



Leverhulme Centre
for Nature Recovery

May 2026

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Response to Defra's consultation on changes to the Habitats Regulations Assessment Guidance

This is the Leverhulme Centre for Nature Recovery's response to the Department of Environment, Food & Rural Affairs [consultation on changes to the Habitats Regulations Assessment Guidance](#) in April 2026.

Section 1 – Principles to follow in the Habitats Regulations Assessments (HRA) process

Question 11 How helpful are these principles in setting out the overall approach and expectations for how Habitats Regulations Assessments should be undertaken?

Somewhat unhelpful

First, we suggest that the competent authority “must” apply the principles, rather than the weaker “should”.

To save time for both applicants and competent authorities, the guidance should make it very clear that the Habitats Regulations provide strong legal protection for a small number of sites of exceptional importance for biodiversity, which cover less than 7% of England and Wales, and that proposals that damage these sites can only be permitted in exceptional circumstances of overriding public interest when no alternatives are available. In line with the mitigation hierarchy, the competent authority should work with the applicant to guide them towards alternatives that do not damage the site, such as siting their development in a different location.

However, the wording of the first principle (“work with applicants constructively to find a way to allow plans and projects, if possible, while still complying with legal obligations”) gives a misleading expectation that the competent authority should try to find a way to allow most proposals to go ahead. This is likely to raise expectations and lead to wasted time if the proposal cannot meet the legal requirements. To set expectations realistically in line with the mitigation hierarchy, we suggest changing the first principle to emphasise the importance of applying the mitigation hierarchy and align with the wording of the regulations to avoid Likely Significant Effects (LSE), to:

“work with applicants to apply the mitigation hierarchy by identifying ways to deliver plans and projects that avoid Likely Significant Effects on the sites.”

The previous principles contained the explicit instruction to consider direct and indirect, temporary and permanent effects and to consider effects when combined with other threats and pressures, including from other plans and projects. These principles have been removed from the new draft, and it is unclear why. The principles also fail to apply the precautionary principle, which is justified given the ongoing decline in biodiversity in England and Wales, the failure to progress towards our statutory biodiversity targets and the exceptional international importance of the Habitats sites. We therefore suggest reinstating key guidance as extensions to principle 5 and 6:

- Extend principle 5 as follows: “make judgements based on the facts of the individual situation and the ecological condition of the site’s features, including all possible direct and indirect, temporary and permanent effects of the proposal, at every phase, and considering effects on the site when the proposal is combined with other current or future threats and pressures, including from other plans and projects.”
- Extend principle 6 as follows: “consider talking to relevant experts or specialists as early as possible and use the best objective and scientific information available to make informed decisions, applying the precautionary principle where information is uncertain or incomplete.”

The principle that authorities should “only ask applicants for information that’s relevant to the site’s conservation objectives and proportionate to what is being assessed and needed to carry out the HRA” is more restrictive than the previous version, which did not restrict information to the site’s conservation objectives. Additional information could be relevant, such as to enable consideration of alternatives, whether there are imperative reasons of overriding public interest, and how the proposal could affect the role of the site within the wider ecosystem (e.g. by supporting keystone species or habitat networks). We therefore suggest simplifying to “only ask applicants for information that’s proportionate to what is being assessed and needed to carry out the HRA”.

The principle to “consider as early as possible whether a derogation is likely and, if so, engage with applicants and the relevant SNCB to agree an approach to derogation” gives the misleading impression that derogation may be commonly granted. This could raise expectations by applicants and waste time if they submit proposals that are unlikely to be legally compliant. The principle needs rewording to stress that derogation is only to be applied in exceptional circumstances, e.g.:

“consider whether a derogation may be required, noting that this will only apply in exceptional circumstances of overriding public interest where there is no alternative, the mitigation hierarchy has been applied, and other legal tests are met.”

Question 12 Do these principles strike the right balance between supporting users in complying with legal requirements and encouraging an efficient approach to decision-making?

No

The intended purpose of the Habitats Regulations is to provide strong protection for a small number of habitats of exceptional importance for biodiversity, which is essential to meet our statutory nature recovery targets and international commitments. The revised principles have been weakened (as noted for Question 11), by omitting important factors such as combined effects, failing to apply the mitigation hierarchy and precautionary principle, and raising an expectation for derogation, which is rarely appropriate. Rather than encouraging an efficient approach to decision-making, this is likely to falsely raise expectations and waste time for both the applicant and the authority. Gathering the robust evidence needed to make an informed decision that complies with legal requirements is a vital part of an efficient decision-making process, as it is essential for sound decisions that have the best societal outcomes for people and nature.

Section 2 – Making use of an existing HRA

Question 13 How helpful is the detail in this section on when an existing HRA can and cannot be used?

Somewhat unhelpful

Site conditions can change year-on-year as species populations fluctuate in response to external threats and pressures, including new plans and projects in the vicinity since the last HRA. We suggest changing “Competent authorities can re-use an existing HRA if” to “Competent authorities can ONLY re-use an existing HRA if”, and adding the condition that:

“there is robust data on the site condition and species populations that shows that the conclusions of the previous assessment are still valid.”

Question 14 Will this section give support to users in avoiding unnecessary repetition of work related to HRAs?

Somewhat

The current wording actively encourages authorities to re-use previous HRAs as a matter of course. This risks normalising the expectation that no new data needs to be gathered. This

is risky given that ecosystems are dynamic, and change with climatic patterns and external threats and pressures (such as pollution, or other nearby developments).

Therefore, as stated for Q13, we suggest changing “Competent authorities can re-use an existing HRA if” to “Competent authorities can ONLY re-use an existing HRA if”.

Section 3 – Checking for likely significant effects on a habitats site

Question 15 How helpful is the detail in this section on determining whether a plan or project could have a significant effect on a protected site?

Somewhat unhelpful

The language in this section is very unclear and risks undermining the precautionary principle. First, what is a ‘hypothetical risk’ as opposed to a ‘real risk’? By definition, a risk is something that may or may not occur in real life, so all risks are hypothetical?

Second, the instruction to “Move to Stage 2: Appropriate Assessment if a likely significant effect from the plan or project alone cannot be ruled out with sufficient certainty” is also confusing. By definition, if a risk is likely then it cannot be ruled out?

Next, the requirement to provide “credible evidence that the risk is real” undermines the precautionary principle. By definition, a risk is something that has not yet occurred, so how can credible evidence be provided that it is ‘real’? The next statement that “This means that there does not need to be zero probability of an effect for it to be ruled out” (which is a somewhat confusing triple negative) puts the burden of proof on the competent authority rather than the requiring the applicant to prove that there will be no risk of harm. This directly contravenes the precautionary principle. We suggest simplifying these two sentences to:

“An effect is ‘likely’ where objective scientific information (which can include expert scientific judgement) indicates that the plan or project could have a significant effect on the site. In line with the precautionary principle, if there is uncertainty then risks cannot be ruled out.”

It is surprising that the guidance provides a loophole for further impacts on sites that are already in unfavourable condition: “Where the conservation status of a site is unfavourable, the scope for approving activities which affect the site is necessarily limited, but it is not nil. For example, additional impacts below a certain level may be incapable of causing changes to the conservation status or restricting the restoration of favourable condition”. This appears to give up on sites in unfavourable condition rather than pursuing efforts to improve them. We recommend restoring stronger protection here. i.e.

“Where the conservation status of a site is unfavourable, further impacts will not be allowed.”

Question 16 How helpful is the detail in this section on how a real (as opposed to hypothetical) risk should be identified and evidenced?

Somewhat unhelpful

As mentioned for Q15, the distinction between 'real' and 'hypothetical' risks is confusing because a risk is something that may or may not occur in real life, so all risks are hypothetical?

Also as discussed for Q15, the requirement to provide "credible evidence that the risk is real" is confusing. By definition, a risk is something that has not yet occurred, so how can credible evidence be provided that it is 'real'? The next statement that "This means that there does not need to be zero probability of an effect for it to be ruled out" (which is a somewhat confusing double or even triple negative) puts the burden of proof on the competent authority rather than the requiring the applicant to prove that there will be no risk of harm.

We would also like to point out that these requirements are not suitable for the screening stage, which is intended to identify all potentially plausible Likely Significant Effects (LSE) using the precautionary principle to allow for uncertainty.

As for Q15, we suggest simplifying these two sentences to:

"An effect is 'likely' where objective scientific information (which can include expert scientific judgement) indicates that the plan or project could have a significant effect on the site. In line with the precautionary principle, if there is uncertainty then risks cannot be ruled out."

To align with the principles, the guidance needs to state that risk assessment includes spatial effects, timing, duration, frequency of impacts, and in-combination effects.

Section 4 – Checking for in-combination effects with other plans and projects

Question 17 How helpful is the detail in this section on how in-combination effects should be considered?

Somewhat helpful

As for the other sections, this section needs to explicitly refer to the precautionary principle, including regarding the combined impact of many smaller threats or pressures. Assessment of combined effects should also consider the impact of plans and policies when combined with other threats and pressures to site integrity such as pollution and climate change.

Question 18 Should this section include further detail on what should be considered an in-combination effect?

Yes

In line with our response to Q17, we suggest adding the following clarification:

“Assessment of combined effects should consider the impact of plans and policies when combined with other threats and pressures to site integrity such as pollution and climate change, which affect site condition. Sites that are already in poor condition will be less resilient and therefore more sensitive to further small additional pressures.”

Section 5 – How to use screening criteria

Question 19 How helpful is this section at setting out the purpose of the screening criteria?

Somewhat unhelpful

We have significant concerns over the following paragraph:

“Thresholds may be developed by competent authorities, and for specific impacts may sometimes be developed by an SNCB. Competent authorities should use their expert judgement to reach these conclusions where it provides sufficient certainty, without needing more detailed information such as surveys or modelling.”

At the screening stage, the key aim is to ensure that any potentially significant risks are taken into account when deciding whether it is necessary to proceed to Stage 2. Given that many competent authorities lack the resources to carry out an in-depth ecological assessment of the site, it does not seem appropriate to base the important screening decision on thresholds developed by the authorities, with only occasional recourse to the Statutory Nature Conservation Body (SNCB), and to exclude the use of surveys and modelling. This raises the risk that screening may rule out potentially significant risks based on incomplete information. We recommend clarifying this e.g.:

“Thresholds used to screen out specific impacts must be informed by robust scientific evidence, such as surveys or modelling, and must be subject to approval by the relevant SNCB. They cannot be based solely on the judgement of the competent authority.”

We also recommend replacing “should” with “must” in the requirement that competent authorities “should” record their reasoning and evidence.

Question 20 on what criteria must be met for a plan or project to be screened out?

Somewhat unhelpful

As noted for Q19, the detail in this section risks undermining the precautionary principle by screening out potentially harmful effects based only on the expert judgement of over-stretched authorities. We recommend changing this section to specify that:

“Thresholds used to screen out specific impacts must be informed by robust scientific evidence, such as surveys or modelling, and must be subject to approval by the relevant SNCB. They cannot be based solely on the judgement of the competent authority.”

We also recommend replacing “should” with “must” in the requirement that competent authorities “should” record their reasoning and evidence.

Section 6 – Assessing the potential effect of a plan or project on the integrity of a site

Question 21 How helpful is the detail in this section on the definition of site integrity?

Somewhat unhelpful

The definition is very comprehensive, and we welcome the recognition that all species and habitats can contribute to site integrity and ecosystem function, not just those that are designated. However, the previous version contained this important reminder at the end of the list of criteria for determining whether integrity is compromised:

“You must be able to rule out all reasonable scientific doubt that the proposal would not have an adverse effect on the integrity of the site before you can allow the proposal to go ahead.”

This should be reinstated in line with the precautionary principle

Section 7 – Checking effects against a site’s conservation objectives

Question 23 How helpful is this section on how maintain and restore objectives should be handled when assessing an impact on site integrity?

Somewhat unhelpful

There is a significant weakness in the new exemption for “temporary” effects if they will “not prevent affected areas from returning to the same level of ecological functionality within an appropriate timescale.” Timescale needs to be clearly defined, both for the timescale within which the effect will be “fully undone” and the time for the areas to return to their previous functionality (or achieve their conservation objectives). Effects at critical times of year such as for breeding or over-wintering can have long-lasting impacts on species populations.

We proposed that a fourth bullet point should be added to state that the effect should:

“not cause adverse impacts on species populations and ecosystem health that persist longer than one year, taking into account the importance of key lifecycle stages such as breeding and overwintering.”

A final paragraph should stress that “Where uncertainty remains over any of the criteria, the precautionary principle must be applied, and the effect should not be assumed to be temporary.”

Section 8 – Considering reasonable scientific doubt

Question 24 How helpful is this section in explaining what constitutes reasonable scientific doubt?

Somewhat unhelpful

Some aspects of this section undermine the precautionary principle.

Firstly, “This conclusion of no adverse effect does not have to be established with absolute certainty. It involves a judgement by the competent authority, based on the evidence available. To be satisfied beyond reasonable scientific doubt, the competent authority does not always have to assess the reasonable worst-case scenario, and it is not necessary for there to be no risk.”

It is not clear why worst-case scenarios are being excluded here, and why approvals can be granted even if risks remain? This leads to the real possibility of harm to our most valuable wildlife sites. We recommend that this sentence is deleted.

Secondly, the statement that “Whether there are grounds for reasonable scientific doubt will always be a matter of judgement for the competent authority” is concerning given the lack of resources for detailed ecological assessments in many authorities. The previous version of the guidance required consultation with the relevant SNCB, and this should be reinstated.

Lastly, the sentence “Where reasonable scientific doubt remains, the plan or project cannot be approved unless suitable mitigation measures can be applied or the derogation criteria are met” should be changed to “... AND the derogation criteria are met”, to clarify that even if derogation is granted, mitigation is still required.

Section 9 – Securing compensatory measures

Question 25 How helpful is the detail in this section on compensatory measures?

Neither helpful nor unhelpful

Additional safeguards are needed to ensure that compensation is genuinely additional to actions that would have happened anyway. Specifically, extra points should be added to clarify that:

“Compensatory measures cannot include habitat enhancement that would normally occur as part of site management, cannot target features that are already in favourable condition, and must provide compensation for the same habitat type as that which is at risk of harm by the proposal”.

The guidance should also ensure that all compensatory measures are delivered before any potentially adverse impacts on the site commence.

Section 10 – Habitats regulations assessments: guide for applicants Amending the HRA guidance to include the offshore

Question 28 Do you agree with the proposal to draft the HRA guidance so that it applies to Habitats sites in the offshore waters of England, as well as the inshore waters?

Disagree

Many marine species from seabirds to dolphins and orcas are in serious decline. They already face weakening of habitat protection due to other legislation, e.g. the potential to disapply current protections via payment to the Marine Recovery Fund in line with the Planning and Infrastructure Act, and changes to the offshore wind planning regime. Extending the HRA guidance beyond the 12km zone risks exacerbating these challenges. Any such change should involve detailed public consultation.

Question 29 Are there any parts of the HRA process in the offshore which you would like us to focus on in the guidance?

No

As noted for Q28, given the weakening of language around the mitigation hierarchy and precautionary principle in this draft guidance we oppose extending it further offshore. Any such extension should only be considered if the current guidance is strengthened in line with our comments, and with much more in-depth public consultation and dialogue with marine conservation bodies and academic experts.

About us

The ongoing loss and degradation of nature is one of the greatest challenges of our time. In response, the Leverhulme Centre for Nature Recovery (LCNR) was created in 2022 as a hub for innovative research on nature recovery. It brings together experts from a broad range of disciplines across the University of Oxford. The team collaborates with partners in communities and organisations around the world.

What is nature recovery?

We define nature recovery as the activity of helping life on Earth to thrive by repairing human relationships with the rest of the natural world.


Our aims


- To understand the societal, biophysical, policy and systemic factors that enable or challenge nature recovery
- To collaborate with partners in case study landscapes to test and enhance frameworks, technologies, and tools for effective, inclusive, scalable, nature recovery delivery that also provides for society and its wellbeing
- To establish an inclusive nature recovery community at Oxford, leveraging its intellectual capital and interdisciplinary convening power to address key debates and challenges in the field.



Leverhulme Centre
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