



## **Habitats and Wild Birds Directives Implementation Review Response from Wild Law UK**

Wild Law UK welcomes this opportunity to respond to the Habitats and Wild Birds Directives implementation review.

### **Summary**

Wild Law UK believes that the Habitats Directive, together with the Wild Birds Directive, forms the cornerstone of Europe's nature conservation policy. As such, these two directives are the frontline defence against the degradation of the natural world without which the human species cannot survive. The fundamental notion underlying Natura 2000<sup>1</sup> is that nature conservation is more effective when protected habitats are linked. Weakening the rigour of the rules implementing the Directives in England would not only risk harming the natural world within its borders but would likely have knock-on effects across the British Isles. Wild Law UK would not condone any change to the implementing regulations that would impair their effectiveness for the sake of simplification or reducing costs to industry. Wild Law UK calls for strengthening the implementation of the Directives by applying Earth-centred values and principles.

It is imperative that the UK Government upholds its obligations to protect biodiversity at a time of mass extinctions of species, mass deforestation and loss of habitats, climate change, peak oil, increased food insecurity, increased poverty and the breakdown of communities. The Government needs to address the alarming reality that we have exceeded the safe operating space (boundaries) for three of nine planetary systems (climate change, biodiversity loss and excess nitrogen and phosphorus production).<sup>2</sup> Such human activities are damaging Earth and undermining the conditions of life for present and future generations. Wild Law UK believes the Government, and society in general, need to address this urgent challenge if we are to pass on a viable and flourishing future to the generations to come.

Wild Law UK would like to remind the Government of its commitments to nature conservation at the EU level under the Bern Convention<sup>3</sup> and at the international level under the UN Convention on Biological Diversity.<sup>4</sup> In the lead up to the Rio+20 conference in June of this year, the Government has recognised “that the natural environment is central, not peripheral” and believes “it must be made clear that the major global challenges facing us – food security, environmental degradation, climate change, poverty eradication – are inextricably linked”.<sup>5</sup> The Implementation Review must be carried out in the spirit of the Government's global commitments to nature conservation and its stated aims for Rio+20, the most important international conference on sustainable development in the last 20 years. Wild Law UK also requests that the UK Government endorse the Universal

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<sup>1</sup> Natura 2000 network, available at [http://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/index_en.htm).

<sup>2</sup> Rockström, J et al. Planetary boundaries: Exploring the safe operating space for humanity. *Ecology and Society* [online] 14, 32 (2009). [www.ecologyandsociety.org/vol14/iss2/art32](http://www.ecologyandsociety.org/vol14/iss2/art32). Note proposal by Peter Roderick, a UK lawyer, for an international Declaration on Planetary Boundaries which recognises and respects the necessary Earth-system processes which sustain all life, and promotes responsibility for safeguarding these processes from serious or irreversible damage. <http://planetaryboundariesinitiative.org/>

<sup>3</sup> Convention on the Conservation of European Wildlife and Natural Habitats, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=104&CM=8&DF=&CL=ENG>.

<sup>4</sup> United Nations Convention on Biological Diversity, available at <http://www.cbd.int/convention/text/>.

<sup>5</sup> See <http://www.defra.gov.uk/environment/economy/eu-international/>.

Declaration of Rights of Mother Earth<sup>6</sup> which is being considered at the international level,<sup>7</sup> and whose formal adoption at the 2012 Rio+20 conference has the support of governments and NGOs alike.<sup>8</sup>

## Wild Law UK

Wild Law UK is an unincorporated organisation made up of more than 100 UK-based legal professionals from the private, public and voluntary sectors and non-lawyers from all walks of life, including students and academics.

Wild Law UK believes that current environmental law is failing to prevent the cumulative degradation of the natural world. We believe that the root cause of this is that laws, even in their most protective environmental form, treat nature as a "resource" for the sole benefit of humanity. As such, protection of nature is often subsumed to the perceived greater "[human] public interest" in economic growth. Such anthropocentrism is out of step with science and leads to a dangerously unbalanced relationship between humans and the rest of the Earth community.

Without the natural world we cannot survive. Without recognising the intrinsic value and rights of the Earth and all life, we are in severe danger of irreparably damaging our life support system. We must recognise the rights of all life on Earth - human and non-human – to exist, to have habitats and to fulfil their role in the evolutionary processes of the Earth. This will help the necessary shift in society's values to create a more mutually enhancing relationship between people and nature.

The common belief of those who are part of Wild Law UK is that governance systems, including law, must be rapidly reoriented so that they support, rather than undermine, the long term health and integrity of the Earth. This approach is known as Earth-centred governance<sup>9</sup>, which recognises that humans are one of the many species making up the amazingly diverse Earth community and seeks to rebalance our relationship with the Earth system.

## Principles and considerations for the Implementation Review

Commenting on the Review, the Environment Secretary, Caroline Spelman said: "The vast majority of development cases do successfully meet the Directives' requirements but a small number raise particularly complex issues which give rise to unnecessary costs and delays. There's also the possibility that the Directives are being used in ways for which they were not intended."<sup>10</sup>

There is no indication here about what these small number of cases concern or why the Government considers the costs to be unnecessary. Neither is it clear why the Government considers it possible that the Directives are being misused. If the issues involved are complex it is important that the potential effects on a site are appropriately assessed.

"The analysis will focus on the obligations in the legislation which affect the authorisation process

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<sup>6</sup> See Universal Declaration of the Rights of Mother Earth, Art.1(7), Art.2(1), 2(2) <http://therightsofnature.org/universal-declaration/>.

<sup>7</sup> See UN Economic and Social Council, Study on the need to recognize and respect the rights of Mother Earth, 15<sup>th</sup> January 2010, <http://www.un.org/esa/socdev/unpfi/documents/E.C.19.2010.4%20EN.pdf>; UN General Assembly Resolution 65/164 on Harmony with Nature, <http://www.un.org/en/ga/president/65/initiatives/Harmony%20with%20Nature/A-RES-65-164.pdf>; Submission by the Plurinational State of Bolivia to the Ad-Hoc Working Group on Long-Term Cooperative Action at the 16<sup>th</sup> Conference of the Parties to the UNFCCC, [http://unfccc.int/files/meetings/ad\\_hoc\\_working\\_groups/lca/application/pdf/bolivia\\_awglca10.pdf](http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/bolivia_awglca10.pdf).

<sup>8</sup> Including Bolivia, Ecuador and Paraguay, see <http://motherearthrights.org/>, and the Global Alliance for the Rights of Nature: <http://therightsofnature.org/founding-organizations/>

<sup>9</sup> For seminal reading on Earth-centred governance see, e.g., Berry, T., *The Great Work*, Bell Tower, 1999 (who developed 'Earth Jurisprudence'), Cullinan, C., *Wild Law*, (Green Books, 2011) 2nd ed., Stone, C., *Should Trees Have Standing* (OUP, 2010), 3rd ed., and *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, edited by Burdon, P. (Wakefield Press, 2011).

<sup>10</sup> See <http://www.defra.gov.uk/news/2011/11/29/habitats-and-birds-directives>.

for proposed development, with a view to reducing the burdens on businesses while maintaining and where possible enhancing environmental benefits.”<sup>11</sup>

When implementing the Directive we remind the Government that the spirit and aim of the Directives is to protect biodiversity. Further Article 6(3) of the Habitats Directive requires that a national authority shall agree to a development "only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public". The presumption is for the protection of biodiversity, with economic development being an exception.

This precautionary and participatory process can take time. If the government wishes to move away from this process in complex cases, it would be in breach of its obligations under the Directive.

In the implementation of the Directives the UK Government should also uphold its international obligations for biodiversity protection, particularly under the Bern Convention<sup>12</sup> and the UN Convention on Biological Diversity<sup>13</sup>. The Government should recall the World Charter for Nature, a legally binding document adopted by the United Nations General Assembly in 1982, which requires that human "utilization" of ecosystems and organisms should not compromise the overall integrity of life on Earth.<sup>14</sup>

The UK Government should also honour its commitments to environmental protection at previous and the forthcoming Rio+20 Earth Summit on sustainable development. Further, Wild Law UK requests the Government to take account of the Universal Declaration of the Rights of Mother Earth. Article 7 states: "The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth." Further States should promote economic systems that are in harmony with Mother Earth and consistent with the rights of nature.<sup>15</sup>

In appearing to prioritise development over biodiversity, the Government fails to recognise that the economy is rooted in and dependant on Earth, and a sustainable economy can only be based on a thriving ecology. Therefore, decisions regarding development must be founded on Earth-centred principles which promote the long-term health and integrity of the Earth, recognising that Earth has limits within which humans must live, and respecting the inherent rights of all life on Earth of present and future generations.

## Wild Law principles

Wild Law UK believes that Wild Law principles can strengthen the implementation of the Directives to protect biodiversity and promote a mutually enhancing relationship between humans and Nature.

Wild Law is the rules, regulations and constitutional principles that give effect to Earth-centred governance. A recent international report – *Wild Law: Is there any evidence of Earth Jurisprudence in existing law and practice?* - prepared by two members of Wild Law UK, identified the following three indicators to measure the "wildness" of individual laws:<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Convention on the Conservation of European Wildlife and Natural Habitats, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=104&CM=8&DF=&CL=ENG>.

<sup>13</sup> United Nations Convention on Biological Diversity, available at <http://www.cbd.int/convention/text/>.

<sup>14</sup> Cl. 1 – 4 of the UN General Assembly Resolution 37/7 on the World Charter for Nature, <http://www.un.org/documents/ga/res/37/a37r007.htm>.

<sup>15</sup> See Article 3(2)(l) of the Declaration of Rights of Mother Earth.

<sup>16</sup> Filgueira, B. and I. Mason, *Wild Law: Is there any Evidence of Earth Jurisprudence in Existing Law and Practice?*, UK Environmental Law Association and the Gaia Foundation (March 2009), p. 5.

## 1. Earth-centred governance

- Recognises the intrinsic value of nature – as a life support system for all life on Earth, rather than as a "resource" for the sole benefit of humanity.
- Respects the Earth's limits/boundaries and reflects scientific understanding of how ecosystems operate. For example, we should adopt a precautionary approach and prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles, including through phenomena such as climate change.
- Respects the rights of nature to exist, to habitat and to fulfil our role in the community of life, and to restoration from damage.
- Recognises that humans are one of many species in the amazingly diverse Earth community.

## 2. Mutually enhancing relations to promote the well-being of the whole Earth Community

- Rebalances the human relationship with the Earth system, from which human well-being derives, so that it contributes to the well-being of the whole Earth community now and in the future.

## 3. Community Ecological Governance

- Respects the rights of all species of the Earth community to participate in governance decision-making which affects their life and future.

The Report evaluates the "wildness" of both the Habitats and Wild Birds Directives on the basis of these indicators. The Habitats Directive came closest to upholding/endorsing the Wild Law principle of Earth-centred governance, establishing Wild Law credentials on its Earth-centred qualities. It recognises the intrinsic value of nature for its own sake and is concerned with deterioration *per se* and not in relation to any particular human purpose.<sup>17</sup>

The Habitats and Wild Birds Directives do contain potential to open up arguments for Earth-centred governance and their intentions have clear Wild Law foundations, save for the fact that the overriding interest is essentially anthropocentric. Their weakness as Wild Law instruments lies in the fact that they follow the general rule of human priority without seriously affecting or challenging that general rule except in special instances. Equally, and consistently with this weakness, there is little scope allowed for community involvement, none for communities outside Government-designated areas, and no means of community level engagement or enforcement. The intentions place both Directives on the 'wild' side of the balance, but only just.<sup>18</sup>

The Report states: "The above criticisms are not intended to say that the Habitats and Wild Birds Directives are not viable, and even enlightened, effective and necessary, environmental legislation". Therefore, Wild Law UK cautions against weakening the implementation of the Directives and rather, would seek measures to strengthen their implementation for the protection and enhancement of biodiversity. Wild Law UK believes that in order to be effective the Directives need to go further and include Earth-centred values and principles. Earth-centred governance seeks to rebalance our relationship with the Earth system from destructive to mutually enhancing for the benefit of the whole Earth community.

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<sup>17</sup> *Id.* at p. 8.

<sup>18</sup> *Id.* at p. 11.