



Proposed new policies for European Protected Species licensing

Analysis of responses to the public consultation held between 25 February and 7 April 2016

December 2016

Contents

Summary

Introduction

Policy 1 - Greater flexibility when excluding and relocating European Protected Species (EPS) from development sites

Policy 2 - Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost

Policy 3 - Allowing EPS to have access to temporary habitats that will be developed at a later date

Policy 4 - Appropriate and relevant surveys where the impacts of development can be confidently predicted

Additional points raised by respondents that are applicable to all policies

Answers to queries raised by respondents

Summary

Natural England publicly consulted on 4 proposed new policies for European Protected Species (EPS) mitigation licensing on Defra's behalf between February and April. The proposed policies sought to achieve better outcomes for EPS and reduced unnecessary costs, delays and uncertainty that can be inherent in the current system. Policy 1 proposed greater flexibility in exclusion and relocation activities, where there is investment in habitat provision. Policy 2 proposed greater flexibility in the location of compensatory habitat. Policy 3 proposed greater flexibility on exclusion measures where this will allow EPS to use temporary habitat. Policy 4 proposed a reduced survey effort in circumstances where the impacts of development can be confidently predicted.

A large number (259) of responses were received, many of which were comprehensive. Responses from developers and energy companies indicated that demand to use the new policies will be high if they are adopted. Responses from consultant ecologists gave a very helpful insight into how the policies could be used to maximise benefits to EPS and developers. Responses from environmental NGOs were cautiously optimistic that the policies could achieve better environmental outcomes for EPS. Responses from members of the public and other interested parties were more negative. However, many of these responses did not focus on the new policies, and instead advocated blanket prohibitions on any development on any land containing EPS. Those who submitted comments that were more specifically about the new policies gave a helpful insight into the ecological and other risks involved.

The consultation response suggested that there would be little early demand for their application of the proposed policies PLP1, 2 and 3 for species other than for great crested newt (GCN). This is the species for which most difficulties in licensing have been reported in recent years and for which improved implementation is most sought by the development industry. The proposed policies would provide substantial benefit even if applied only to GCN. Adoption of the policy more broadly would allow Natural England to explore whether it can provide benefits in mitigation licensing for other EPS. Conservation outcomes for these species will continue to be safeguarded by the legal tests in licence determinations. As such there will be no restrictions on which EPS the policies can apply to.

Proposed policy 1 (greater flexibility in excluding and relocating EPS from development sites)

There was strong agreement that this policy had the potential to reduce costs, delays and uncertainty for developers. There was an evenly split response regarding the potential to benefit Great Crested Newts (GCN), with many respondents expressing the view that it could be beneficial in certain circumstances but not in others. This proposed policy would give Natural England as the licensing authority greater flexibility to respond to this variation in circumstances. The conventional approach (that focussed on trapping and relocation of GCN) would remain an option, where it would best serve the licence purpose or the conservation of GCN. The proposed wording has been strengthened slightly to reflect that the benefit that will be sought by Natural England through this policy is that which would arise from using habitat provision in place of trapping and translocation.

Proposed policy 2 (greater flexibility in the location of newly created habitats that compensate for habitats that will be lost)

There was clearer consensus that this policy could benefit GCN, with many respondents recognising the potential to create more habitats that are larger, or better in terms of quality and connectivity. There was slightly less optimism regarding the benefits for developers, with some respondents commenting that although delays and uncertainty could be reduced the overall

costs could in fact be higher. The proposed wording is amended very slightly for the purpose of clarification.

Proposed policy 3 (allowing EPS to have access to temporary habitats that will be developed at a later date)

This proposed policy received the most evenly split views on the ecological and financial benefits. Many respondents wanted GCN to be allowed access to habitats in which they would clearly thrive, but many others felt that the risks to GCN whilst they were in those habitats were too high. Some felt that the costs of managing temporary habitats for GCN would be cheaper than excluding them through permanent fencing, whilst others felt the opposite especially if populations were to become very high. This policy would give us the flexibility to vary licensing approaches to suit the circumstances of individual cases, both to reduce costs and increase benefit to EPS. We intend to explore case studies with the minerals sector, and will share the successes and lessons learnt with this sector and consultant ecologists through fora such as our Developer Industry Group and Customer Panel.

We have clarified the wording of the policy in response to concerns regarding the ability of post phased development landscapes to support sufficient populations of GCN, and in response to strong views regarding the necessity of well-prepared management plans.

Proposed policy 4 (appropriate and relevant surveys where the impacts of development can be confidently predicted)

This policy generated strong views on the inflexibility of current survey standards and a desire to allow a greater reliance on expert judgement. We also received concerns regarding how we intended to define the circumstances in which it could be used. We have amended the proposed wording to make clearer the factors to be considered in licensing decisions.

Introduction

This report analyses the responses we received in relation to our public consultation on proposed new policies for European Protected Species licensing and provides the final wordings of the policies that have been approved by Defra.

The consultation ran from 25 February – 7 April 2016. We received 259 responses. A breakdown of responses by the type of respondent is at Figure 1.

Prior to and during the consultation period we held meetings with our Developer Industry Group and Developer Customer Panel, the Chartered Institute of Ecology and Environmental Management (CIEEM), consultant ecologists, environmental lawyers, and environmental Non-Governmental Organisations (NGOs). We also ran a workshop at the Herpetofauna Workers Conference.

In the following sections we present an analysis of the responses to each of the four proposed policies, and present our recommendations on how the policies should be adopted.

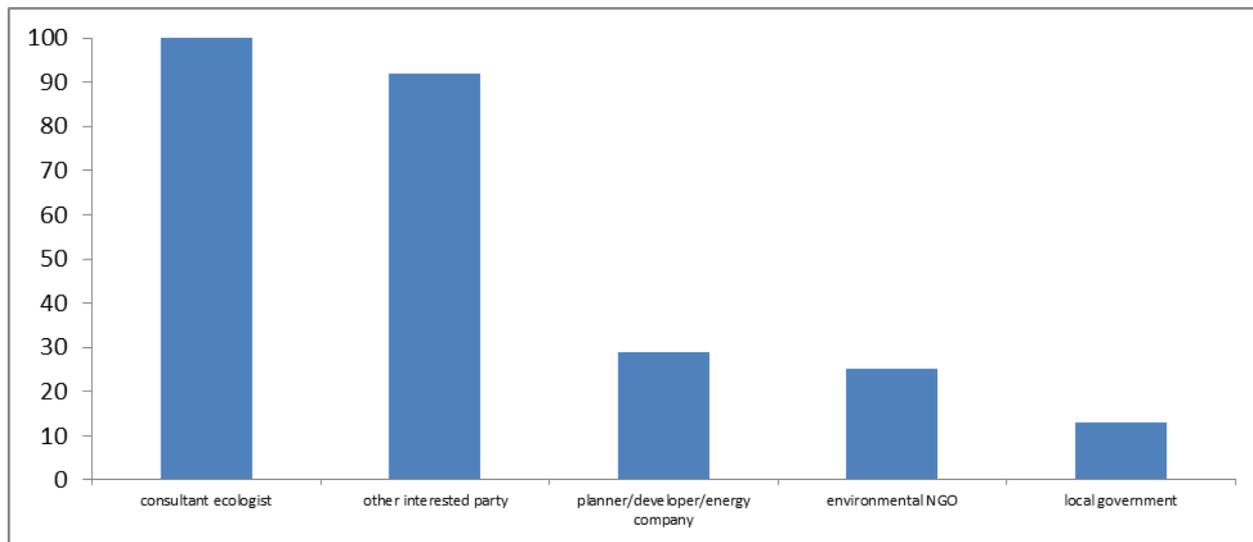


Figure 1. Number of responses to the consultation by respondent type. Other interested parties were predominantly members of the public and local community groups.

Policy 1 – Greater flexibility when excluding and relocating EPS from development sites

Background

This policy was proposed to offer the opportunity to reduce investment in excluding and relocating EPS from development sites and increase investment in the provision of compensatory habitat. It was designed to apply in situations where a better outcome for the local EPS population could be achieved by creating good quality and well connected habitats, rather than by excluding and relocating EPS from development sites.

Question 1 – do you think that this policy could benefit Great Crested Newts?

Overall 46% of respondents felt that this policy could benefit Great Crested Newts (GCN) (Figure 2). Views differed strongly across the respondent types. 84% of planners/developers/energy companies and 63% of consultant ecologists felt that the policy could be beneficial, but this view was shared by only 29% of environmental NGOs and 19% of interested parties. A mixed response was received from local Government.

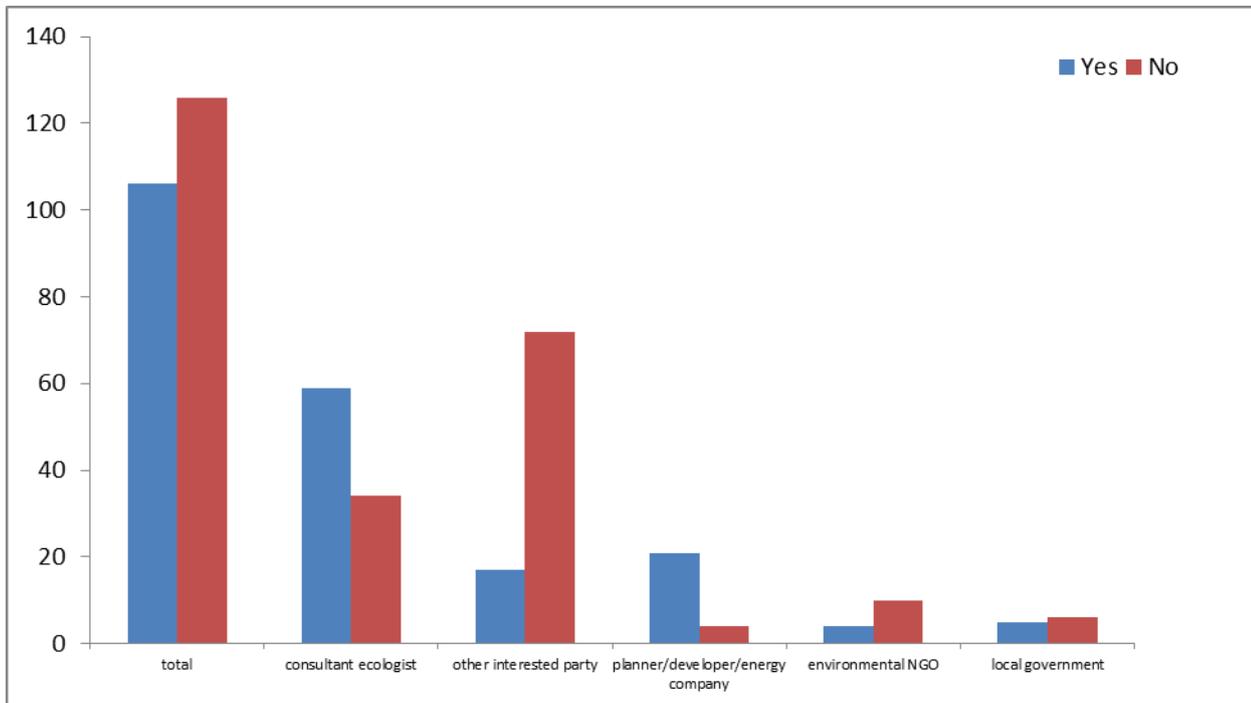


Figure 2. Responses to the question ‘do you think this policy could benefit GCN’ by respondent type.

Those who felt that this policy could benefit GCN used a wide range of reasons to justify their response. Frequent views were that:

- It will put the focus on populations not individuals
- Greater emphasis on habitat creation versus capture and relocation will improve outcomes for GCN
- GCN are a species that can recover from losses quickly
- GCN are more likely to thrive in good quality rather than sub-optimal habitat
- ‘Overcompensation’ will lead to an improvement in populations
- It will allow the creation of habitats that are sustainable in the long-term
- It will allow ecologists who know the site best to get the best environmental outcome for it
- Developers will appreciate our efforts to improve the system and will carry out habitat creation to a high standard in return
- The costs of capture and relocation are so high that developers currently spend as little as they can on habitat creation
- It will reduce the negative publicity about GCN delaying and preventing development
- It will allow innovative solutions to be secured at an early stage
- It is a genuine win-win for GCN and developers

Many respondents who answered yes to this question felt that the policy could only be beneficial to GCN in certain circumstances or if applied in certain ways. Frequent views were that:

- It should only be used if there is an adequate evidence base and up to date surveys
- It should only be applied if there is a strategic relocation plan at district level
- It should only be applied to low rather than high populations
- Some exclusion and relocation should always be undertaken; these activities should not be removed entirely
- Whilst fencing and capture can be reduced, other mitigation activities (e.g. destructive searches) should still be undertaken

- It should only be used if the compensatory habitats are protected strongly and in the long-term, with long-term management and monitoring plans
- It should be favoured where colonisation of new habitat is deemed likely and can be supported by transitional management
- The money saved should always be invested in GCN conservation

Many of those who felt that this policy would not benefit GCN explained that this was because they were of the view no development should take place on any land containing GCN. Others provided views that were more specifically about the proposed policy, and frequent views were that:

- Information on the local population will often be insufficient for the policy to work
- Populations of GCN naturally fluctuate but surveys are only undertaken in one season. If single season surveys indicate that a low rather than high population is present, this population could be destroyed
- The risk of death and injury are too high
- Measuring habitat quality is too subjective
- There is no guarantee that GCN will colonise the habitat created for them
- The approach will create isolated areas of high populations and reduce numbers in the wider area, which will decrease genetic diversity
- It is difficult to secure compensatory habitats in the long-term, even with Section 106 agreements which can be difficult to enforce
- It is preferable to integrate wildlife with development so people can enjoy it
- Local Planning Authorities without ecologists will not have the expertise so make this policy work
- Landowners will not want ponds created on their land due to health and safety concerns
- The rules are currently clear but the proposed policy will be vulnerable to misunderstanding, doubt and potential abuse

Other points raised by respondents were:

- The requirement for compensation to provide additional benefits to the local population is unjustified and not required by law. The key issue is whether the level of mitigation and compensation is sufficient to meet the FCS test.
- It would be better to improve mitigation guidelines to ensure mitigation is not too costly
- Off-setting metrics are required

Question 2. Do you think this policy could benefit other EPS?

Overall, only 30% of respondents felt that this policy could benefit other EPS (Figure 3). This view was reflected across all respondent types except for developers where the majority considered that the policy would benefit other EPS.

There were mixed views as to whether this policy could benefit other reptile and amphibian EPS (natterjack toads, smooth snakes and sand lizards). Some respondents felt that these species could benefit from greater investment in good quality habitat and have a sufficiently high fecundity to recover from any losses due to reduced mitigation measures. However others felt that these species were too sedentary to find and move to good quality replacement habitat and their habitat requirements were too specific to be easily replicated.

Some respondents felt that the policy could benefit non-EPS reptiles (e.g. adders) and should be extended to include them. We address this point in the Question and Answer section at the end of this document.

Most respondents felt that the policy was inappropriate for mammalian EPS (e.g. bats, dormice and otter). Reasons given included:

- the policy requires knowledge of the origin of populations, and this is more difficult to determine for mammals
- low numbers in a colony can be important for a local population
- reproductive rates of mammals are too low
- mammals live at lower densities, are highly social and territory faithful
- mitigation including exclusion and relocation can provide greater returns for mammals compared to amphibians and reptiles
- they occupy habitats which are hard to replicate and easy to harm
- there is much less confidence that mammals will colonise habitats that have been created for them
- the impacts on genetic diversity are potentially greater for mammals compared to amphibians and reptiles

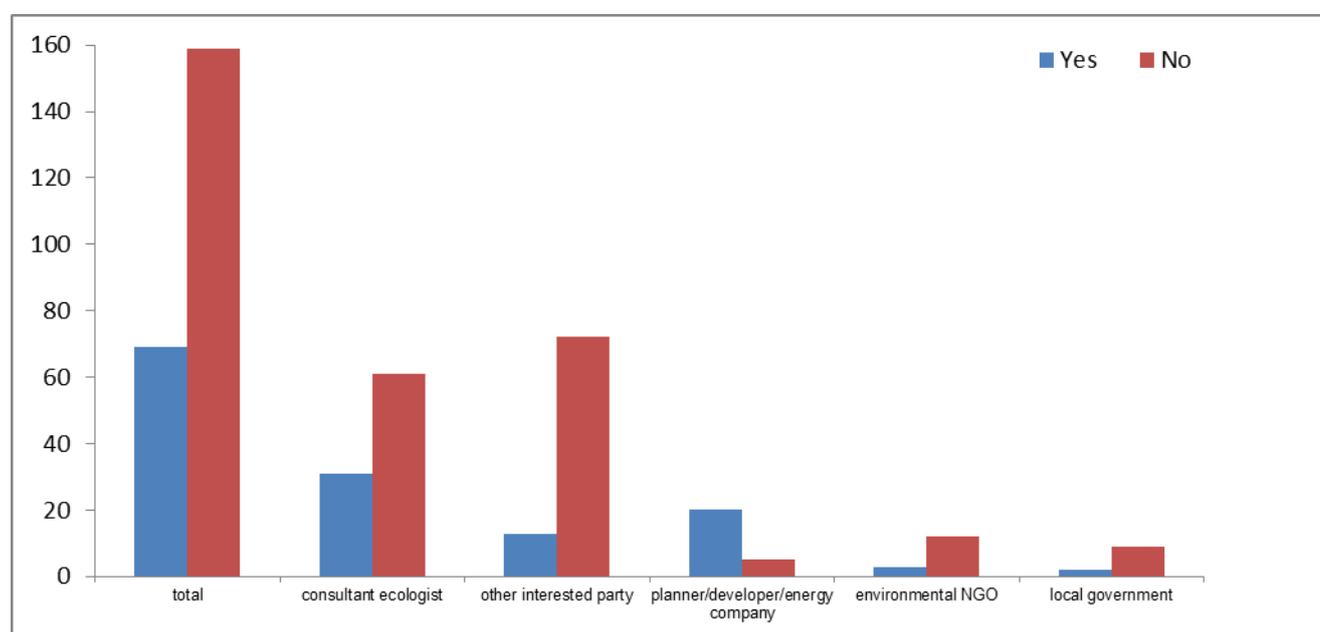


Figure 3. Responses to the question 'do you think this policy could benefit other EPS' by respondent type.

Question 3. Do you think this policy will reduce costs, delays and uncertainty for developers?

Overall, 78% of respondents felt that this policy had the potential to reduce costs, delays and uncertainty, and this view was shared across all respondent types (Figure 4). However, many respondents who answered yes to this question felt that these benefits would be to the detriment of EPS.

Most respondents felt that the policy had the potential to reduce costs and delays. Many also felt that it could reduce uncertainty, however some felt the opposite and were concerned that increasing the number of options available could in fact increase uncertainty.

Those who felt that the policy would be more expensive for developers said that:

- surveying costs would increase due to the need to survey a wider area
- long-term management measures would be more expensive than short term mitigation
- landowners will increasingly hold developers to ransom when they realise their land is essential to facilitate development
- the risk of legal challenge would increase

- the policy will not speed up decisions on planning and licensing which are the principal source of delay

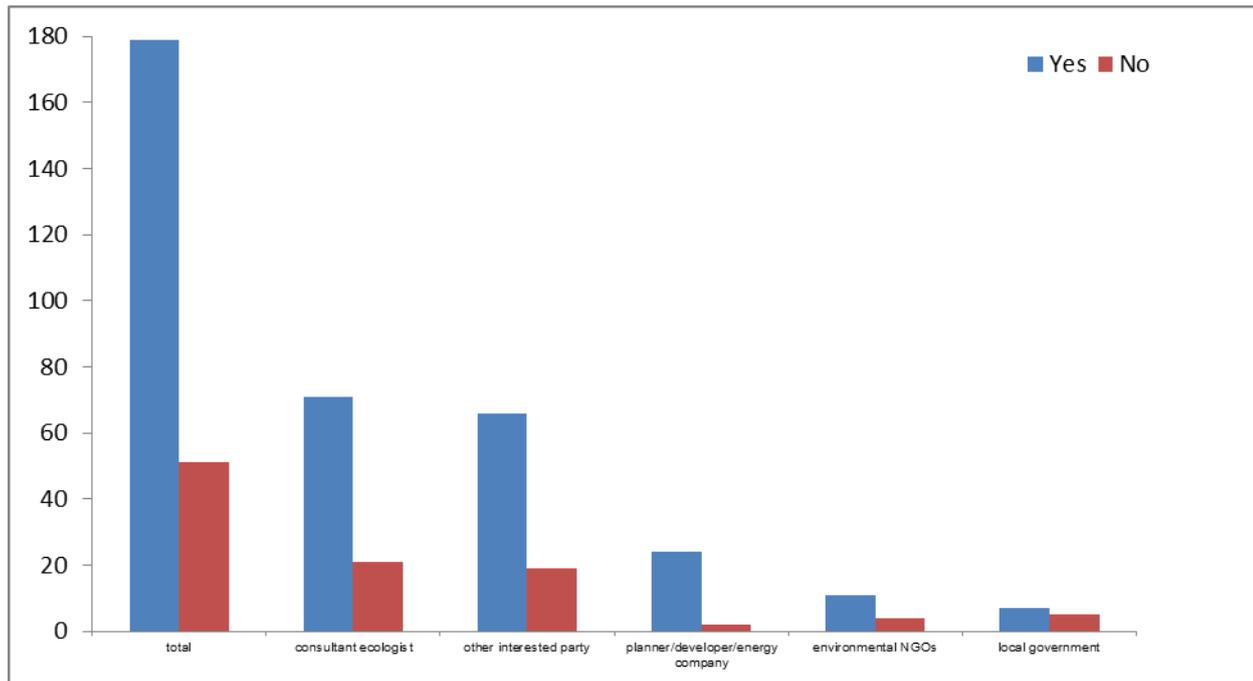


Figure 4. Responses to this question ‘do you think this policy will reduce costs, delays and uncertainty for developers’ by respondent type

Question 4. Do you have examples of where this policy could have been helpful?

77 respondents provided examples. We may contact respondents who have submitted case examples to discuss them further.

Conclusions

There was strong agreement that this policy had the potential to reduce costs, delays and uncertainty for developers. There was a broadly even split in responses regarding the potential to benefit GCN. Many respondents could see the benefit of increasing the focus on habitat provision and the wider local populations, but a number of risks were also identified. Equally importantly, many respondents felt that the policy could be beneficial in certain circumstances but not in others.

Whilst the proposed policy opens the door to greater reliance on habitat provision and less reliance on trapping and relocation of EPS, it does not restrict the latter. It adds flexibility but does not take it away. It introduces the possibility of a sliding scale in which the relative reliance on habitat provision, on the one hand, and trapping and translocation on the other are weighted to maximise benefit and cost effectiveness.

We have amended the wording to clarify that requirements for trapping and translocation will be removed only when greater benefit would arise from focussing investment instead on habitat provision. This is necessary to ensure consistency with the avoid-mitigate-compensate hierarchy and to meet the No Satisfactory Alternatives (NSA) and FCS tests.

Feedback suggested that there will be little initial demand to use this policy for other EPS. Nevertheless we do not want to completely rule out using this policy for other EPS where a solution delivered under this new approach would clearly benefit that species and be cost effective for business. If we receive an application to use this policy for another EPS we will carefully consider it and ensure that the benefits to EPS are clear. The Habitats Regulations

tests remain in place to ensure, amongst other things, that this cannot harm the conservation status of the EPS concerned.

We agree with respondents on the need for good quality and up to date surveys. We also agree that compensation sites should be secured through S106 or NERC agreements, where this is necessary to ensure they receive establishment and maintenance measures and therefore allow the FCS test to be satisfied. We agree on the need for monitoring, and this will be delivered in the same way as our current approach to monitoring EPS mitigation licences through action report forms.

We agree with respondents that whilst the avoid-mitigate-compensate hierarchy should remain in the policy wording, reference to the NPPF is confusing. We have removed this reference.

The following policy has been approved by Defra:

*Defra considers that compensation for EPS impacts can be delivered without the need to relocate or exclude populations, where: exclusion or relocation measures are not necessary to maintain the conservation status of the local population; the ~~NPPF~~ avoid-mitigate-compensate hierarchy is followed; and compensation provides ~~additional~~ **greater** benefits to the local population **than would exclusion and/or relocation**.*

Policy 2 - Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost

Background

This policy was proposed to offer flexibility in the location of compensatory habitat provision. EPS are usually relocated to habitats that are within the boundary of the development site or on land which is adjacent and connected to it. This policy would allow compensatory habitat to be located further away and disconnected from the development where this would be of additional benefit to the local EPS population.

Question 5. Do you think this policy could benefit GCN?

Overall, 59% of respondents felt that this policy could benefit GCN (Figure 5). 92% of planners/developers/energy companies, 75% of ecologists, and 67% of local Government respondents felt that this policy could be beneficial. Only 32% of other interested parties felt that it would be beneficial, and there was an evenly split view from environmental NGOs.

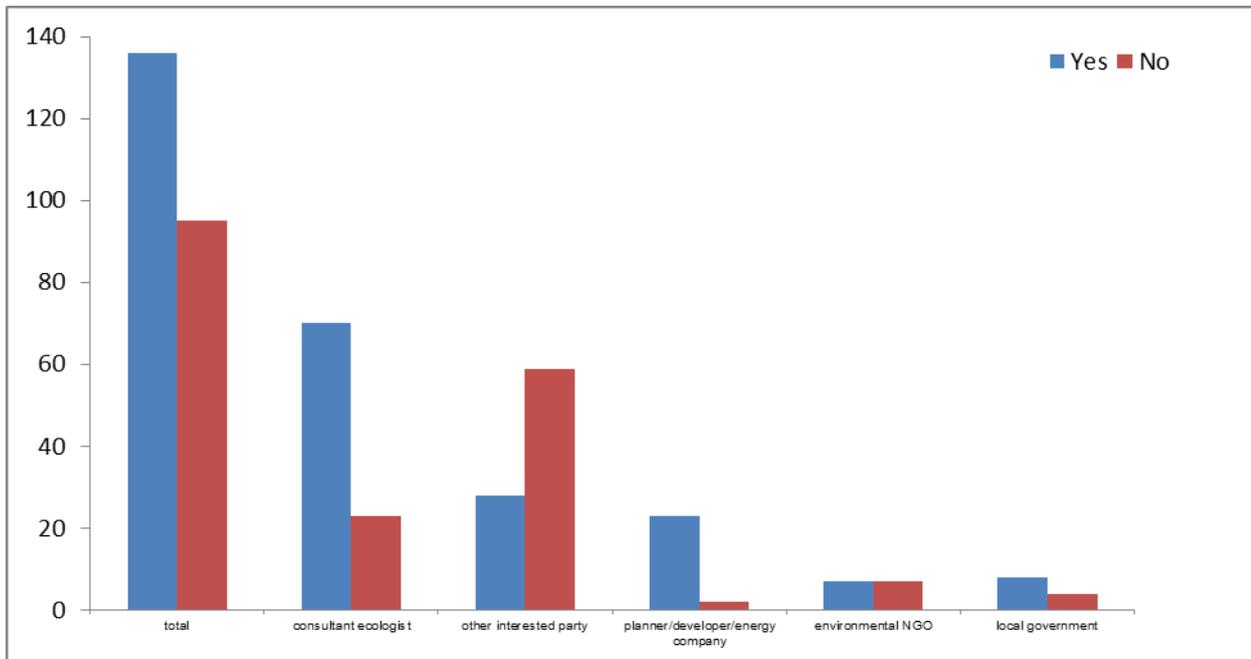


Figure 5. Answers to the question 'do you think this policy could benefit GCN' by respondent type

Those who felt the policy would benefit GCN made the following points:

- It allows a landscape scale approach to conservation
- It is consistent with the Lawton principles of more, bigger, better and joined
- It will address the nationwide problem of habitat fragmentation
- Efforts to create compensatory habitats can be consolidated and targeted to areas of conservation gain
- It will allow more flexible, creative, imaginative and innovative solutions. Increasing the number of options available increases the change of a good option being chosen.
- Habitats will be larger, of better quality and better connected
- GCN requirements are well understood and habitats can be created quickly
- The quality of habitats is more important than the location
- It will allow 'outbreeding' to strengthen the gene pool within expanded populations
- It will particularly help populations that are current isolated
- There is often no long term benefit to maintain populations in areas of high development pressure. There is frequently no suitable space for compensatory habitat. Habitat quality is often compromised by having to 'squeeze it in' amongst buildings. Habitats can quickly become degraded and disturbance can be high. Forcing GCN to stay within development sites can lead to their populations becoming isolated.
- Existing large sites (e.g. open spaces) can be used. Local communities will benefit from habitats being in areas where they can enjoy them. The public will view GCN as an asset not a problem.

Many respondents who answered yes to this question felt that the policy would only be beneficial to GCN in certain circumstances or if applied in certain ways. Frequent views were that:

- It should not be introduced until the benefits of off-site compensation are proven
- The avoid-mitigate-compensate hierarchy must always be followed
- It will not work on every site and the traditional route must always remain available
- It should only be used where small already isolated populations will be lost
- It must only be used if on-site compensation will be less beneficial

- It should only be used if there are no alternative closer areas and no ecological dispersal barriers
- There needs to be a detailed knowledge of GCN distribution before judgements can be made about where compensation should be located
- The habitats created must be the same type and size
- Habitats used as compensation must not already contain GCN
- Compensatory habitat must be secure in the long term and sufficient funding must be available for long-term management
- There must always be clarity on monitoring requirements
- Translocation should only be attempted once new habitats have been created and achieved sufficient maturity

Many of those who felt that this policy would not benefit GCN explained that this was because they were of the view that no development should take place on any land containing GCN. Others provided views that were more specifically about the proposed policy, and frequent views were:

- It is better to integrate wildlife into our built environment
- Development sites will become sterile, especially as GCN habitat on development sites also benefited other wildlife
- It undermines the importance of on-site mitigation
- It will encourage more relocation, rather than the protection of existing sites
- It is difficult to judge whether a distant habitat will be sufficient without extensive survey
- There is an increased risk that GCN could be moved to areas that are unsuitable, where they cannot sustain their populations
- GCN will be too remote from areas they naturally colonised. They have a propensity to try to return to their natal ponds and may leave the habitats created for them
- Although population numbers may increase, other important characteristics of a population could be harmed including isolation and range
- Increasing population isolation poses threats to genetic viability and population fluidity, and increased risk of disease
- Section 106 agreements are not sufficiently binding to secure compensatory habitats in the long-term
- Local authorities without in house ecologists will not be able to make informed decisions on where habitats should be located
- Developers don't often own excess land nor the right type of land that will allow the approach to happen in practice

The following additional points were made during answers to this question, some of which were repeated from responses to the proposed policy 1:

- Natural England should establish a layer of favoured compensation areas to be targeted across England, reflecting the ecological need, existing habitat and connectivity. Without targeted direction of compensation the approach risks being piecemeal as it is now with compensation effectively shadowing development rather than being focused on areas of greatest concern or opportunity.
- The requirement for compensation to provide additional benefits to the local population is unjustified and not required by law. The key issue is whether mitigation and compensation is sufficient to meet the FCS test.
- The four components of the concept of conservation status should be used to assess the value of this approach
- Disease testing will be required for relocations over certain distances

- There must be an assurance mechanism to ensure that the quality of the habitat is sufficient
- Offsetting metrics are required

Finally, answers to this question illustrated mixed views on whether compensatory habitats should be managed by and eventually become the responsibility of local conservation organisations. Many respondents felt that this would give the sites greater long-term security, and that these groups would manage them well and be able to monitor their success. However others felt that developers should not rely on their good-will and that they will often be under-resourced.

Question 6. Do you think the policy could benefit other EPS?

Overall, 48% of respondents felt that other EPS could benefit from the proposed approach (Figure 6). Views varied across respondent types – 92% of planners/developers/energy companies, 58% of ecologists, and 53% of environmental NGOs could see potential benefits to other species; but only 33% of local Government respondents and 27% of interested parties shared this view.

Most respondents referred to bats and dormice in their written responses, and there were mixed views about each.

Those who felt that dormice could benefit stated that:

- More habitat could be provided than the current 2:1 recommended ratio
- There would be more opportunities to use a larger well connected wood
- Dormice will be away from the pressures found on development sites such as disturbance
- It would be particularly beneficial where existing populations are at risk of longer term isolation or fragmentation, and would be a better alternative than dormice bridges which are often unsuccessful
- Ecologists have the skills and experience to confirm scenarios where dormice could be relocated further afield successfully

However other respondents felt that:

- Dormice habitats cannot be created quickly
- It would need too much survey to be cost-effective
- Suitable habitats are few and far between
- The carrying capacity of the receptor woodland could be affected

For bats, many respondents who felt the policy could be beneficial stressed that this view was held for the more common generalist species only. They thought that the policy:

- Would create a good mix of habitats and roosts
- Would allow the strategic creation of habitats at a landscape scale
- Would move bats away from the pressures they face on development sites, such as disturbance, cat predation and harmful lighting

However many respondents did not feel bats would benefit from the policy as:

- We don't know enough about whether the existing approach to compensation works so we should not be increasing risks by placing compensation further away
- Bats have to be encouraged rather than physically relocated, so there is little guarantee that they will use the roosts created for them, especially if they are further away
- It could increase competition if bats were encouraged into the core sustenance zones of other populations

- Bats are faithful to their roost sites
- Bats are faithful to their home ranges and their knowledge of commuting routes passes through generations
- Our knowledge of how bats use different habitats throughout the year is too poor

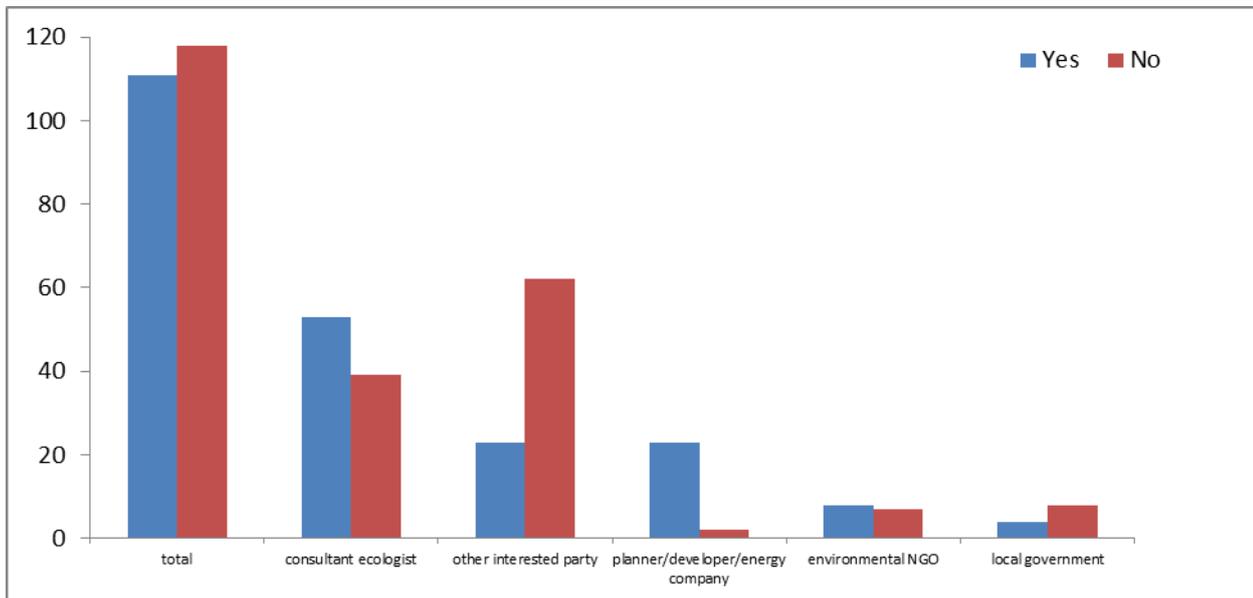


Figure 6. Responses to the question 'do you think this policy could benefit other EPS' by respondent type

Question 7. Do you think this policy could reduce costs, delays and uncertainty for developers?

Overall, 66% of respondents felt that the policy could be beneficial in this way (Figure 7). The strength of this view varied across respondent types: developers 81%, interested parties 74%, ecologists and environmental NGOs both 57%, local Government 45%. Many respondents who answered yes to this question wished to point out that they felt that these benefits would be to the detriment of EPS. A commonly held view was that the policy has the potential to reduce delays and uncertainty but may in fact be more expensive. Reasons given for this included:

- Additional survey work is required
- Land may need to be purchased
- Additional compensation is required
- Long-term management costs will increase
- Monitoring costs will increase
- There will be more legal challenges
- Developers will be increasingly held to ransom by landowners who realise that their land is essential to facilitate development

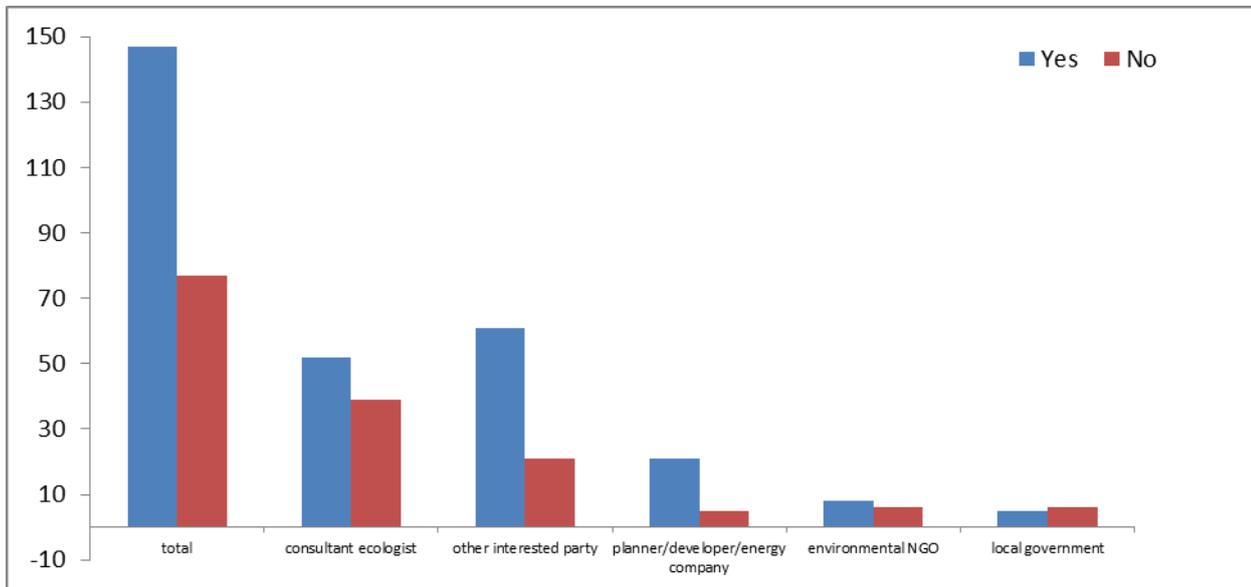


Figure 7. Answers to the question ‘do you think this policy could reduce costs, delays and uncertainty for developers’ by respondent type

Question 8. Do you have any examples of where this policy could have been helpful?

59 respondents provided examples. We may contact respondents to discuss the examples they provided in more detail.

Conclusions

Compared to policy 1 there was greater optimism that this policy could benefit GCN, with many respondents recognising the potential to create more habitats that are larger and better in terms of quality and connectivity. There was slightly less optimism regarding the benefits for developers, with many respondents commenting that although delays and uncertainty could be reduced the overall costs of delivering a more substantial compensation package further away could in fact be higher.

As for PLP1, indeed all the proposed policies, it should be noted that this proposed policy would not remove the option of the conventional approach. Should on-site habitat provision be adequate for the EPS concerned and preferable to the applicant, it will still be an option. This option is not constrained by the policy, which acts to increase flexibility not decrease it.

Feedback suggested that there will be little demand to use this policy for other EPS. Nevertheless we do not want to completely rule out using this policy for other EPS where a solution delivered under this new approach would clearly benefit that species. If we receive an application to use this policy for another EPS we will carefully consider it and ensure that the benefits to that species are clear. The Habitats Regulations tests remain in place to ensure, amongst other things, that this cannot harm the conservation status of the EPS concerned.

We agree with respondents on the need for good quality and up to date surveys. We also agree that compensation sites should be secured through S106 or NERC Act agreements, where this is necessary to meet the FCS test. We agree on the need for monitoring, and this will be delivered in the same way as our current approach to monitoring EPS mitigation licences through action report forms.

We agree with respondents that whilst the avoid-mitigate-compensate hierarchy should remain in the policy wording, reference to the NPPF is confusing. We have removed this reference. We have also removed repetitious wording.

The following policy has been approved by Defra:

*If the licensing tests are met and the NPPF avoid-mitigate-compensate hierarchy is followed, off-site compensation measures may be preferred to on-site compensation measures, where there are good reasons for maximising development on the site of EPS impacts, and where an off-site solution provides ~~additional~~ **greater** benefit to the local population than an on-site solution. ~~The licensing tests must be satisfied.~~*

Policy 3 - Allowing EPS to have access to temporary habitats that will be developed at a later date

Background

Some EPS can thrive in 'man-made' habitats such as brownfield sites and mineral workings. Currently developers often take steps to exclude EPS from such habitats, fearful that their presence will cause delays and other issues when the land is developed a later date. In the consultation we proposed that EPS should be allowed temporary use of such habitats, provided that steps are taken to ensure their local conservation status is maintained over the life of the project and after it has been completed.

Question 9. Do you think this policy could benefit GCN?

Overall, 46% of respondents felt that this policy could benefit GCN (Figure 8). Views were mixed across the different respondent types: 88% of planners/developers/energy companies, 64% of local Government respondents, and 53% of ecologists felt that it could be beneficial. However only 36% of environmental NGOs and 25% of other interested parties felt it could be beneficial.

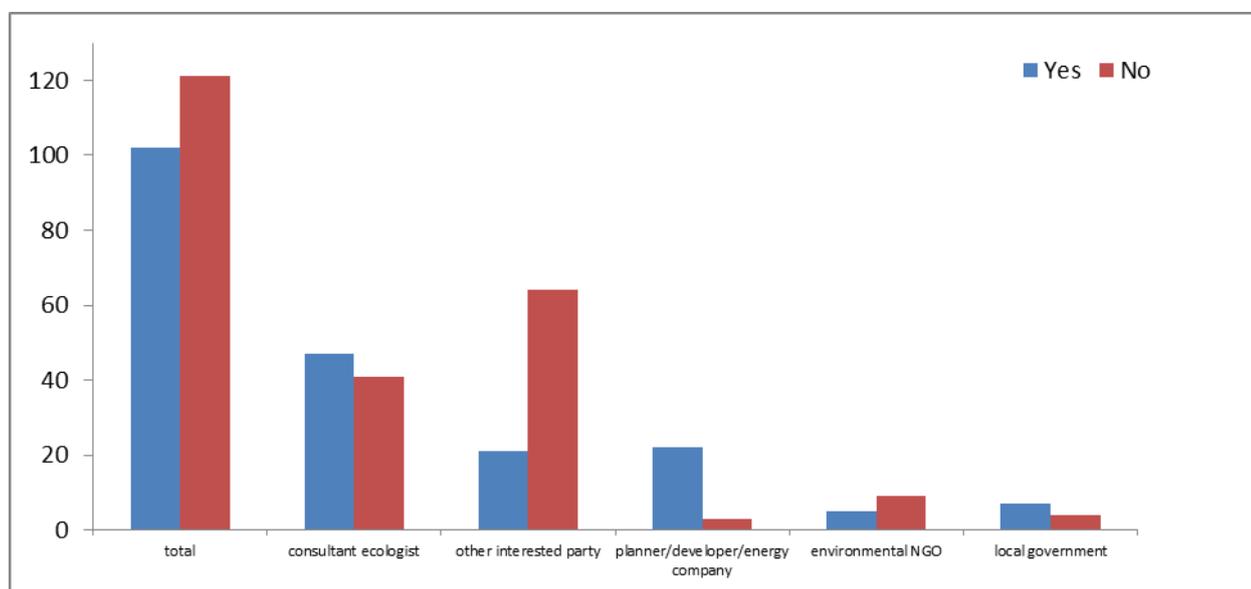


Figure 8. Answers to the question 'do you think this policy could benefit GCN' by respondent type

Those who felt the policy could be beneficial to GCN commented that:

- GCN should be allowed to naturally establish on any site, and once established be afforded the same level of protection as anywhere else
- If economic activity is beneficial to protected species it should be encouraged not penalised. We should dis-incentivise the exclusion/deterrence of GCN from habitats that might otherwise be available and suitable.

- Mineral sites often provide the best habitats for GCN. Many important populations owe their creation to old mineral sites. We should not exclude GCN from these areas in which they can thrive.
- Permanent fencing is often ineffective, thus in reality GCN are already present in phased development
- Currently phased sites are often managed to prevent the establishment of habitat that is attractive to GCN. This would allow the opposite – management specifically to benefit GCN.
- The highly damaging practice of applying herbicides will be avoided
- On larger and long running sites there is the potential to retain breeding populations some distance away from active areas. Currently these populations have to be moved out of the way and cannot be returned once development is complete due to double handling rules.
- The approach will arguably have less impact than a translocation, involving gradual progression of movement rather than complete removal
- Habitats that GCN are currently moved to are often worse than the habitats in a quarry, so it is better to let GCN remain in the quarry and use methods to prevent unnecessary death and damage
- It will allow the transient and opportunistic nature of populations to continue and take advantages of sites that would otherwise be excluded
- GCN are very mobile across mineral sites. They are able to colonise temporary habitats and water bodies quickly and build up large populations. They can therefore withstand the loss of some individuals and habitats as locations are worked.
- There will be less antagonism towards the species, generating less negative publicity and more willingness to provide conservation benefits

Many of those who felt that this policy would not benefit GCN explained that this was because they were of the view no development should take place on any land containing GCN. Others provided views that were more specifically about the proposed policy, and frequent views were:

- It is vague and open to misrepresentation. It will lead to confusion, uncertainty and abuse.
- Well maintained permanent exclusion, preventing GCN from colonising and avoiding mortality, would be more beneficial
- This is a high risk approach that presents an unacceptable risk of death and injury
- You can never be sure an area will not be developed. Significant populations of GCN could colonise only to be lost when developed later.
- Habitats could be destroyed prior to populations becoming stable and individuals reaching breeding age
- It risks killing the fittest individuals as they are the ones that first colonise new areas
- There will be too much disturbance and disruption of habitat in this type of environment
- There could be endless relocation and double handling which is stressful to individuals
- The policy only offers time-limited benefits. The focus should be on finding long-term permanent sites not temporary habitats.
- Quarry managers do not have the right skills to manage GCN habitats in the way required by this policy
- Once mineral working ceases it will be impossible to guarantee the same conservation status unless there is massive pond creation on adjacent farmland

The following additional points were made:

- It is not common for mineral operators to erect permanent amphibian fencing simply to prevent GCN accessing. This would be prohibitively expensive over the long duration that mineral sites operate. Operators only erect fencing if they are aware that GCN are present and after they have obtained a licence to trap and move.
- A conservation plan will be essential for every site on which this policy is used
- Method statements will require rigorous enforcement
- Plans will need to ensure that local populations in the surrounding areas are not overly attracted to the temporary habitats
- It is extremely important to establish a baseline population prior to development starting or access being permitted
- Long term monitoring is essential. Data collection over several years will be necessary to prove whether a population has increased.
- The phrase *On completion of development such sites would be expected to contribute to the conservation status of the local population as much as or more than the land use which preceded development* is too weak. There needs to be greater certainty that the post-development landscape will provide at least the same level of EPS resource.
- It would be better to have two separate policies, one for mineral workings and one for brownfield sites. For the latter, the term brownfield sites needs defining and this policy should only apply to short-term brownfield sites. Long-term brownfield sites should be treated the same as any other habitat.
- A register of sites on which this policy is being used should be created

Question 10. Do you think this policy could benefit other EPS?

Overall, only 34% of respondents felt that other EPS could benefit, and this view was reflected by consultant ecologists (32% yes), environmental NGOs (23% yes) and other interested parties (21% yes) (Figure 9). However 84% of planners/developers/energy companies and 55% of local Government respondents could see benefits.

A small number of respondents felt that the policy could also benefit other amphibian and reptile EPS on mineral workings. Some respondents felt that the policy could be beneficial to dormice if it allowed them access to brownfield sites containing early successional stages of woodland. However others cautioned against this as these habitats take years to develop and dormice do not recover from losses quickly.

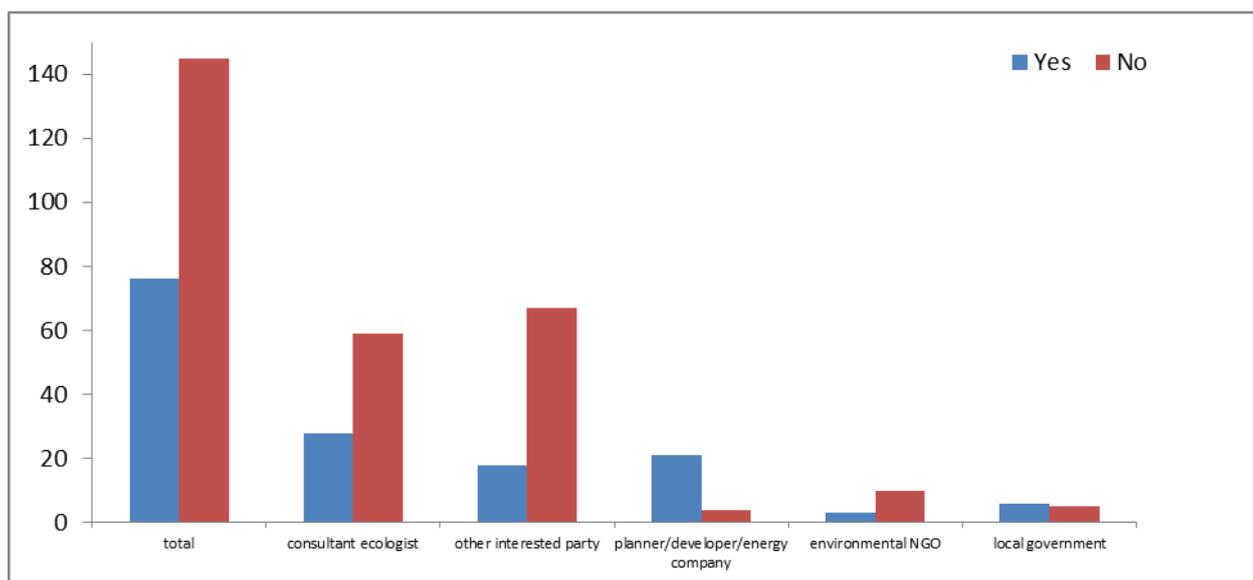


Figure 9. Answers to the question 'do you think this policy could benefit other EPS' by respondent type

Question 11. Do you think this policy could reduce costs, delays and uncertainty for developers?

Overall, 66% of respondents felt that this policy could be beneficial in this way, and this view was fairly consistent across all respondent types (Figure 10). Many felt that the types of costs would change rather than the amount. In other words, developers would save costs through less investment in permanent exclusion fencing, but this would be off-set by the need to manage habitats and monitor GCN populations. Some respondents felt that uncertainty could increase, as well maintained and permanent exclusion fencing provides a level of certainty that GCN are absent, but developers could never be certain how GCN would use a site once they had colonised.

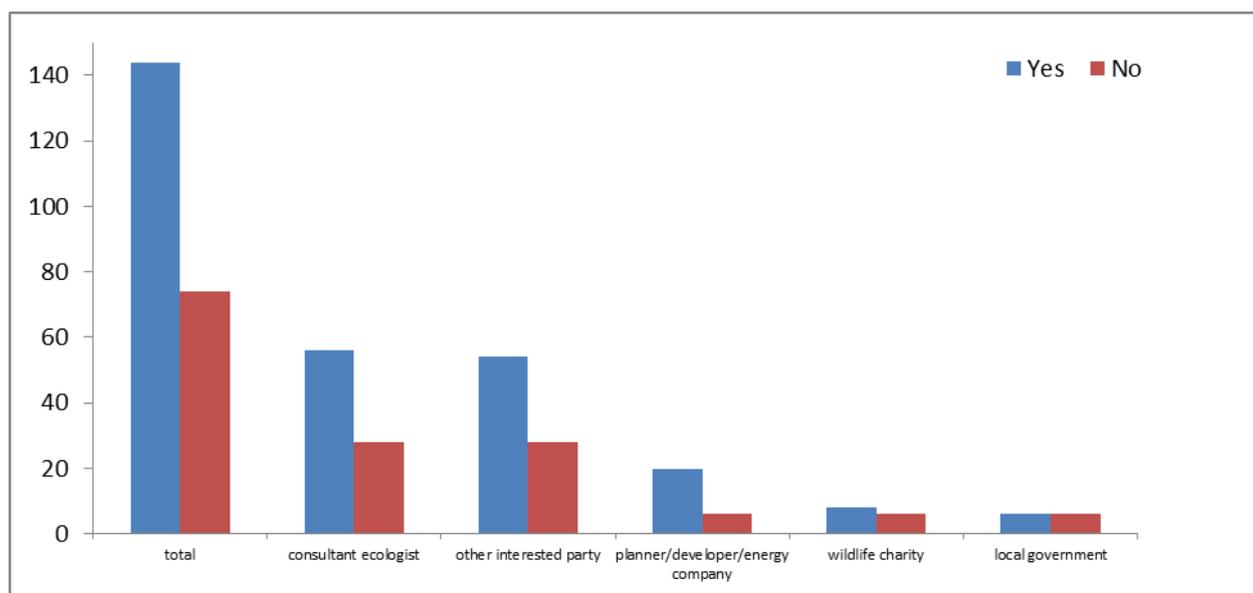


Figure 10. Answers to the question ‘do you think this policy could reduce costs, delays and uncertainty for developers’ by respondent type

Question 12. Do you have any examples of where this policy could be helpful?

33 respondents provided examples of cases for this proposed policy. We may contact these respondents to discuss these cases in detail.

Conclusions

This proposed policy received the most evenly split views on both the ecological and financial benefits. Many respondents wanted EPS to be allowed access to habitats in which they would clearly thrive and from which they have hitherto been excluded. However others felt that the risks to EPS whilst they were in those habitats were too high. There were mixed views about whether the costs of managing temporary habitats for EPS would be greater or less than the costs of excluding them, with many of the view that this would depend on the site in question. One point that the vast majority of respondents agreed on was that the policy was most appropriate for GCN within mineral workings. There was very little discussion about applying it to other EPS or other types of temporary habitat.

In the short-medium term we intend to explore case studies with the minerals sector, and will share the successes and lessons learnt with this sector and consultant ecologists through our Developer Industry Group and Customer Panel. We have clarified the wording of the policy in response to concerns regarding the ability of post phased development landscapes to support sufficient populations of GCN. We agree with the many respondents who said that well-

prepared management plans would be essential for this to work, and we have added this requirement to the proposed wording.

The following policy has been approved by Defra:

*Where development (such as mineral extraction) will temporarily create habitat which is likely to attract EPS, Defra favours proposals which enable works to proceed without the exclusion of EPS, where the conservation status of the local population would not be detrimentally affected. On completion of development such sites ~~would be expected to~~ **must** contribute to the conservation status of the local population as much as or more than the land use which preceded development. The measures to achieve this should be **set out in a management plan** and secured by a legal agreement.*

Policy 4 - Appropriate and relevant surveys where the impacts of development can be confidently predicted

Background

This policy was intended to allow a reduced survey effort in circumstances where the impacts of development on EPS (predominantly bats and GCN) can be predicted confidently.

Question 13. Do you think this policy could benefit GCN and bats?

Overall, there were mixed views on whether this policy could benefit GCN and bats, and this was reflected across all respondent types save developers (Figure 11). Some respondents felt that the policy would result in 'overcompensation' that would be beneficial to these two species. However a greater proportion of respondents felt that it was more likely to not cause harm rather than to be beneficial.

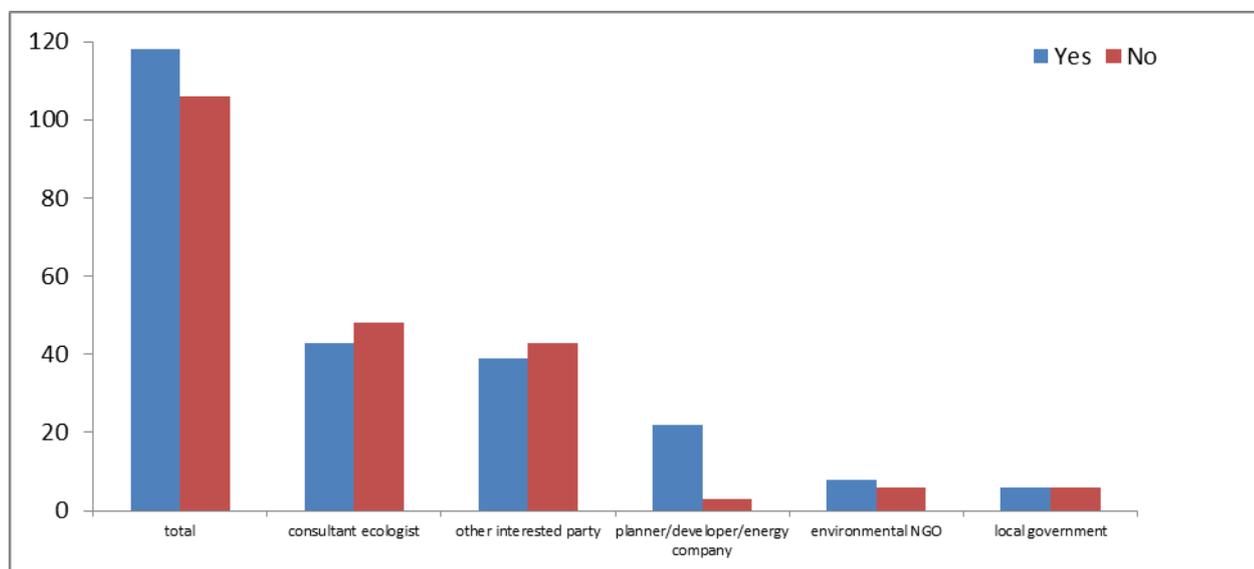


Figure 11. Answers to the question 'do you think this policy could benefit GCN and bats' by respondent type

Many respondents raised other positive aspects of the proposed approach including:

- It will allow previous survey data to be used
- It will allow surveys to be programmed and undertaken at the appropriate and optimal time of year
- In many cases impacts can be confidently predicted without the need for extensive surveys

- Current survey guidelines are too rigid and there needs to be more flexibility
- In many instances information gained in surveys is not material to impact assessment. These unnecessary surveys need to cease.
- There will be more reliance on experts in their field
- It allows discretion unlike the current approach
- It will allow judgement and discretion to be applied rather than the current 'tick-box' approach which almost demands delay and costs which are of no benefit to EPS
- We should trust qualified and experienced ecologists to determine when enough survey has been undertaken for judgements to be made
- If the costs of surveying were made more proportionate it would reduce the perception of EPS as barriers to development, and developers would be less tempted to get away with doing no survey
- For bat surveys, the number of required visits is often too high, especially in low risk casework. Often multiple visits are made and the same information is obtained. Experienced consultants often only need one visit to predict an outcome.
- Developers are often happy to provide habitats and make a contribution towards biodiversity. What really frustrates them is the excessive time and cost of survey work which can be of no benefit to EPS.
- Reduced bureaucracy will reduce crimes against EPS

Those who did not support this policy felt that:

- Appropriate and relevant surveys are already being carried out. This policy does not appear to change the current position.
- Reduced surveys will become the new standard because every project will be considered urgent
- There is already too much confusion over surveying, mitigation and compensation; and this will make things worse
- There will be an unacceptable lack of evidence to inform action
- It is seldom possible to make these types of prediction confidently
- The less information you have the worse decisions will be
- We are still learning the ecology of EPS, and there are many variables and inconsistencies
- Surveys outside the breeding season of bats and GCN are difficult
- It will be possible to miss important bat roosts / GCN ponds
- Signs of bats are often hidden
- It weakens the role and value of surveying information in the process of impact assessment and mitigation/compensation design
- Works will proceed without knowing the true extent of populations
- It could result in poor mitigation and compensation
- It could increase unforeseen/unintended consequences of development
- It removes the ability to accurately monitor the impacts of development
- It removes the ability to accurately monitor the failure or success of mitigation/compensation
- Developers will engineer the use of this policy by delaying contacting an ecologist until late in the season
- Large developers will use the 'genuine need' clause to bully their way to getting licences

Respondents made the following additional comments when answering this question:

- This policy should adopt the precautionary principle and refer to it by name
- This policy should refer to the avoid-mitigate-compensate hierarchy, as the other policies do. Justification for decreased surveying is not the same as justification for bypassing avoidance and mitigation.
- The phrase sufficient certainty should be replaced with a high level of certainty

- Surveys could be reduced but never abandoned altogether
- Reduced surveys will always need to be backed up with local knowledge and a desk study of the evidence. Good background information will be required e.g. that held by Local Records Centres
- The policy will need key principles and thresholds (whilst acknowledging that cases vary greatly to the extent that set criteria are impossible).
- It is more difficult to predict the impacts on GCN compared to bats
- For bats, it will be more appropriate for small roosts of species that roost openly and leave obvious signs, it will be less appropriate if evidence of bats is hidden in inaccessible places
- For bats, further research is needed on the extent that emergence and dawn surveys iteratively provide further information over and above preliminary roost assessments. This could establish whether subsequent surveys add value in proportion to costs.
- The mitigation/compensation should guarantee a benefit to the conservation status of the EPS, not simply maintenance
- It is not necessary to demonstrate a genuine need for development to proceed to a particular timescale. This policy should be available whenever the other bulleted circumstances apply as they enable the licensing tests to be satisfied.

Question 14. Do you think this policy could benefit other EPS?

Overall there was a mixed response to this question (Figure 12) and this was reflected across all respondent types save planners/developers/energy companies. In the written responses, very few respondents put forward arguments that it should be opened out to other EPS, although a small number mentioned that it was possible to accurately predict the mitigation/compensation required when development impacts on dormouse habitat.

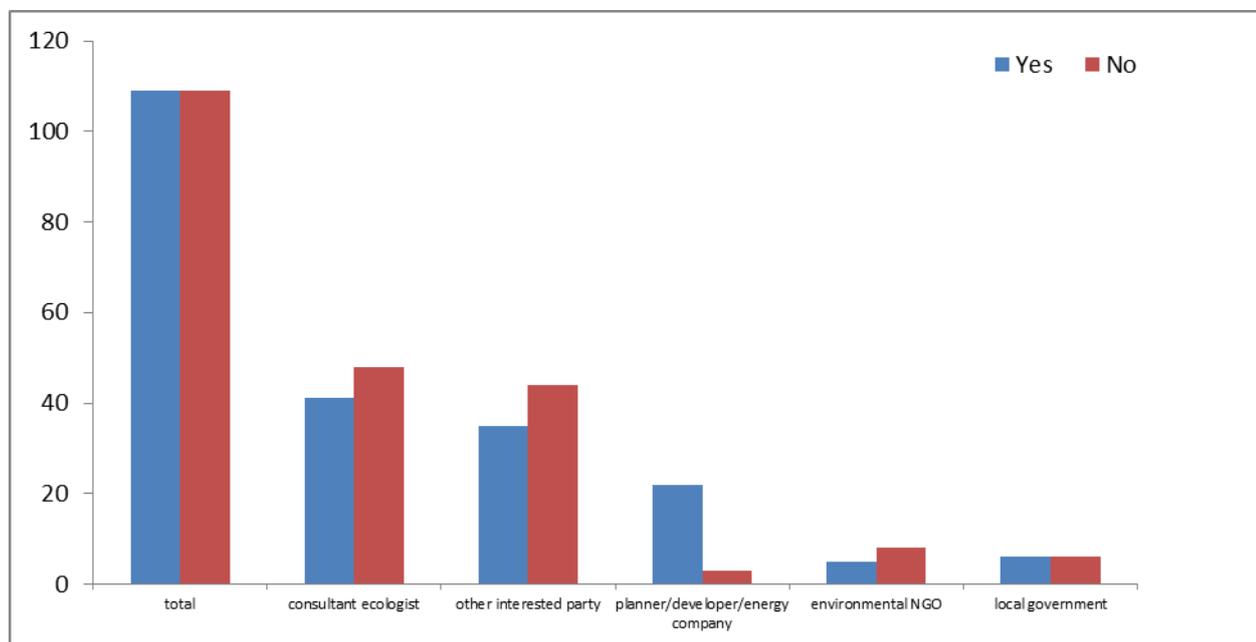


Figure 12. Answers to the question ‘do you think this policy could benefit other EPS’ by respondent type

Question 15. Do you think this policy could reduce costs, delays and uncertainty for developers?

Overall, 73% of respondents felt that the policy could be beneficial in this way (Figure 13). This view was reflected across all respondent types although the views of local Government respondents were more mixed. Many respondents felt that the cost savings through more

proportionate surveys could be considerable, and that the policy had significant scope to reduce the delays associated with EPS being unexpectedly discovered towards the end of the survey season. However others felt that the costs saved through reduced surveys would be off-set by the need to undertake more mitigation/compensation. Many respondents felt that uncertainty would increase through a reliance on professional opinion rather than survey data.

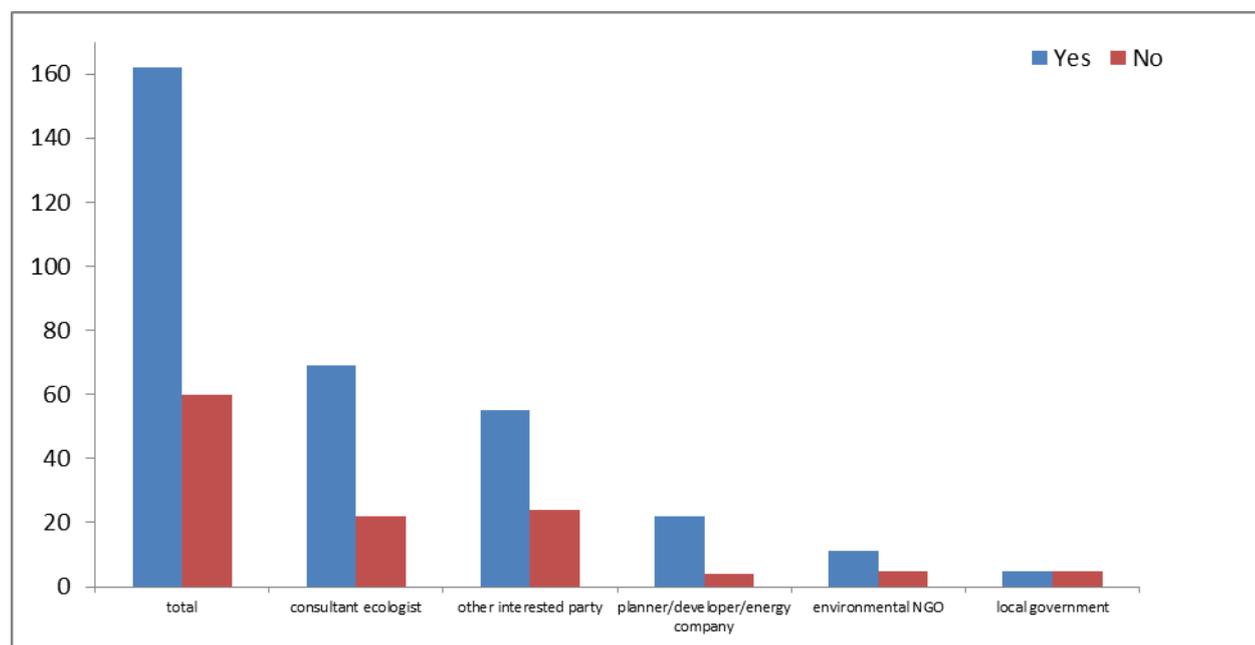


Figure 13. Answers to the question ‘do you think this policy could reduce costs, delays and uncertainty for developers’ by respondent type

Question 16. Do you have any examples of where this policy could have been helpful?

57 of respondents provided examples. We may contact these respondents to discuss these cases.

Conclusions

The overriding messages we received from respondents (particularly consultant ecologists) were a high level of frustration regarding the inflexibility of current survey standards and a desire to place greater reliance on expert judgement.

We already exercise a level of flexibility in survey effort, where departure from published standards is justifiable. We would encourage ecologists to consult the current survey guidelines carefully before planning how surveys will be carried out.

We recognise that this policy offers the opportunity to allow further flexibility in surveying, but we must do this in a way that does not result in an unacceptable dilution of survey standards, nor poor quality surveys, nor unacceptable risks to EPS. Good survey information must remain the cornerstone of our decision making. We feel that this proposed policy nevertheless offers further scope to increase flexibility and pragmatism to survey standards where safeguards can be provided in the form of precautionary mitigation or compensation measures. We recognise the risks of relying on expert judgement but if we use this policy in a way which will reward expertise and good judgement this could help to drive up standards.

In the consultation we proposed that this policy could be used if 5 circumstances applied. One of these was “Where there is a genuine need for development to proceed to a particular timescale”. Respondents raised serious concerns with this requirement. Many felt that it would be impossible to define and enforce consistently. Others felt that it could encourage poor

planning and deliberate delay in instructing surveys. Others felt that those undertaking large scale and important development projects (e.g. Nationally Significant Infrastructure Projects) would always try to rely on it. We agree with these concerns and have removed it from the final policy wording.

The other circumstances were:

- standard survey requirements are not necessary to inform the mitigation and compensation that is required to maintain the conservation status of the local population
- the cost of carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring
- there is confidence that the mitigation and compensation offered would maintain (or preferably enhance) the conservation status of any EPS population likely to be affected
- the developer agrees to implement that level of mitigation or compensation irrespective of what is subsequently found unless Natural England agrees that there is a high degree of certainty that the level of mitigation or compensation can be safely reduced

These were supported by respondents to a much greater degree.

Taking all of the above into consideration the following policy has been approved by Defra:

Original:

Natural England as the licensing authority is entitled to rely on a reduced surveying effort in setting licence conditions where: there is a lack of survey information to remove uncertainty as to the level or type of impact; it is necessary to enable development to proceed to a particular timescale for which there is a demonstrated need; the ecological impacts of development can be predicted with sufficient certainty; and the mitigation or compensation will ensure that development does not damage the conservation status of the local population of any EPS concerned.

Final:

Natural England will be expected to ensure that licensing decisions are properly supported by survey information, taking into account industry standards and guidelines. It may, however, accept a lower than standard survey effort where: the costs or delays associated with carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring; the ecological impacts of development can be predicted with sufficient certainty; and mitigation or compensation will ensure that the licensed activity does not detrimentally affect the conservation status of the local population of any EPS.

Additional points raised by respondents that are applicable to all policies

During responses, the following points were raised that are applicable to more than one of the proposed policies:

- The optional nature of these policies needs to be emphasised, as does the continued need to stress that they are only available if the three licensing tests are met
- The policies change a clear and well understood process which applies to all circumstances. Applying additional options to certain circumstances will increase uncertainty.
- It is unrealistic to expect local planning authorities without access to in house ecological expertise (60% of all authorities) to apply these policies at the planning stage.
- There needs to be more guidance on the survey requirements of each of the proposed policies. The proposed policies (particularly 1 and 2) require surveys to be undertaken beyond development sites. This will potentially be very costly to the extent that it could make use the policies not cost-effective. Whilst current survey standards should continue

to be applied within development sites, cheaper alternatives should be considered in off-site areas, e.g. eDNA and Habitat Suitability Indexes for GCN.

- The policies place greater reliance on compensation to off-set impacts on EPS and to meet the FCS test. It is essential that compensation measures must be secured in advance of any impacts on EPS.
- Compensatory habitats created under these policies should be considered as replacements rather than additions. They must not be counted towards international, European, national or local policy targets for habitat creation. This would be double-counting.
- If these policies are to be applied to EPS other than GCN or bats a further consultation should be undertaken
- Application of these policies needs to take the social context into account. The policies increase scope for biodiversity and green-spaces to be moved away from where people live.
- The increasing flexibility the policies provide increases the urgency to identify Favourable Reference Values for EPS. Without them there will always be doubt about positive outcomes.
- The policies will increase the level of regulatory risk that will be taken on by Natural England and local planning authorities, and decrease this level of risk for developers
- These policies increase the need to bring decision making forward in the regulatory process
- 1200 licence applications represents only 0.32% of the 369,000 developments that were granted planning permission in England in 2015. We query whether licensing is really a substantial cause of delay at national level.

Answers to queries raised by respondents

Respondents raised a number of questions in their consultation responses. We have answered those that were most frequently asked below.

Queries relating to more than one policy

Will applications be assessed by national or area teams?

- Area teams, but our escalation procedures will continue to apply. A selection of applications that use the new policies will be quality assured by national senior wildlife advisers.

Can I apply to use the policies when making amendments or re-submissions?

- Yes

Can I apply to use the policies when registering sites under the low impact class licence?

- No, they are not appropriate for cases that fall within the current bat low impact class licence nor the forthcoming GCN low impact class licence

Can the policies be used in combination with each other?

- Yes they are not mutually exclusive and are available in combination where they are compatible.

Will it be mandatory to use the Discretionary Advice Service (DAS) or Pre-Submission Screening Service (PSS) prior to submitting an application?

- The opportunities which are offered by the PLPs are best considered early in the planning process because they may affect the type and timing of surveys required, the design and layout of development, and the design and location of measures to protect EPS. We are able to provide advice before a licence application is submitted, through our discretionary advice service (pre-planning application) or through pre submission screening (pre-licence application). In the early period after introduction of these policies, as the industry gets used to them, it is especially likely that these forms of advice from NE will help to secure cost effective outcomes and avoid delay. We will not be providing any detailed advice on application of the PLPs in our determination of licence applications.

How should I avoid the inconsistencies that may arise if the traditional approach is required at the planning stage but the new approach is available at the licensing stage?

- The best way of alleviating this potential issue will be to use our DAS service at an early stage in the planning process and to convey our advice to the planning authority.

Many of the policies refer to the local population of EPS. How is local population defined in this context?

- A group of individuals of the same species that live in a geographic area at the same time and are (potentially) interbreeding (i.e. sharing a common gene pool) . This is an ecological definition, which includes the potential to interbreed, rather than simply meaning the collection of individuals of a species in a given area. In line with European Commission guidance, we consider the definition of 'population' to include 'metapopulations'. A metapopulation is a group of spatially separated populations of the same species which interact at some level. Metapopulations can be thought of as a network of populations of the same species (i.e. they are linked and interact).

Many of the policies refer to the conservation status of the local population? How is conservation status defined in this context?

- We are exploring the formulation of local definitions of FCS but it will be some considerable time before they can be expected for all species in all geographical areas. In the interim we will consider applications in relation to the parameters of FCS provided by the Habitats Directive.

Do the new policies require biodiversity offsetting metrics?

- No. These are not required under the current approach and the new policies do not change this.

How will these policies be monitored?

- For policies 1, 2 and 4 there will be no change to the current approach i.e. licence holders will be required to submit action report forms and carry out the monitoring that these forms require. For policy 3 a dedicated monitoring plan will need to be agreed. Given that there has been a great deal of recent change in licencing practice, we expect in the near future to review our approach to licence monitoring.

Are the policies compliant with the Habitats Directive and transposing Regulations?

- Natural England considers that it can lawfully apply these policies in its licensing decisions. The policies do not remove the need to apply for a licence where the offences are engaged. Each licensing application will be considered on its own merits and licences will only be issued where the three licensing tests are satisfied.

Are the policies compliant with the aspects of the Wildlife and Countryside Act that also protect EPS?

- The position in the Wildlife and Countryside Act 1981, as amended, (“WCA”) does not change as a result of these licensing policies. Some of the protections in the WCA for EPS are for specific forms of disturbance and although they do not directly align with the disturbance offence in the Conservation of Habitats and Species Regulations 2010, as amended, (the “Habitats Regulations”), there is some duplication. The WCA does not allow licences to be granted by Natural England for development purposes in order to derogate from the offences. As they do currently, developers will need to consider, and if necessary take advice, on whether the offences in the WCA will be engaged and whether the statutory defence is available depending on the particular circumstances.

Will there be a review of the effectiveness of these proposed policies if they are implemented?

- Yes they will be subject to ongoing review

Queries on policy 1

How will this policy affect surveying requirements?

- Impacts and compensation proposals will need to be considered in the context of surrounding populations. This is likely to require a different range of information. Survey requirements will need to be considered on a site by site basis.

What ‘exclusion’ methods can be reduced or removed?

- This policy relates to all forms of exclusion and relocation. This includes ‘hard’ exclusion measures such as exclusion fencing and pitfall trapping and we anticipate many applicants will wish to focus on reducing or removing these activities. The policy provides that these can only be reduced or removed where they are not necessary to maintain the conservation status of the local population. It will also include ‘softer’ exclusion measures such as hand searches, destructive searches, capture from ponds using netting or bottle trapping, draining down ponds in winter, using ramps during excavation works, and rescue of GCN found whilst works are underway. The policy will allow a reduction or removal in these activities again only where they are not necessary to maintain the conservation status of the local population. We anticipate that some developers will wish to undertake a selection of these soft exclusion measures as they are likely to be a more cost effective way of contributing to the FCS test than the provision of compensation. Some measures may also be needed to address legal requirements where there are other species protected under domestic legislation (see below).

Can the policy be applied if other protected wildlife is present on the development site?

- The policy can be applied in respect of EPS where the three licensing tests and policy constraints are satisfied. Where there are other domestically protected wild animals on the same site, the policy does not apply to those species. The consultation was deliberately focused on EPS. It was not intended to cover wild animals protected only by the WCA. These species do not have the benefit of the wider protections under the Habitats Regulations and the WCA does not allow licences to be granted for development purposes in order to derogate from offences in section 9 WCA. These species must be considered separately under the relevant legislation.

How much additional compensation is required?

- The conventional approach, focussed on trapping and translocation, is seen as mitigation. In order to rely instead on compensation, whilst remaining in line with the avoid-mitigate-compensate hierarchy, habitat compensation will be favoured, through PLP1, only where it provides greater benefit to the conservation status of the species, than would the trapping and translocation. This could be delivered through creating larger, better quality or better connected compensatory habitats, but other factors could be considered such as longer term security, or locating habitats in areas subject to less disturbance. At this stage we are not intending to place standardised quantitative measures on these factors.

Queries on Policy 2

This policy can only be used when there are 'good reasons for maximising development on a site'. What is meant by this?

- Examples we envisage include:
 - where developing a whole site and placing compensation outside it would provide a better outcome for the EPS
 - where it is particularly difficult to accommodate GCN habitats within the development site
 - where there is a lot of development pressure in the area, and it may be beneficial to take newts away from it and into areas where they are more likely to be secure in the long term
 - where there is ongoing phased development which could result in many movements of newts, and as such it may be better to put them further away in one movement
 - where the development need can only be delivered in a very specific location (e.g. a school or community building for a specific catchment)
 - where there is very little land available for development but many potential areas in which compensatory habitats could be located
 - where delivering the development need in one site would avoid the need to spread it out over multiple development sites

How will this policy alter surveying requirements?

- If applicants wish to place compensation further away from development sites they will inevitably need to extend surveys into this wider area to gain a greater understanding of the wider population. It will be necessary to understand the relationship between the population on the site to be lost and the wider population, especially if compensation is to

be located beyond the dispersal limit of the population to be lost. Survey data should demonstrate why an off-site solution is better than an on-site solution.

How much additional compensation is required?

- The conventional approach has been for licensing to require habitat compensation to be located on the impact site or as close as possible. This is because as a rule, the greater the distance between impact and compensation, the greater the risk to distribution and therefore the conservation status of the species. PLP2 provides greater flexibility for licenced solutions to offset against the risk arising from the greater distance by providing increased benefit, in terms of the scale or quality of habitat compensation. Thus NE will consider licensing more distant habitat compensation solutions when greater benefit can be achieved at distance than would be possible through habitat compensation on site. This could be delivered through creating larger, better quality or better connected compensatory habitats, but other factors could be considered such as longer term security, or locating habitats in areas subject to less disturbance. At this stage we are not intending to place standardised quantitative measures on these factors.

What is the maximum distance that a compensation site can be located away from the site being developed?

- Compensation will need to be located within the area used by the local population as defined above.

Can one compensation site be used to compensate for more than one development?

- This would be possible subject to the avoid-mitigate-compensate hierarchy, the three licensing tests and the other limbs of this policy being met. It does risk increasing population isolation and range but it could also be an effective way to address piecemeal impacts through the strategic location and large and good quality compensation sites.

What would happen if the development site is in one local authority district but the compensatory habitat is in another?

- There is no ecological reason why this should be an issue but it is recognised that this may require the involvement and agreement of both local authorities

Queries on Policy 3

A wide range of views on the pros and cons of this policy were submitted, but no significant queries were raised about how it should operate

Queries on Policy 4

Have you reversed your position on not mitigating for a worst case scenario and on over-compensation being unacceptable?

- Only in the circumstances in which this policy applies. We have always sought to ensure that survey requirements are proportionate and focussed on informing the decisions that need to be made. We have sought to avoid over-precautionary licensing, in which greater measures are required than are likely to be needed. We have listened to stakeholders who have made clear that this approach is insufficiently flexible because in some cases delay is far more expensive than the establishment of additional mitigation and

compensation measures. Thus where the ecological information does not make the real impact scenario clear but narrows down the possibilities clearly, we will offer applicants a choice of how to address the residual uncertainty, either by providing more information or by providing more mitigation/compensation.

What are the circumstances in which this policy can be applied?

- When all of the following apply: *the costs or delays associated with carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring; the ecological impacts of development can be predicted with sufficient certainty; and mitigation or compensation will ensure that the licensed activity does not detrimentally affect the conservation status of the local population of any EPS.*

How will you determine whether the ecological impacts of development can be predicted with sufficient certainty?

- This will often depend on what alternative information is available. For bats this could be information held by local bat groups and local records centres on the species that are known to use the area, DNA analysis of droppings found in the building, and a thorough inspection of the building to allow an expert judgement on the type of roost, what species are likely to use it and maximum occupancy. For GCN an alternative approach could involve eDNA tests plus habitat survey to enable a judgement about the extent of occupied habitat and its likely importance

How will you determine whether the mitigation and compensation offered would maintain/enhance the conservation status of the local population?

- There needs to be the same level of confidence that the three licensing tests are met as there would be if standard surveys were carried out. This policy is about using alternative information to surveys, not about lowering the level of confidence required to make decisions.

How much additional mitigation and compensation is required?

- Enough to mitigate and compensate for the 'worst case scenario'. For example, if an eDNA test plus habitat survey suggests that an absolute maximum of three ponds may be affected and they may all be breeding ponds, this is what needs to be compensated for. If an ecologist judges that it is possible that a maternity roost is potentially used by three species of bat, compensation would need to deliver the maternity roost needs of all three species.

How will this policy align with surveys required for planning permission applications? Will the local authority be expected to accept reduced survey requirements in these cases?

- We will seek to secure through the licensing process only the survey and other measures necessary to satisfy the three licensing tests, albeit that this might sometimes need to reflect a worst case scenario. It is possible that a local authority may not wish to accept the same information and other measures. The local authority is able to take our licensing decisions and advice into account. Applicants and potential applicants may therefore wish to proactively share information from NE with the local authority.