectives in view of best available scientific information.
 - A competent authority must consult the nature conservation body for the purpose of an appropriate assessment. As such, should a competent authority be minded to depart from the conservation objectives in order to ensure that an assessment reflects best available scientific information, they will need to consult the nature conservation body and have regard to any representations they may make (regulation 43(3)).
 - If the conservation body agrees that a departure from the conservation objectives is appropriate under the circumstances which apply, this should not, in principle create grounds for legal challenge.
 - If the conservation body disagrees that a departure from the conservation objectives is appropriate under the circumstances which apply, the competent authority remains free to depart from their advice but they must have cogent and compelling reasons for doing so (refer Wightlink).

3.3 The approaches in Wales and Scotland

- 3.3.1 Approaches in Wales and Scotland follow a similar format to those in England. In Wales conservation objectives are contained within a site-specific 'Core Management Plan'. The conservation objectives are described as 'a composite statement defining site-specific aspirations for each designated feature. Each conservation objective is comprised of a 'vision' for the feature which is interpreted in light of accompanying 'performance indicators' providing listed 'attributes' and 'specified limits'.
- 3.3.2 In Scotland conservation objectives are published within a site-specific 'Conservation Advice Package'. Overarching conservation objectives are set for all habitat and species features. These are supported by feature-specific conservation objectives which provide quantitative and qualitative information against which the objectives can be interpreted and applied.

4 Having regard to JNCC standards when producing/updating conservation objectives

4.1 The role of JNCC common standards

- 4.1.1 The role of the JNCC is central to ensuring consistency across the UK in biodiversity matters which raise issues common to England, Wales, Scotland and Northern Ireland. In 2022 JNCC updated their Statement on Common Standards for Monitoring Protected Sites' document⁷. The 'Introduction' to the current document explains:

The Natural Environment and Rural Communities Act (NERC; 34(2)c) 2006) defines one of the special functions of the UK statutory Country Nature Conservation Bodies (the Department of Agriculture, Environment and Rural Affairs (Northern Ireland)), Natural England, Natural Resources Wales, NatureScot) and the Joint Nature Conservation Committee (JNCC), to establish "...common standards throughout the United Kingdom for the monitoring of nature conservation...". Common Standards were established in 1998 for statutory site monitoring and as a universal set of common principles that could be adopted by Statutory Nature Conservation Bodies in the UK.

Common Standards Monitoring was developed to provide an agreed approach to the assessment of condition on statutory sites designated through UK legislation and international agreements. UK designated sites where common standards have been applied include Sites of Special Scientific Interest (SSSIs) and Areas of Special Scientific Interest (ASSIs), Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), and international designations such as Ramsar sites designated under the Convention on Wetlands of International Importance. Common Standards Monitoring is also used for subtidal and wider marine features.

- 4.1.2 The establishment of common standards throughout the UK is therefore a requirement under section 34(2) of the NERC Act 2006. These common standards enable monitoring information from each protected site to be amalgamated to provide local, national and UK-wide assessments. A full understanding of the role of JNCC in the production of such standards is understood through reading Section 34(1-2) of the NERC Act in full:
- 1) *The UK conservation bodies have the functions described in subsection (2), but those functions may be discharged only through the joint committee.*
 - 2) *The functions are—*
 - a) *providing advice to the appropriate authorities on the development and implementation of policies for or affecting any nature conservation matter which—*
 - i) *arises throughout the United Kingdom and raises issues common to England, Wales, Scotland and Northern Ireland,*
 - ii) *arises in one or more (but not all) of those places and affects the interests of the United Kingdom as a whole, or*

⁷ [JNCC Statement on Common Standards for Monitoring Protected Sites'](#)

iii) arises outside the United Kingdom;

b) providing advice to any persons and disseminating knowledge about any matter falling within paragraph (a)(i), (ii) or (iii);

c) establishing 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;

d) commissioning or supporting (whether by financial means or otherwise) research which the joint committee thinks is relevant to any matter mentioned in paragraphs (a) to (c).

4.1.3 It is therefore the case that Section 34 imposes constraints upon the independence of the UK conservation bodies in respect of certain functions, which may only be discharged through the Joint Nature Conservation Committee (JNCC). **As such, the conservation body in Northern Ireland cannot independently establish standards for monitoring of nature conservation sites.**

4.1.4 The issue of the extent to which conservation objectives for European sites must reflect the JNCC standards is separate, but related. Conservation bodies may apply the standards in different ways allowing for a degree of local interpretation. A logical and rational argument can however be made that the conservation objectives for a European site must take account of JNCC common standards for monitoring, as set out below.

- The introductory text to the JNCC Statement (referred to at 4.1.1 above) is clear that common standards apply to European sites.
- The Commission Note on conservation objectives explains how conservation objectives are intrinsically linked to the achievement of favourable conservation status.

‘in its most general sense a conservation objectives is the specification of the overall target for the species and/or habitat types for which a site is designated in order for it to contribute to maintaining or reaching favourable conservation status of the habitats and species concerned’.

- In the UK the JNCC common standards for monitoring underpin the UK monitoring work relied upon to report on favourable conservation status.
- Site level conservation objectives which specify overall targets for species and attributes to achieve favourable conservation status *must* therefore be informed by the JNCC common standards.

4.2 Producing common standards and their status

4.2.1 Conservation objectives are advisory in nature, but they include and reflect standards which are published by JNCC. Conservation bodies in Northern Ireland have considerable discretion when publishing conservation objectives, and updating them, but they are bound by the standards produced centrally at a UK level by JNCC.

4.2.2 Indeed, section 34 of the NERC Act 2006 precludes UK devolved conservation bodies from establishing independent approaches and standards for monitoring of nature conservation sites. A comprehensive suite of Common Standards for monitoring have therefore been

produced by JNCC against the following broad habitats and species groups. In some cases more detailed guidance is available under these broad groups. For example freshwater common standards guidance is available for freshwater lakes, rivers, canals, ditches and freshwater fauna.

Habitat features	Species features
Coastal	Birds
Freshwater	Freshwater fauna (including fish)
Lowland grassland	Invertebrates
Lowland heathland	Reptiles and amphibians
Lowland wetland	Marine mammals
Marine	Terrestrial mammals
Upland	Vascular plants
Woodland	Bryophytes and lichens

4.2.3 The production of common standards involves extensive interagency consultation. The forward for the Common Standards Monitoring document for rivers explains:

'This document has been prepared by the Inter-agency Freshwater Group, comprising representatives of Scottish Natural Heritage, Natural England, Natural Resources Wales and the Northern Ireland Environment Agency.'

4.2.4 As such, whilst the JNCC is responsible for producing common standards for monitoring they do so through established inter-agency groups involving close working and consultation with representatives from the UK conservation bodies.

4.2.5 It follows that whilst conservation objectives can be readily changed by nature conservation bodies without significant stakeholder engagement or consultation, changes to standards referred to within the conservation objectives are treated differently. UK nature conservation bodies cannot change common standards which are set by JNCC at a UK level and changes to the standards produced by JNCC are subject to inter-agency consultation and, frequently, external consultation with relevant specialists.

4.2.6 Whilst UK condition monitoring standards are set by JNCC, and cannot be changed by nature conservation bodies, they remain advisory in terms of their status from a competent authority perspective. As such, whilst a competent authority must 'have regard' to the standards, they can choose to ignore them. With reference to the Wightlink decision they would be expected to have 'cogent and compelling' reasons for doing so.

4.3 Comparison with other 'standards' such as those produced under WFD

4.3.1 Common standards for monitoring are produced in accordance with the requirements of the NERC Act 2006. They are separate and discrete from other standards such as those which might be produced under other legislative regimes such as the Water Framework Directive.

4.3.2 The most important distinction is that common standards for monitoring are not statutory standards which apply as a matter of law, as those under the Water Framework Directive do, they are advisory in nature.

5 Advice on structure and content of NIEA draft updated conservation objectives and supporting advice.

5.1 Limitations

- 5.1.1 This advice has been drafted in accordance with a tight timescale in view of a constrained budget. In principle, the provision of advice on the structure and content of the NIEA draft updated conservation objectives and supporting advice could be an extensive piece of advice. The updated drafts are detailed and comprehensive and there is a lot which could be explored in details in providing any such advice.
- 5.1.2 Time constraints have however prevented a detailed approach to this section 5 and, as a consequence, only high level strategic comments are provided. This advice therefore reflects a limited review of the documentation provided and should not be treated as exhaustive.

5.2 The format of the updated conservation objectives

- 5.2.1 The updated conservation objectives have been produced as one document entitled 'Conservation Objectives'. They all follow a standard format of 13 sections and a supporting Annex 1, as summarised below.

- 1) Introduction
- 2) Role of conservation objectives
- 3) Definition of favourable condition
- 4) Site information
- 5) Summary site description
- 6) SAC selection features
- 7) Conservation objectives
- 8) SAC selection feature objective requirements
- 9) Additional ASSI feature objective requirements
- 10) Management considerations
- 11) Main threats, pressures and activities with impacts on the site
- 12) Monitoring
- 13) References

Annex 1

- 5.2.2 The conservation objectives are detailed and contain a wealth of site-specific information which is highly relevant to project proposers, consultants acting on their behalf, competent authorities and those with responsibility for managing and monitoring European sites.
- 5.2.3 Sections 1-3 provide relevant background and contextual information. Sections 4-6 provide the site specific information concerning the site itself and the reasons for designation. Section 7 provides the conservation objectives with reference made to section 8 and the

attached Annex. Section 9 includes content relevant to any additional ASSI features, which are not adequately covered by the information for SAC/SPA features. Sections 10-12 are relevant to management and monitoring requirements.

5.2.4 A strategic high level review of the structure and content of NIEA draft updated conservation objectives and supporting advice has raised comments under three headings which are considered in turn below:

- How the document should be used
- The structure of the document and the status of component sections
- Status of advice in light of best available scientific information

5.3 How the document should be used

5.3.1 At a high level, the Commission Note refers to the role of conservation objectives as two-fold. It explains the *need* for establishing site-related conservation objectives with reference to them being '*a necessary reference for identifying site-related conservation measures and for carrying out appropriate assessments of plans and projects*'. Most external readers of conservation objectives are likely to be using the objectives for the latter purpose and they may be unaware of the wider role that such objectives also play in relation to site management considerations and the delivery of conservation measures.

5.3.2 The draft NIEA conservation objectives document refers to the conservation objectives having three roles:

- Conservation planning and management
- Assessing plans and projects
- Monitoring and reporting

5.3.3 The content within the document is comprehensive and clear. An experienced practitioner, who is familiar with the nuances of site management, and how they differ from the assessment of a plan or project under Article 6(3), will find a lot of helpful site-specific information and will be able to determine for themselves which sections are more or less relevant. A reader who is less familiar with the wider roles of conservation objectives, who is using the document to inform an appropriate assessment, may benefit from further guidance to explain which sections are more or less relevant for particular users. For example: Is the entire document relevant to all roles? If a reader is undertaking an appropriate assessment must it be made 'in view of' the entire document, or only section 7 (noting that section 6 refers to ASSI selection features)? In the absence of such clarification there is a risk that the document might be somewhat overwhelming and impenetrable to some readers.

5.3.4 Furthermore, after setting out the conservation objectives in section 7, the subsequent text then introduces a reader to the concept of component objectives which '*form the basis of a condition assessment, the results of this will determine whether the feature is in favourable condition, or not*'. A reader using the document to inform an appropriate assessment is not provided with an explanation as to how the conservation objectives can usefully inform the appropriate assessment or how the concept of component objectives and favourable condition relates to the application of the integrity test under regulation 43.

- 5.3.5 By way of comparison, the supplementary advice produced by Natural England includes the following standard text:

'You should use the Conservation Objectives, this Supplementary Advice and any case-specific advice given by Natural England, when developing, proposing or assessing an activity, plan or project that may affect this site.'

This Supplementary Advice to the Conservation Objectives presents attributes which are ecological characteristics of the designated species and habitats within a site. The listed attributes are considered to be those that best describe the site's ecological integrity and which, if safeguarded, will enable achievement of the Conservation Objectives.'

- 5.3.6 **DTA Ecology advice – It is suggested that the draft documents could be improved by providing greater clarity as to how the documents should be used for different purposes. In particular, further guidance to explain how the attributes and targets provided in the attached Annex relate to the concept of site integrity, and how they may be used to inform the application of the integrity test to demonstrate that an assessment has been made in view of the conservation objectives.**

5.4 The structure of the document and the status of component sections

- 5.4.1 Regulation 43 is clear that an appropriate assessment must be made 'in view of the conservation objectives'. Given the formal status awarded to the conservation objectives in the legislation, it is the advice of DTA Ecology that a reader which is using the document to inform an appropriate assessment should be left in no doubt as to *what* the conservation objectives for any given site are, against which the sufficiency of their appropriate assessment might be evaluated.

- 5.4.2 In the opinion of DTA Ecology confusion arises from the document itself being entitled 'Conservation Objectives' whilst also containing a stand-alone section 7 entitled 'Conservation Objectives'. A reader is therefore unclear as to whether the entire document comprises the formal conservation objectives, or only section 7.

- 5.4.3 The confusion is further compounded by section 7 including the following standard text:

'For each SAC feature, there are a number of component objectives which are outlined in the table below. These include a series of attributes, measures and targets which form the basis of Condition Assessment. The results of this will determine whether the feature is in favourable condition or not. The feature attributes and measures are found in the attached annex.'

- 5.4.4 Even if a reader was to work on the basis that, for the purpose of an appropriate assessment, the formal conservation objectives are contained only in section 7, the wording then implicitly brings both section 8 and the supporting annex into the frame.

- 5.4.5 **It is the advice of DTA Ecology that the document should be clear and explicit as to what the formal conservation objectives are (against which an appropriate assessment must be made 'in view of'). The England approach explained in section 3 of this advice bears further scrutiny in this regard. There are considerable benefits from publishing high level 'formal' conservation objectives, which remain relatively stable over time, and**

***accompanying* supporting or supplementary advice, which is subject to periodic review and includes site-specific details such as attributes and targets against which the potential effects from a plan or project can be understood. The ability to update the supplementary advice whilst leaving the formal conservation objectives unchanged brings many administrative benefits.**

5.5 Status of advice in light of best available scientific information

- 5.5.1 As referred to in earlier sections of the advice. The current approach, whereby all the information is contained within a single document, makes it more difficult to update sections to reflect best available scientific information. Furthermore, the lack of any clear position that the conservation objectives advice is provided without prejudice to case-specific advice creates uncertainty for decision makers in circumstances where best available scientific information has not yet been reflected in the site-specific conservation objectives or relevant supporting information.
- 5.5.2 As explained in section 3, the Natural England supplementary advice explains that, for the purpose of a HRA a decision maker should refer to the conservation objectives, the supplementary advice, AND any case-specific advice provided by Natural England. This provides for a fallback position which allows case-specific advice to override the supplementary advice in the event that it is not up to date with best scientific understanding.
- 5.5.3 **DTA Advice – NIEA should consider the relationship between the formal conservation objectives, the attached annex containing the features targets and attributes, and case-specific advice when undertaking an assessment for an individual plan or project.**
- 5.5.4 In this regard NIEA might want to explore options involving better join up between sections 7 and 8 with the current annex to the conservation objectives being provided as a separate supporting or supplementary document. Alternatively, if additional guidance was incorporated into the existing document to clearly identify the ‘formal conservation objectives’ for the purpose of an assessment under regulation 43, the annex could remain part of the current overall document allowing for independent updates without any changes to the formal high level conservation objectives. To avoid misunderstanding it is envisaged that any such approach would likely involve a change to the title of the document perhaps simply to something along the lines of ‘Conservation objectives and relevant supporting information’ or something broader reflecting the approaches in Wales or Scotland which refer to ‘Core Management Plans’ or ‘Conservation Advice Package’.