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Summary of Responses to the Consultation on the Fifth Quinquennial Review of Schedules 5 and 8 of The Wildlife and Countryside Act 1981 and the Governments' Decisions

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Introduction

This document summarises the responses to the consultation: *Consultation on the Fifth Quinquennial Review of Schedules 5 and 8 of the Wildlife and Countryside Act 1981*. It also summarises the Governments' decisions with respect to each of the species proposed for inclusion in (or removal from) the Schedules, and gives the general rationale for the making of those decisions.

The consultation lasted for twelve weeks from 27 January until 20 April 2010 and fifteen responses were received. Five of these were from government agencies, five were from fishing and water industry related organisations, and four were from conservation charities. The list of those who responded can be found at Annex A.

The analyses are intended to provide an indication of the range and nature of views expressed, rather than an exhaustive summary.

The amendments to the schedules are due to come into force in 1st October 2011.

Background

Schedules 5 and 8 to the Wildlife and Countryside Act 1981 (WCA) list, respectively, animal and plant species requiring protection. Section 24 of the Act requires the GB conservation bodies of Natural England, the Countryside Council for Wales and Scottish Natural Heritage, acting through the Joint Nature Conservation Committee (JNCC), to review Schedules 5 and 8 every five years and to recommend any changes to the Secretary of State.

The JNCC submitted its report in December 2008, to which the Department of Environment Food and Rural Affairs (Defra) and the Welsh Government (WG) gave careful consideration, before preparing the public consultation paper. The Scottish Government is consulting separately.

Legislation

The legislation protecting animal and plant species relevant to this review is the WCA. The key sections are 9 and 13 set out below:

Section 9(1) Subject to the provisions of this Part, if any person intentionally kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence.

Section 9(2) Subject to the provisions of this Part, if any person has in his possession or control any live or dead wild animal included in Schedule 5 or any part of, or anything derived from, such an animal, he shall be guilty of an offence.

Section 9(4) Subject to the provisions of this Part, a person is guilty of an offence if intentionally or recklessly,

- (a) he damages or destroys any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection;
- (b) he disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- (c) he obstructs access to any structure or place which any such animal uses for shelter or protection.

Section 9(5) Subject to the provisions of this Part, if any person

- (a) sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal; or
- (b) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things,

he shall be guilty of an offence.

The legislation protecting plant species relevant to this review is as follows:

Section 13(1) Subject to the provisions of this Part, if any person intentionally picks, uproots or destroys any wild plant included in Schedule 8; not being an authorised person, intentionally uproots any wild plant not included in that Schedule, he shall be guilty of an offence.

Section 13(2) Subject to the provisions of this Part, if any person

- a) sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild plant included in Schedule 8, or any part of, or anything derived from, such a plant; or
- b) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things,

he shall be guilty of an offence.

General rationale for the Governments' decisions

At the end of the summary of responses for each individual species the decision and the rationale behind it is given. In reaching decisions a number of overarching considerations have been applied:

1. *Marine species* – fisheries in European Union waters are managed under the Common Fisheries Policy (CFP), meaning decisions relating to the management of fish stocks are generally taken at an EU level. Only where a) protection under the Wildlife and Countryside Act 1981 offers additional safeguards that cannot be provided by the CFP and b) International Council for the Exploration of the Sea (ICES) advice is that a species requires long term protection by being added to the prohibited species list under the CFP, will a species be listed on schedule 5 of the WCA.
2. *Effective use of legislation* – in all cases consideration has been given as to whether: a) legislation is the best approach; and b) whether the WCA is the most effective means of legislating. In some cases problems are localised and in the case of some marine species existing by-laws may offer the most effective protection. In other cases, other legislative regimes may offer more appropriate conservation measures.
3. *Evidence v precautionary principle* – where species face a particular threat, decisions to provide legislative protection sometimes need to be taken on a precautionary basis – i.e. without all evidence of the status of the species being available. But where research is planned or is underway and its findings will help in determining the most appropriate form of protection it may be appropriate to await these findings.
4. *Commercial impacts* – in all cases where there is a potential impact on commercial interests thorough consideration has been given as to whether the impacts on business are justified by the need for species protection.

Responses on the Marine Species

Generally, there was support for listing the proposed marine species.

A number of general reasons for supporting the listing of the proposed marine species under Schedule 5 of the WCA were given, including:

1. There has been significant decline of the species in UK waters.
2. Protection would prohibit targeted fishing and protection from possession and trade.
3. Protection would require the return of any by-catch individuals to the sea (because possession would be an offence) and if done quickly, survival rates in these cases would be high.
4. Protection would prevent targeted recreational fishing.
5. Protection would positively progress the Species Action Plan targets for these species.

General reasons for not supporting the listing of the proposed marine species focused on Common Fisheries Policy issues:

- The species is/are already protected under the CFP, and if there were any change to the CFP Total Allowable Catch (TAC), UK fishermen would be disadvantaged.

A number of points were made on the marine species as a whole:

Other solutions

The National Federation of Fishermen's Organisations (NFFO) made the following statement:

“The NFFO is opposed to the listing of marine species under Schedule 5. It considers that the banning of commercial fisheries is not the way to deal with species conservation. In the waters surrounding the United Kingdom, it is generally the case that there are mixed fisheries which means that it is impossible to totally avoid the problem of incidental by-catch. As a result, instituting a ban presents a cosmetic solution which only increases discards and leads to distorted information as to the true state of stocks. Much more can be achieved by concentrating on greater selectivity, real time closures to protect females and spawning stocks and harvest control rules....Furthermore, the commercial fisheries are already tightly regulated by Brussels and also by United Kingdom by-laws. Introducing yet another level of protection would

simply add greater complexity to what is already a very complicated operating system.”

Using the WCA to set a precedent

The Shark Trust highlighted that the consultation made reference to the limited protection afforded to species, as killing and taking could still occur beyond the 12 nautical mile (nm) limit and in international waters. The respondent made the following comment in response to this:

“The Trust strongly urges Defra to take a proactive position on this matter, supporting the precautionary principle and acknowledging that by setting a precedent for protection in UK waters Defra may indeed encourage further protection in the territorial waters of other nations. It should be noted that in this vein the listing of the Angel Shark on the WCA was a factor in the European Commission’s decision to actively protect the Angel Shark and subsequently list it as a prohibited species throughout EU waters and by EU vessels worldwide.”

Limitations to protection under the WCA

The Shark Trust also felt that the argument that proposed species would not be protected from commercial by-catch activities was counterproductive as profiting from this by-catch would be prohibited, so there would be no incentive to retain by-caught listed species; research shows that by-catch discard survival rates for many elasmobranchs are positive due to their generally robust physiology.

Total Allowable Catch

The Countryside Council for Wales pointed out that the JNCC is empowered to make recommendations at any time to the Welsh Assembly Government or the Secretary of State, and that this could be enacted if a TAC is introduced for a particular species whilst derogation measures are sought.

Advantages of protection

The Shark Trust felt that the advantages of protection for many of the proposed elasmobranchs in the consultation were ‘significantly under-represented’, and said that:

“Listing under Schedule 5 would not only prevent targeted fisheries for these threatened species, but also result in the release of listed elasmobranchs caught as by-catch.”

It gave the following advantages:

- Raise public awareness -- listing would improve public understanding of the importance of species protection.
- Commercial fisheries -- listing would further reinforce voluntary and legislative controls.
- Wider legislative controls – listing these species would encourage and support wider management/conservation initiatives: e.g. the listing of the angel shark as a prohibited species under the CFP regulations.
- Ecosystem integrity – in order to maintain wider ecosystem health, all efforts should be made to retain or re-establish populations in the wild.

Species Specific Issues

Spiny Lobster (Palinurus elephas)

Current Protection under the WCA: None

JNCC recommendation: protect under 9(1), 9(2), 9(4)(a), 9(4b) and 9(5)

Defra / WG recommendation– minded to disagree.

Of the seven respondents who commented on the spiny lobster three agreed with JNCC's recommendation to protect the species under 9(1), 9(2), 9(4)(a), 9(4)(b) and 9(5), three disagreed and one said more information was needed.

Support for protecting this species included 1, 2 and 3 of the general reasons for support set out on page 7.

Common Fisheries Policy Issues

Buglife and Invertebrate Link were also of the opinion that discrimination against English and Welsh fishermen could be avoided in the event of the spiny lobster being added to Schedule 5 by the use of Article 9 of the CFP Regulation. Invertebrate Link stated:

“There is a mechanism under Article 9 of the CFP Regulation (Council Regulation 2371/2002) whereby Member States can seek approval from the Commission and affected Member States to apply fisheries conservation measures or measures to protect marine eco-systems within their 6 – 12nm zones to foreign vessels.”

Minimum landing size

Whilst the **Countryside Council for Wales** accepted that minimum size limits are a beneficial management tool, it expressed concerns that:

“Minimum size limits have been in place for some time now for the spiny lobster, but there are no indicators to suggest that the population status of the spiny lobster has recovered.”

Respondents who agreed with Defra and the WG recommendations not to protect the species under 9(1), 9(2), 9(4)(a), (4)(b) and 9(5) did so for the following reasons:

- English and Welsh fishermen would be discriminated against. Under the CFP fishermen from certain member states have the right to fish within some parts of the 6 – 12nm zone of UK territorial waters, and these vessels would not ordinarily be subject to any WCA requirements.
- Adequate protection for the spiny lobster already exists in the form of by-laws of the Sea Fisheries Committees such as minimum landing size and forbidding the taking of berried hens.
- The species is important to fisheries in certain areas and protection under the WCA would inflict negative economic impacts on the fishing industry.
- We should wait until further research on the cause of decline and possible rehabilitation of the species has been completed before making a decision on whether to protect.

The Shellfish Association of Great Britain felt that the proposal to list the spiny lobster was somewhat problematic given the present lack of knowledge about the species but felt that it should not be added, pending more research.

Decision: No protection under the WCA.

Defra and the WG have decided not to protect the spiny lobster at this review. There is already a minimum landing size imposed by the CFP and local by-laws are even stricter on catch size and not catching berried females. There is some doubt about the current stocks of the spiny lobster and a more informed decision could be taken when research has been completed on the population size in time for the next review.

Angel Shark (*Squatina squatina*)

Current protection under the WCA: 9(1) out to 6 nautical miles.

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – views invited

Of the five respondents who commented on this species four agreed with JNCC's recommendation to extend protection from 6 nautical miles to 12 nautical miles and to protect under sections 9(2) and 9(5). The fifth agreed with extending protection from 6 nautical miles to 12 nautical miles only, but with reservations. Support for protecting this species included all 5 general reasons for support set out on page 7.

Common Fisheries Policy Issues

The Countryside Council for Wales referred to the general CFP issues set out in the consultation and were of the opinion that these would be compatible with Schedule 5 protection for the following reasons:

- Since January 2010, the angel shark has become a 'Prohibited species', meaning that it is prohibited for EU vessels to fish for, to retain, or to tranship and land this species in all EU waters, and there is therefore no contravention of EU trade laws.
- The consultation document acknowledges that it is unlikely that the status of 'Prohibited species' will be lifted, and that it is also unlikely that a TAC will be introduced in the short term.

Seafish supported the section 9(1) provisions being extended to 12 nautical miles provided it also applied to non-UK vessels. However, this respondent was against listing on Schedule 9(5) and said:

“if it is caught legitimately as by-catch then it should be allowed to be landed and subsequently sold.”

The National Federation of Fishermen's Organisations, however, had no objection to the proposals for protection of this species:

“provided that the 'incidental result' defence is maintained to cover involuntary by-catch” (s.10(3)(c)).

Decision: Extend protection under 9(1) to 12 nautical miles and protect under 9(2) and 9(5) to 12 nautical miles offshore.

It is generally accepted that this species is all but extirpated from UK waters and it is agreed that protection of the angel shark be extended to 12 nautical miles from the shore of England and Wales. It is fully protected by the CFP and is likely to be so for many years to come.

Although the CFP is the primary tool for the conservation of this species, unlike many of the other Elasmobranch species here, the ICES advice is that it should be provided with the fullest protection possible – this is key in our decision to extend protection under the WCA.

No UK fishermen will be discriminated against because no member States can fish for angel shark, and given the ICES scientific prognosis, fisheries will not return in the near future. Extending the protection which we afford will give additional protection not afforded by the CFP, by ensuring that recreational fishers cannot target or retain angel sharks should they be caught.

Porbeagle Shark (Lamna nasus)

Current Protection under the WCA: None

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – views invited

Of the four respondents who commented on this species two agreed with JNCC proposals to protect under 9(1) and 9(2) and 9(5) to 12 nautical miles. One felt any decision should be deferred pending Defra's planned research, and the other felt it should be protected under 9(1) only, subject to conditions. All five of the general issues for marine species set out on page 7 were raised in relation to this species.

Common Fisheries Policy Issues

The Shark Trust stressed that the porbeagle shark was critically endangered in the North East Atlantic and said:

“until recently CFP management of the species was subject to opportunistic target fisheries leading to a dramatic decline in population.”

The Shark Trust also made the following statement about possible impacts on the fishing industry:

“Defra has strongly supported the closure of the target fishery for porbeagle shark and has strictly controlled by-catch for this species for 2008/09/10. Thus, due to pre-existing domestic management, UK fishers would not be unduly penalised by the listing of this species, even in the unlikely scenario of a change in CFP regulations.”

Seafish again agreed with JNCC’s recommendation of addition to section 9(1) provided it applied also to non-UK vessels and that the decision is reviewed if the current TAC increases from zero. The respondent also stated:

“We suggest that the Act [WCA] is linked to the Total Allowable Catch (TAC) system under the CFP, so that 9(1) applies as soon as there is no TAC, and that conversely 9(1) does not apply if it relates to fish caught as a part of a TAC.”

Seafish disagreed with adding the porbeagle shark to section 9(5) because they felt that if it is caught legitimately as by-catch then it should be allowed to be landed and subsequently sold. The respondent also felt that any action taken should be reviewed in light of the results of the porbeagle shark research being planned by Defra. Seafish made no comment with respect to including this species (or indeed any of the other proposed species) under 9(2)(possession). Its comments and reservations on 9(1) and 9(5) were similar for all proposed marine fish species.

The National Federation of Fishermen’s Organisations disagreed with JNCC’s recommendations, and felt that a decision should not be made until the research currently carried out by Defra has been completed. It stated that:

“The ‘incidental result’ defence must be maintained to prevent UK fishermen being disadvantaged in the 6 -12 nm zone.”

Decision: No protection under the WCA.

Porbeagle sharks are already protected under the CFP. There is a zero TAC with no bycatch provision. This is in line with ICES advice. We consider that these measures presently offer sufficient protection for this species from its principle threat of commercial fishing pressure.

Defra and the WG have been leading advocates of the adoption of appropriate fisheries management measures to protect vulnerable and threatened elasmobranch species. We strongly support and welcome the protection that has been afforded to this species under the CFP.

Defra is also funding detailed research into the species, so that bespoke management measures that avoid its capture can be set in the future, and bycatches avoided.

Although it is not something Defra or the WG would support, as this species is not on the CFP's prohibited species list, quotas could return in the foreseeable future leaving a legal clash with the CFP.

We have decided to only protect commercial fish under the WCA where ICES advice is that they should receive the highest possible level of protection. When ICES advice states that full protection is needed we see this as confirming that fisheries will definitely not be returning in the immediate future.

As this species is well protected under the CFP, and ICES advice is not for addition to the prohibited species list, we have decided that it would not be appropriate to expand this protection under the WCA.

We will, however write to recreational anglers stressing the need to release endangered species such as these when caught.

Common Skate (Dipturus batis)

Current protection under the WCA: None

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – views invited

Of the five respondents who commented on this species, two agreed with the JNCC recommendation to protect under 9(1), 9(2) and 9(5) to 12 nautical miles, one felt that protection should be achieved through ‘working with angling interests’, one supported inclusion on 9(1) only, subject to conditions, and one was opposed to listing. All five of the general issues for marine species set out on page 7 were raised in relation to this species.

Impact on Fishermen

The Shark Trust made the following statement in relation to possible impacts on fishermen:

“As regards the common and white skate it should be noted that a significant proportion of the UK fleet and UK skate processors, as well as the UK supermarket chains have taken voluntary action over the past 4 years to avoid the landing, retention and sale of common and white skate, acknowledging their Critically Endangered status – this position is further supported by their current CFP status as Prohibited species. Considering the life history strategy of these species a strong case can be made for the retention of the Prohibited species status [under the CFP] for a number of years to come...Thus listing these species on Schedule 5 will not represent any additional burden on the UK fleet even in the unlikely scenario that the CFP Prohibited status is rescinded.”

The Countryside Council for Wales was in favour of all the JNCC recommendations and said that:

“Extending protection of this species under sections 9(2) – possession; and 9(5) - sale ...enhances the EU protection as retail trade in this species is not prohibited through CFP protection.”

Scottish Natural Heritage, however, said that:

“Action is required to protect this species but this should be by working with angling interests and maintaining the current positive relationship with those interests.”

Seafish again felt that the species should be added to 9(1) but not to 9(5), and made similar comments as it made for the other species.

The National Federation of Fishermen's Organisations disagreed with JNCC's recommendation because the species is already protected under CFP, and if there were any change to the TAC then UK fishermen would be disadvantaged.

Decision: No protection under the WCA.

The Common Skate is listed as a prohibited species under the CFP, this prohibits its capture, retention and landing. This exceeds ICES advice as a precautionary measure.

Defra and the WG have been leading advocates of the adoption of appropriate fisheries management measures to protect vulnerable and threatened elasmobranch species and the following of Scientific Advice for elasmobranch species at all times. We agree with the use of the precautionary approach until more bespoke management measures can be found to protect these species from their principle threat of commercial fisheries pressure.

These species are currently on the CFP's prohibited species list (exceeding the current ICES advice), but, given that the ICES advice is not for the highest possible level of protection, although it is not something Defra or the WG would support, quotas could return in the foreseeable future creating a legal clash with the CFP.

We have decided to only protect commercial fish under the WCA where ICES advice is that they should receive the highest possible level of protection. When ICES advice states that full protection is needed we see this as confirming that fisheries will definitely not be returning in the immediate future.

As this species is well protected under the CFP, and ICES advice is not for addition to the prohibited species list we have decided that it would not be appropriate to expand this protection under the WCA. We will, however write to recreational anglers stressing the need to release endangered species such as these when caught.

White Skate (*Rostroraja alba*)

Current protection under the WCA: None

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – views invited

Of the five respondents who commented on this species two agreed with JNCC's proposal to protect under 9(1), 9(2) and 9(5), one agreed with listing under 9(1) only, subject to conditions and one disagreed. Again, **Scottish Natural Heritage** felt that protection should be achieved through 'working with angling interests'. Support for protecting this species included all 5 general reasons for marine species listed on page 7.

Common Fisheries Policy Issues

The Countryside Council for Wales referred to the General Common Fisheries Policy Issues set out in the consultation and were of the opinion that these would be compatible with Schedule 5 protection for reasons which include:

- Since January 2010, this species has been identified as a 'Prohibited species'.
- As the species has been extirpated from all or some of their range it is unlikely that the prohibited status will be lifted in the near future.
- Capture, retention and landing of the species is prohibited in all relevant EU waters, and there is therefore no contravention of EU trade laws.

Seafish agreed with adding the species to schedule 5 under 9(1) but not 9(5), and made similar comments as it gave for the other species.

The National Federation of Fishermen's Organisations disagreed with JNCC's proposal because: the species has never been common in UK waters; the species already has a zero Total Allowable Catch (TAC); and if there is any change in the CFP TAC UK fishermen would be disadvantaged.

Decision: **Protect under 9(1), 9(2), 9(5) to 12 nautical miles.**

The White skate is fully protected by the CFP and is likely to be so for many years to come. The UK is on the very edge of its range.

Although the CFP is the primary tool for the conservation of this species, unlike many of the other Elasmobranch species proposed here, the ICES advice is that it should be provided with the fullest protection possible by addition to the CFPs prohibited species list. This is key in our decision to offer the species protection under the WCA.

No UK fishermen will be discriminated against because no member states can fish for white skate, and given this scientific prognosis fisheries will not return in the near future. Extending the protection which we afford it will give additional protection not afforded by the CFP by ensuring that recreational fishers cannot target or take them should they be found.

Undulate Ray (Raja undulata)

Protection under the WCA: None

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – minded to disagree

Of the five respondents who commented on this species, comments were similar to the skate: two agreed with JNCC's proposal to protect under 9(1), 9(2) and 9(5), one disagreed, one supported listing under 9(1) only, subject to conditions, whilst the fifth felt protection agreements were the way forward. All five of the general issues for marine species set out on page 7 were raised in relation to this species.

Common Fisheries Policy Issues

The Countryside Council for Wales was of the opinion that the General Common Fisheries Policy Issues set out in the consultation would be compatible with Schedule 5 protection.

Seafish felt that the species should not be listed on Schedule 5 because it has never been common in UK waters, it already has a TAC of zero, and further research should be undertaken to inform decisions.

The National Federation of Fishermen's Organisations stated that we should not protect the undulate ray at the moment because of the lack of data on the species. The respondent therefore felt that government should wait for scientific data and reports on stock levels on the species to become available before any decisions are made.

The Shark Trust pointed out that the undulate ray is considered globally endangered and is on the IUCN Red List.

Scottish Natural Heritage again felt that protection should be achieved through 'working with angling interests and maintaining the current positive relationship with those interests'.

Decision: No protection under the WCA.

The Undulate Ray is listed as a prohibited species under the CFP, this prohibits its capture, retention and landing. This exceeds ICES advice as a precautionary measure.

Defra and the WG have been leading advocates of the adoption of appropriate fisheries management measures to protect vulnerable and threatened elasmobranch species and the following of Scientific Advice for elasmobranch species at all times. We agree with the use of the precautionary approach under the CFP, until more bespoke management measures can be found to protect these species from their principle threat of commercial fisheries pressure.

These species are currently on the CFP's prohibited species list (exceeding the current ICES advice), but, given that the ICES advice is not for the highest possible level of protection, although it is not something Defra or the WG would support, quotas could return in the foreseeable future creating a legal clash with the CFP.

We have decided to only protect commercial fish under the WCA where ICES advice is that they should receive the highest possible level of protection. When ICES advice states that full protection is needed we see this as confirming that fisheries will definitely not be returning in the immediate future.

As this species is well protected under the CFP, and ICES advice is not for addition to the prohibited species list, we have decided that it would not be appropriate to expand this protection under the WCA. We will, however write to recreational anglers stressing the need to release endangered species such as these when caught.

Spurdog (Squalus acanthias) (also known as spiny or piked dogfish)

Current protection under the WCA: None

JNCC recommendation: Protect under 9(1), 9(2), 9(5) to 12 nautical miles.

Defra/WG recommendation – views invited

Of the five respondents who commented on this species two agreed with JNCC's proposals to protect spurdog under 9(1), 9(2) and 9(5). All five of the general issues for marine species set out on page 7 were raised in relation to this species.

Common Fisheries Policy Issues

The Countryside Council for Wales referred to the General Common Fisheries Policy Issues set out in the consultation and were of the opinion that these would be compatible with Schedule 5 protection for reasons which include:

- “A by-catch quota only (i.e. no TAC) was agreed for 2010, thus preventing targeting of the species, but allowing the landing of a small proportion of by-catch in mixed demersal fisheries. In England, Wales and Northern Ireland, vessels are only allowed to land 2 fish per trip as by-catch. The CFP currently requires any by-catch greater than these quantities to be ‘promptly released unharmed to the extent practicable’.”
- “The EU has made a commitment to reduce this by-catch quota to zero for 2011. As of the 1st January 2011 all spurdog landings are prohibited. Due to its slow rate of recovery, it is unlikely that any TAC will be introduced for this species in the near future.”

Seafish agreed with protecting the species under section 9(1) but not 9(5) as they believe that fishermen should be able to land and sell by-catch.

The Shark Trust said that “recovery for this species will be extremely slow” because it takes about 20 years for females to reach maturity, and gestation takes two years with only small litters produced.

The National Federation of Fishermen's Organisations disagreed with JNCC's recommendation because management measures such as minimum landing size are already in force. They felt that we should wait until further

Defra funded research has been completed to inform future management decisions. The respondent also said that:

“Although stocks are reported as ‘declining’, anecdotal information from fishermen indicates that they are common (the invisible statistic).”

Decision: No protection under the WCA.

Spurdog are already protected under the CFP. There is a zero TAC with no bycatch provision. This is in line with ICES advice. We consider that these measures presently offer sufficient protection for this species from its principle threat of commercial fishing pressure.

Defra and the WG have been leading advocates of the adoption of appropriate fisheries management measures to protect vulnerable and threatened elasmobranch species. We strongly support and welcome the protection that has been afforded to this species under the CFP.

Defra is also funding detailed research into the species, so that bespoke management measures that avoid its capture can be set in the future, and bycatches avoided.

These species are not on the CFP’s prohibited species list and although it is not something Defra or the WG would support, quotas could return in the foreseeable future creating a legal clash with the CFP.

We have decided to only protect commercial fish under the WCA where ICES advice is that they should receive the highest possible level of protection. When ICES advice states that full protection is needed we see this as confirming that fisheries will definitely not be returning in the immediate future.

As this species is well protected under the CFP, and ICES advice is not for addition to the prohibited species list we have decided that it would not be appropriate to expand this protection under the WCA. We will, however write to recreational anglers stressing the need to release endangered species such as these when caught.

Responses on the other animal species

Allis and Twaite Shad (Alosa alosa & Alosa fallax)

Current Protection under the WCA: Allis – 9(1) and 9(4)(a)
Twaite – 9(4)(a)

JNCC recommendation: Protect allis shad under 9(4)(c) and increase protection for twaite shad under 9(1) and 9(4)(c).

Defra/WG recommendation – minded to agree

Seven respondents replied on the shad species. Five agreed with JNCC's proposals to increase protection of allis under 9(4)(c) and to increase protection for twaite under 9(1) and 9(4)(c) in England and Wales, one disagreed, and one merely noted the proposals without comment.

The Environment Agency supported the additional protection for both twaite and allis shad, including protection from killing, injuring and taking under 9(1) but disagreed with using the WCA as a mechanism:

“For England and Wales the Migratory and Freshwater Fisheries legislation might provide a more effective means of protecting shad from ‘killing, injuring or taking.’”

It added:

“Ministers could add shad to our responsibility by way of a Statutory Instrument made under Section 40A of the Salmon and Freshwater Fisheries Act 1975.”

Alternative protection

Whilst it supported Defra's proposals for both species of shad, the Environment Agency highlighted the importance that these new offences be backed up by the operational ability to enforce them and said:

“We would prefer to see the same outcome delivered more effectively by extending the Environment Agency's duty to include both species of shad. We have an established framework to license or authorise fishing for all other migratory and freshwater fish and the operational capacity to enforce this and the other protections for shad that were conferred on them by the Marine and Coastal Access Act. These include the power to make and enforce by-laws to protect shad

fisheries and we have recently applied to Ministers to confirm by-laws that will require the mandatory release of rod-caught shad.”

Spawning grounds

The Environment Agency agreed with JNCC and Defra that denying access to spawning grounds is a threat to both shad species and said that:

“The only statutory measures available now to protect or improve access to spawning grounds for either species of shad are for us placing conditions on water management authorisations.” However, the Agency added that: “comprehensive measures to protect and improve access for shad could be delivered by way of (postponed) fish passage regulations proposed by Defra.”

British Waterways supported the general principle of improving the protection afforded to shad, but was unclear as to how the Defra / WG recommendation would achieve this. The respondent said the following in relation to existing and new obstructions:

“The extension of the section 9(4)(c) protection can only apply to new obstructions; it cannot apply retrospectively. It cannot, therefore, be used to address the problem of existing dams and weirs.....In relation to new obstructions there is already a process for considering fish passage issues when a new weir or dam is constructed. A new weir or dam will require an impoundment licence and / or a flood defence consent from the Environment Agency.”

Impact Assessment

The Environment Agency pointed out that shad is taken as by-catch, albeit in small numbers and added that:

“The basis of 9(4)(c) is to protect access to spawning grounds. If this is to be effective, then it will have a significant impact on the owners of existing structures such as weirs and barrages on rivers and estuaries used by shad in their spawning migrations. It will also have significant impacts on any new barrage proposals put forward by developers. Given that the Severn Estuary is a key site for both shad migration and hydropower development, the impact on this sector could be significant.”

British Waterways said, with regard to the impact on sectors and groups:

“The impact assessment does not consider the direct implications the increased protection could have on public bodies, water companies, and private landowners.”

The organisation also made the following comment with regard to impacts on costs and benefits:

“We do not believe that the application of s.9(4) to shad has been properly considered. The effect of the additional protection is unclear and it is unlikely to add anything to existing mechanisms, in which case the cost would be zero. However, if there is a requirement to install a fish pass then the failure to include this cost in the impact assessment is a major omission. It is estimated that a fish pass may cost anywhere between £60,000 to £75,000 depending on size and location and the cost of a shad fish pass is likely to be within this region.”

Northumberland Sea Fisheries Committee agreed with both proposals and highlighted that the consultation does not mention rivers in Northumberland and said that one or both of twaite and allis shad are now believed to be occurring in the rivers Tyne, Coquet, Tweed and the adjoining coastal region.

Decision: Increase the twaite shad protection to include section 9(1).

We will increase the protection of the twaite shad to match that of the allis to prevent targeted fishing and taking of this species, which is almost indistinguishable from the allis shad whilst alive. This will prevent confusion for fishermen and make the legislation easier to enforce.

We have decided not to increase the shad protection to section 9(4)(c) which would make it an offence to obstruct access to any structure or place used for shelter or protection. Although there is general support for this level of protection for the shads, we accept that this legislation is not best suited to realise the aim of ensuring that they have free passage to their spawning grounds.

Under the Salmon and Freshwater Fisheries Act 1975 the Environment Agency can insist that fish passes are installed for salmon or sea trout in certain circumstances. Plans are in place to extend this legislation to all migratory and freshwater fish, including the shads next year. The provision of fish passes in obstructions (such as weirs, dams or sluices) for shads will facilitate their access to spawning and feeding grounds.

Pool Frog (northern clade only) (Pelophylax lessonae – formerly Rana lessonae)

Current protection under the WCA: None, but this is a European Protected Species fully protected under Schedule 2 of the Conservation of Habitats and Species Regulations 2010.

JNCC recommendation: Protect the northern clade of this species under 9(4)(b) and 9(4)(c) for England only.

Defra /WG Recommendation: minded to agree

All three respondents who commented on this species agreed with the JNCC recommendation to protect under 9(4)(b) and (c) for England only.

The Countryside Council for Wales said that:

“It is important that this applies only to the northern clade to prevent protection of the non-native introduced specimens at other sites in England.”

Decision: Protect under 9(4)(b) and (c) for England only.

The re-introduced pool frog is currently present on just one site. By adding it to the schedule, intentional or reckless action to disturb the species while in its place of shelter or obstruct access to a place of shelter would become an offence (as locations are known and a defence of claiming not to be aware of the species' presence would be hard to sustain).

Talisker Burnet & Slender Scotch Burnet Moth (Zygaena lonicerae ssp.jocelynae, Zygaena loti ssp. scotica)

NB Talisker Burnet was consulted on as Narrow Bordered Five Spot Burnet Moth. Please see below reasons for change.

Current Protection under the WCA: None

JNCC recommendation: Protect from sale under Section 9(5).

Defra / WG recommendation: protect from sale under Section 9(5), if or when given full protection in Scotland under s.9(1), 9(2) and 9(5).

All four respondents who commented on this species agreed it should be protected from sale. Two agreed with Defra and the WG, and two agreed with the JNCC recommendation for England and Wales.

The British Entomological and Natural History Society said the following:

“The responsibility for the protection of these taxa has been devolved to the Scottish Executive. We do not, therefore, think it is appropriate for legislation in England and Wales to anticipate what action the Scottish Executive may or may not decide to take. Should these two taxa become fully protected in Scotland then protection from sale in England and Wales should follow which is what you recommend.”

Scottish Natural Heritage also agreed with Defra and felt that if the forthcoming Scottish consultation leads to increased protection in Scotland, a ban on sale in England and Wales “will support and underpin this protection.”

Buglife and Invertebrate Link, however, both rejected the Defra / WG recommendation of waiting for Scotland to legislate and made the following quote with regard to the Narrow Bordered Five Spot Burnet Moth and the Slender Scotch Burnet Moth:

“Although specimens have been taken from Scotland they were intended for sale in England. England is where the market is and as Scotland is now behind England and Wales it is very unlikely that Scotland will act in response to QQR5 prior to England. This would result in at least another 5 year delay before action is taken to close down the market for this species. There is no further reason for delay, the species was proposed for listing by Scottish organisations in 2002.....Protection from sale in England and Wales will benefit the species regardless of any additional protected status in Scotland.”

Buglife and Invertebrate Link nevertheless did not support ‘full protection’ in Scotland as proposed by JNCC and were of the opinion that protection from sale is all that is necessary in Scotland (as well as protection from sale in England and Wales).

The British Entomological & Natural History Society recommended a change in the common name for the narrow-bordered five-spot burnet:

“As this common name refers to all populations of this moth in the UK, and not just to those of the subspecies *jocelynae* it should be avoided to prevent ambiguity and future legal challenge. The appropriate common name would be ‘Talisker burnet’.”

Decision: **Protect under section 9(5).**

Although the Scottish Government has not finalised its decision, we feel that it would be appropriate to ban the sale of these species as the JNCC cited recent evidence of commercial collecting as their reason for protecting these species from sale in England and Wales.

On consulting the JNCC we have decided to change the name of the 'Narrow Bordered Five Spot Burnet Moth' to the subspecies 'Talisker burnet'. Animals are listed by both their common and scientific names under Section 5 of the WCA. It makes sense, therefore, to amend the common name of the moth to 'Talisker burnet', whilst the scientific name for this species will remain as '*Zygaena lonicerae ssp.jocelynae*'. This amendment will help to avoid future confusion.

Essex Emerald Moth (Thetidia smaragdaria)

Current protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG: Minded to agree

All four respondents who commented on this species shared the view that it should be removed from Schedule 5.

Decision: **Remove protection.**

All experts agree that this species is now extinct.

Tentacled Lagoon Worm (Alkmaria romijni)

It should be pointed out that there was a misquote in the consultation in that the initial JNCC recommendations did not recommend a reduction in protection from full to 9(4)(a) and (b) as quoted, but to 9(4)(a) only.

Current protection under the WCA: Full

JNCC recommendation: Reduce protection from full to 9(4)(a) only.

Defra / WG: Minded to agree

All five respondents who commented on this species, agreed with reducing its protection.

Buglife and Invertebrate Link both supported protection under 9(4)(a) only.

Decision: **Reduce protection to 9(4)(a) only.**

This species is not considered at risk from direct exploitation. Reducing the protection will allow recording and research into the species without the requirement for a licence.

Lagoon Sand Shrimp (Gammarus insensibilis)

Current Protection under the WCA: Full

JNCC recommendation: Reduce protection from full to 9(4)(a) only.

Defra / WG: minded to agree

All five of the respondents who commented on this species agreed with the JNCC recommendation to reduce protection from full to 9(4)(a) only.

Decision: **Reduce protection to 9(4)(a) only.**

This species is not considered at risk from direct exploitation. Reducing the protection will allow recording and research into the species without the requirement for a licence.

Lagoon Snail (Paludinella littorina)

Current Protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG: Minded to agree

Five respondents commented on this species. **The Countryside Council for Wales, Buglife, Invertebrate Link, Scottish Natural Heritage and the Highways Agency** all agreed with the JNCC recommendation to remove protection.

Decision: **Remove protection.**

We accept that this species is more common than once thought.

Responses on the plant species

Plantlife felt that a number of points which it raised in its response to the previous quinquennial review consultation led by JNCC in June 2008 had not been adequately addressed. It did not comment on any of the species proposed in this current consultation, but listed a large number of plant species which it felt should be added to Schedule 8 of the WCA 1981.

Rock Nail (Calicium corynellum)

Current protection under the WCA: None

JNCC recommendation: Full protection under 13(1) (picking, uprooting or destroying) and 13(2) (sale)

Defra / WG recommendation: Minded to agree

Two respondents commented on this species. **Scottish Natural Heritage** agreed with the JNCC recommendation to give full protection to this species as:

“it is extremely rare and occurs only on man-made structures, and all sites are at risk from renovation and other human activity”.

Decision: **Protect under section 13(1), and (2).**

Species is severely threatened.

Tree Lungwort (Lobaria pulmonaria)

Current protection under the WCA: None

JNCC recommendation: Protection from sale under 13(2) only.

Defra / WG: minded to agree

Two respondents commented on this species. Both the **Countryside Council for Wales** and **Scottish Natural Heritage** agreed with the JNCC recommendation to protect from sale under 13(2) only.

Scottish Natural Heritage felt that “increased protection from sale in England and Wales will support protection (if approved) in Scotland.”

Decision: **Protect under section 13(2).**

Although this species is abundant in some areas, it is clear that the potential for commercial collection threatens its existence. Therefore we will protect it from possession for the purpose of sale.

Churchyard Lecanactis (Lecanactis hemisphaerica)

Current protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG recommendation: Minded to agree

Only **Scottish Natural Heritage** commented on this species and agreed with the recommendation, although this species does not occur in Scotland.

Decision: **Remove protection.**

Greater taxonomic clarity shows the species to be more common than once thought.

Dune Thread-moss (Bryum mamillatum)

Current protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG recommendation: Minded to agree

Two respondents commented on this species. **Scottish Natural Heritage** said that this species does not occur in Scotland but, along with **the Highways Agency**, agreed with the JNCC recommendation to remove protection.

Decision: **Remove protection.**

Greater taxonomic clarity shows the species to be more common than once thought.

Long-leaved Thread-moss (Bryum neodamense)

Current protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG recommendation: Minded to agree

All three respondents who commented on this species agreed with the JNCC recommendation to remove protection.

Decision: **Remove protection.**

Greater taxonomic clarity shows the species to be more common than once thought.

Young's Helleborine (Epipactis helleborine var. Youngiana)

Current protection under the WCA: Full

JNCC recommendation: Remove protection.

Defra / WG recommendation: Minded to agree

Two respondents commented on this species. Both **Scottish Natural Heritage** and the **Highways Agency** agreed with the JNCC recommendation to remove protection. **Scottish Natural Heritage** doubted it was a separate species but merely a variant of *Epipactis helleborine*.

Decision: **Remove protection.**

Greater taxonomic clarity shows the species to be more common than once thought.

Way Forward

The amendments to Schedules 5 and 8 of the WCA will come into force on 1st October 2011.

Annex A

(Respondents to the Consultation)

British Entomological & Natural History Society

British Waterways

Buglife

Countryside Council for Wales

Environment Agency

Highways Agency

Invertebrate Link

National Federation of Fishermen's Organisations

Northumberland Sea Fisheries Committee

Plantlife

Scottish Natural Heritage

Seafish

Shark Trust

Shellfish Association of Great Britain

Thames Water

Annex B

(Code Of Practice On Consultation)

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.