

**EXPLANATORY MEMORANDUM TO  
THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULES 5  
AND 8) (ENGLAND AND WALES) ORDER 2011**

**2011 No. 2015**

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and the Welsh Government. It is laid before Parliament by Command of Her Majesty. It is also laid before the National Assembly for Wales.

2. **Purpose of the instrument**

2.1 The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011 adds four new animals to Schedule 5 of the Wildlife and Countryside Act 1981 (WCA) and removes two existing entries from protection. The Order also extends the protection afforded to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes four existing plant entries. Schedule 5 lists animals protected under section 9 of the Act. Schedule 8 lists plants protected under section 13 of the WCA. These Schedules are amended under section 22 of the Act.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**Matters of special interest to the Constitutional and Legislative Affairs Committee**

3.2 This Order is made following representations by the GB Conservation bodies through the Joint Nature Conservation Committee. It is made on a composite basis to ensure consistency of application between England and Wales.

4. **Legislative Context**

4.1 The WCA protects all wild birds, certain wild animals and certain wild plants. Under Section 9 species listed in Schedule 5 to the Act are afforded certain protection. Depending on the protection detailed it can be an offence amongst other things, to: intentionally kill, injure or take any such wild animal, to have any such wild animal in one's possession or control, intentionally to damage or destroy any structure or place used for shelter or protection, or to sell or expose for sale any such wild animal (and in certain circumstances, things deriving from any such animal).

4.2 Section 13 affords particular protection to plants listed in Schedule 8, and makes it an offence, amongst other things, (a) intentionally to pick, uproot or destroy, or (b) sell or expose for sale, or have in one's possession for sale, any such wild plant.

4.3 Under Section 24 of the WCA the JNCC is required to review Schedules 5 and 8 every five years and to advise the Secretary of State and the Welsh Ministers whether, in the collective opinion of the conservation agencies, any animal or plant should be added to or removed from the Schedules.

4.4 The Secretary of State's and the Welsh Ministers' powers to vary the Schedules are set out in section 22 of the Act.

4.5 Part 1 of the WCA applies in relation to the territorial waters of Great Britain: 12 nautical miles from the baseline (usually the low water mark around the coast). The WCA does not apply in relation to the offshore marine area or international waters.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales, and is being made on a composite basis with the Welsh Ministers.

## **6. European Convention on Human Rights**

6.1 Parliamentary Under Secretary of State Richard Benyon has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Wildlife and Countryside Act 1981 are compatible with the Convention rights.

## **7. Policy background**

7.1 Defra's new business plan, which was launched in November 2010, incorporates the Department's Structural Reform Plan which includes among its three key priority areas 'enhance the environment and biodiversity to improve quality of life'. The Welsh Government's *Living Wales* Programme initiated in September 2010 seeks to secure a more integrated approach to managing the natural environment to ensure that Wales has increasingly resilient and diverse ecosystems that deliver a range of social, environmental and economic benefits. The programme will deliver a new Natural Environment Framework that is compatible with the Welsh Government's Sustainable Development and biodiversity duties.

7.2 In keeping with both policy positions these amendments aim to promote the protection of vulnerable species and the protection the public's interest in relation to biodiversity. There is a variety of reasons as to why the existence of native species is being threatened. These include impacts from human activity, non-native species and climate change. Many native plants and animals have become extinct as a result of one or

more of the above impacts and more species are in danger of the same fate. The Wildlife and Countryside Act 1981 is one part of the strategic approach to the protection of endangered species. We use this to ensure that there is an appropriate legal protection. Where this is not appropriate or possible we have other measures we can use such as providing informed advice and guidance where necessary, encouraging cooperation and promoting best practice.

7.3 During 2008 the JNCC carried out a public consultation in which it sought views on the addition of species to, or removal of species from, Schedules 5 and 8 to the WCA. It also asked whether existing protections should be adjusted. Once the JNCC had summarised the responses to this consultation and evaluated these, it made recommendations to Defra and the Welsh Government in December 2008. After considering these recommendations, Defra and the Welsh Government published a public consultation in January 10 and took into account the responses from this exercise when making final decisions on amendments to Schedules 5 and 8 of the WCA.

## **8. Consultation outcome**

### Responses on the Marine Species

8.1 Generally, there was support for listing the proposed marine species for the following reasons:

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

8.2 The overriding reason given for not supporting the listing of proposed marine species was that the species is/are already protected under the CFP, and if there were any change to the CFP Total Allowable Catch (TAC), UK fishermen would be disadvantaged.

### Responses on other animal species

8.3 There was strong support for JNCC recommendations regarding the proposed scheduling of other animal species. For example, of the seven respondents who replied on the shad species, five agreed with JNCC's recommendation to increase protection of allis under 9(4)(c) and to increase protection for twaite under 9(1) and 9(4)(c) in England and Wales. Furthermore, all respondents who commented on the pool frog agreed with the JNCC recommendation to protect under 9(4)(b) and (c) for England only.

## Plant species

8.4 There was strong support for JNCC recommendations regarding the proposed addition and removal of certain plant species. For example, all consultees who commented on the Long-leaved Thread-moss agreed with JNCC's recommendation to remove protection. Both respondents who commented on Tree Lungwort agreed with JNCC's recommendation to protect from sale under 13(2) only.

## **9. Guidance**

9.1 Further information regarding amendments to Schedules 5 & 8 of the Wildlife and Countryside Act 1981 can be found on either the Defra website at: <http://www.defra.gov.uk/wildlife-pets/wildlife-management/rare-exploited-species/> , or on the Joint Nature Conservation Committee website at: <http://jncc.defra.gov.uk/default.aspx?page=4630> or the Welsh Government's website at: [www.wales.gov.uk/environment](http://www.wales.gov.uk/environment) .

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be minimal. Groups whose trade may be affected by the protection of particular marine species include fishermen, collectors of species and Chinese medicine suppliers. Local authorities may also be affected in terms of higher insurance payments.

10.2 The impact on the public sector is expected to be negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The Impact Assessment indicated that any costs to businesses would be negligible.

## **12. Monitoring & review**

12.1 Section 24 of the Wildlife & Countryside Act 1981 requires the GB conservation bodies of Natural England, the Countryside Council for Wales and Scottish Natural Heritage, acting through the Joint Nature Conservation Committee (JNCC), to review Schedules 5 and 8 of the Act every five years and to recommend any changes to the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

### **13. Contact**

13.1 Matt Ashton at the Department for Environment, Food and Rural Affairs, tel: 0117 372 3611 or email: [matthew.ashton@defra.gsi.gov.uk](mailto:matthew.ashton@defra.gsi.gov.uk).



<b>Title:</b> <b>Review of Schedules 5 &amp; 8 of the Wildlife and Countryside Act 1981</b>  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 31/01/2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Alison.elliott@defra.gsi.gov.uk	

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> Plants and animals present in the wild face constant threats from human activity such as land-use changes, amateur and commercial collection, and both recreational and commercial fishing. These threats can impact significantly on species population numbers and, over time, even cause extinction if nothing is done to halt the decline. There are presently a number of species which research suggests are threatened or even critically endangered. It is important that government legislation is used to regulate human activities and prevent further species loss.	
<b>What are the policy objectives and the intended effects?</b> Protection for native species at risk due to population decline. Listing on Schedules 5 (animals) or 8 (plants) will make it an offence (depending on the protection detailed on a species by species basis) to kill, injure or take, possess or sell any specimen or destroy any structure or place used for shelter or protection; or to intentionally pick, uproot, possess, sell or destroy listed plants.	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> The options considered were whether to provide legislative protection and amend or remove existing legislative protection for the detailed species or not. The preferred option has been to revise Schedules 5 and 8 of the Act as advised by the JNCC unless there is evidence that this is not the most appropriate/effective course of action. The following criteria have been applied in the decision making process: for marine species covered by the Common Fisheries Policy, the Wildlife and Countryside Act will only be used where it offers additional safeguards; is use of legislation the best approach and is the Wildlife and Countryside Act the most effective means of legislating; does the evidence support the decision or is there a need to be precautionary; and is the benefit of protection justified against the potential cost to businesses affected.	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed in 2013
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:..... Date:.....

# Summary: Analysis and Evidence

# Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low		Optional	Optional	Optional	
High		Optional	Optional	Optional	
Best Estimate		Negligible	Negligible	Negligible	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<p>Overall costs and benefits of listing species are difficult to quantify. Collectors will be impacted by the protection afforded to the moth species as they will no longer be able to sell individuals or larvae of the species concerned. Given that the species concerned only have populations in the hundreds and larvae have been known to trade for £4 per fifteen this is not a huge market.</p> <p>Churches and local authorities may be impacted by protection afforded to the Rock Nail. This is known on only a handful of sites so will involve a very small number of churches. They will potentially be required to adopt less intensive land management practices and may – in circumstances where the species is known to be present - be required to carry out Environmental Impact Assessments and apply for licenses if they intend to carry out activities which could impact the species, for example repairs to gravestones that host them.</p> <p>Chinese medicine suppliers could also be impacted if they intended to harvest tree lungwort (an ingredient for a medicine) in the UK. We believe this is currently imported from countries such as Bulgaria and sells for around £9 per kilo. If they wished to harvest it in this country they would need to apply for a licence to do so.</p>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p>Although responses to the consultation did not raise any additional non-monetised costs the most likely group to be affected is recreational anglers who will be affected by the protection afforded to the fish species. Some fishermen may need to change their behaviour by following best practice to ensure that they do not target the protected species and if they catch them they are returned unharmed to the water.</p>					
<b>BENEFITS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low		Optional	Optional	Optional	
High		Optional	Optional	Optional	
Best Estimate		Non quantified	Non quantified	Non quantified	



<p><b>Description and scale of key monetised benefits by 'main affected groups'</b></p> <p>In cases where protection is provided by the Common Fisheries Policy (CFP), the Wildlife and Countryside Act is filling a 'gap' in protection by protecting the species from recreational fishermen who are not subject to the CFP. The benefits in many cases are likely to be modest but close an important loophole. A number of species have had their protection removed. In cases where the population still exists this will reduce the burden on land managers and conservationists who currently have to apply for a licence to disturb the species. It will have the benefit of facilitating recording and research, and better recording could assist in the conservation of the species, both at sites where it has already been recorded and, potentially, at new localities.</p>	
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>The key objective of this review is species protection. Specific objectives include reduction of human impacts on threatened species, increase in species population figures and biodiversity, reduction in the likelihood of threatened fish caught by recreational fishing; ensuring that threatened animals and their habitats are not disturbed by land use change and amateur and commercial collection.</p>	
<p><b>Key assumptions/sensitivities/risks</b></p> <p>There is an assumption that the Common Fisheries Protection policies for the marine species we will be protecting are long-term and will not be changed in the near future. If they did we would be contravening the Common Fisheries Policy and our legislation would have to be amended quickly.</p>	<p><b>Discount rate (%)</b></p>

<p><b>Impact on admin burden (AB) (£m):</b></p> <p>New AB:      AB savings:      Net:</p>		<p><b>Impact on policy cost savings (£m):</b></p> <p>Policy cost savings:</p>	<p><b>In scope</b></p> <p>No</p>
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## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	10/10/2011				
Which organisation(s) will enforce the policy?	Police/local authority				
What is the annual change in enforcement cost (£m)?	£ Negligible				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: £0		Non-traded: £0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	p.7
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	p.7
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	p.7
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	<0.001	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
<b>Total annual costs</b>	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Total annual benefits</b>	0	0	0	0	0	0	0	0	0	0

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### Problem under consideration

Schedules 5 and 8 of the Wildlife and Countryside Act 1981 list species of animal and plant respectively, which need protection from human activity to prevent them from becoming endangered or extinct. JNCC has a statutory obligation to review the Schedules every five years and advise the Secretary of State of their recommendations. The Schedules need updating regularly to ensure that it remains relevant, protecting species before it is too late and removing species that no longer require that protection.

### Rationale for intervention

Most of the species covered in this review have been identified in recent years as candidates for addition to Schedule 5 and 8 because of the threats which they face to their existence from human activity. The scale of the potential threat justifies the use of regulatory measures to prevent further population decline. Government intervention can be used alone or as part of a suite of mechanisms that would effectively dissuade, discourage or deter people from behaviours that lead to, or could lead to, further population decline and even extinction of these species. The aim is to legislate only where it would be effective to do so. The rest have been identified for removal or reduced protection because they have become extinct, are not threatened or have been reclassified.

Protecting species in the wild which are under threat from human activity is a key element of conserving our native flora and fauna and contributes towards achieving the aim of halting the loss of biodiversity in the EU by 2020.

### Policy Objective

It serves our obligation under The Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), which states under Article 3 (1) that 'each Contracting Party shall take steps to promote national policies for the conservation of wild flora, wild fauna and natural habitats, with particular attention to endangered and vulnerable species, especially endemic ones, and endangered habitats, in accordance with the provisions of this Convention'.

The purpose of this review is to revisit and, if necessary amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 (the Act) to ensure that it is effectively regulating a species which requires protection because it is threatened and its population size is decreasing at a rate that requires action before the species becomes extinct. Alternatively it ensures that a species which no longer requires the protection for whatever reason is removed. This is the fifth review of Schedules 5 and 8 since the Wildlife and Countryside Act was enacted in 1981.

### Description of options considered (including do nothing)

**1. Update Schedules** - Schedules 5 and 8 would be updated to protect animals and plant species proposed by the JNCC. All species on the Schedules or proposed to be included in the Schedules were appraised on a case by case basis as follows:

- for species currently on the schedule the option considered was whether to retain them or not (retaining them was the baseline against which costs and benefits of removal were considered)
- for new potential species the option considered was whether to add them or not (not adding them was the baseline against which costs and benefits addition were considered)

The culmination of these case by case assessments is an updated Schedule 5 and 8, which is our preferred option.

The individual species decisions are explained in Annex 2 to this evidence base, the analysis supported the addition of a number of species of animal and plant, and the removal of some species of animal and plant. The rationale for including or excluding species from the list are presented in the annex with the types of costs and benefits assessed in deciding whether to update or not the list of species.

**2. Do nothing** – We would not amend the Schedules as advised by the JNCC, our statutory conservation advisors. This would result in rare and endangered species not being protected under Schedule 5 and 8 of the Wildlife and Countryside Act 1981 contrary to our obligations under the Bern Convention and there would be unnecessary regulatory burdens placed on people as a consequence of protecting species that no longer required this.

### Costs and Benefits of each option

#### Sectors and groups affected

Addition to Schedules 5 and 8 is unlikely to restrict the trade of any sector. While listing a species on the Schedules will restrict or prohibit the capture, killing, sale etc of the species, these are mostly rare species which are not targeted or of low commercial value. The group most likely to be affected are recreational fishermen. However, the species concerned are rare in UK waters and are not subject to targeted fishing, so the effects will be very small. In effect the listing of many species is complementing other measures taken, such as protection under the CFP, and in this case closing off a small but important loophole.

Chinese medicine practitioners may be affected by the ban on possessing for the purpose of sale and actual selling of Tree Lungwort, which is considered to be of benefit in Chinese medicine. There is no evidence that it is being collected in great numbers in the UK at this time.

Churches and local authorities in a very limited number of locations will be impacted by the listing of Rock Nail as it could require them to move to more sensitive estate management and require them to apply for a license to carry out repair work on gravestones where this species is found. Moth collectors will be affected by the protection given to the Talisker Burnet Moth and the Slender Scotch Burnet Moth as they will not be able to sell wild specimens any longer.

Developers may face minor incremental costs as protecting further species under the Wildlife and Countryside Act implies that they would need to examine impacts upon a longer list of species when assessing the environmental impact of new proposals.

NB Specific Impact Tests were considered but were deemed not to be necessary. In particular the listing of these species does not raise any equalities issues and where there were potential impacts on small firms or on competition the species that may have caused concerns have not been listed.

## **1. Updating the Schedules**

### *Benefits:*

This option allows the list of species to be brought up to date and targeted towards those species which are known to be endangered by human activity such as targeted fishing or collection. Conversely it will also remove protection where a species is no longer in danger, for whatever reason, preventing unnecessary public restriction and enforcement action. It is difficult to quantify the benefit of adding species to Schedules 5 and 8 as this is a measure aimed at preventing loss of biodiversity which is not easily quantified. There are no obvious economic benefits, although it could be argued that complementing existing restrictions on commercial fishing legislation under the WCA could increase stock recovery levels in the future.

Environmental benefits: The listing of threatened species on Schedule 5 and 8 will enhance their status and protect them from certain human activities. For example listing the Twaite Shad on Schedule 5 would prevent targeted fishing of the species and would also result in the release,

unharmful, of specimens taken accidentally. Protecting fish species in this way will also help to maintain the diversity of marine species.

Protecting further species under the Wildlife and Countryside Act would also raise the awareness of developers and planners about the legal status of such species and therefore is likely to improve the direct protection of the species as well as their habitat. Species such as the Pool Frog, which is a European Protected Species, would benefit because the listing would add to the legal protection the species has under the Habitats Regulations, as it would also allow prosecution for reckless damage to the species' places of shelter which is not possible at present.

*Costs:*

Protection of Schedule 5 and 8 species would incur only a negligible administrative burden of having to apply for a licence to take, disturb etc. It is unlikely that this will happen for the majority of new species to be protected, however should a licence be required, no charge would be incurred.

A Total Allowable Catch (TAC) of zero under the Common Fisheries Policy (CFP) already applies to the marine species proposed for addition to Schedule 5 (Angel Shark, White Skate). Therefore by listing such species we would not expect any loss to the fishing industry. There was a concern from consultees that if the CFP removed the ban on catching and landing these species they would lose out. However, we are aware that, for the species proposed, the ban is unlikely to be lifted in the foreseeable future. The only costs would therefore be for targeted recreational fishing and we are not aware that these exist.

Rock Nail is usually found on old gravestones and the protection of the species may prevent the movement of gravestones and general graveyard maintenance work. This may affect health and safety policies or other issues regarding graveyard management, although licenses can be granted for public health and safety purposes. The protection of Tree Lungwort would prevent the collection and sale of this species for Chinese medicine. Although there is no evidence of wide-spread collection in the UK at the moment it was felt that action was required to prevent this in the future.

Compliance costs: Offences under the Act are enforced by the police. It is not envisaged that the proposed amendments will impose any significant additional burden upon the enforcement authorities. Though there will be a small one off cost associated with authorities needing to familiarise themselves with the new list of species covered.

## **2. Not updating the Schedules (Do nothing).**

*Benefits:*

The benefits of not revising the species protection Schedules is that there will be no additional burdens on those who wish to fish recreationally or those who wish to collect wild specimens of the species proposed. There would be a negligible financial benefit of not having to apply for a licence to take, disturb, sell etc any of the proposed species.

*Costs:*

This would impose no additional immediate financial costs, as it preserves the status quo although, for species which we propose to remove, there may be the maintenance of an unnecessary burden of having to protect the species for no ecological benefit. The other non-monetary cost would be to our reputation. The GB conservation bodies and the JNCC have a statutory obligation to review the Schedules every 5 years. To not act upon the advice we have been given would be contrary to our statutory responsibility to conserve biodiversity. Our failure to do so may be seen by some as a signal of our weakening resolve to abide by our commitments under the BERN Convention. For the species concerned, this would mean greater risk of the continuing decline of populations.

## Wider Impacts

As stated earlier our failure to implement this revision may be seen by some as a signal of our weakening resolve to abide by our obligations under The BERN Convention and under The Convention on Biological Diversity; and more importantly as a failure to comply with the general duty to conserve biodiversity in section 40 of the Natural Environment and Rural Communities Act 2006.

## Summary and preferred option with description of implementation plan

We propose amending Schedules 5 and 8 in accordance with the table at Annex 2. Certain species in the wild are threatened by human activity such as fishing, habitat destruction (due to housing development or deforestation for example) and the taking of species by collectors. If nothing is done to prevent the further decline of these species, there is a risk that they could become extinct in Great Britain in the near future. Activities leading to their demise such as target fishing of the Shads or collection of tree lungwort are unlikely to be deterred by voluntary approaches such as a code of practice, so consequently government intervention and amendments to legislation is necessary.

Affording legal protection to these species, with which comes the risk of prosecution, will raise awareness of their poor conservation status and the need for particular care to ensure their continued existence as part of our rich fauna and flora. Species protection under the Wildlife and Countryside Act 1981 is likely to encourage a more cautious approach amongst groups, which could have a potential impact on wildlife. It is difficult to gauge the cost implications for sectors such as the fishing trade or developer, but we believe them to be minimal.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; Schedules 5 and 8 are reviewed every 5 years in accordance with section 24(1) of the Wildlife and Countryside Act 1981.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] Link from policy objective to outcome.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Contact with organisations directly involved such as the Environment Agency, conservation agencies, CEFAS and NGO's such as the Shark Trust and Buglife.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured] It is extremely difficult to establish a baseline for endangered species, especially the marine species but the research to date which formed the rationale for recommended inclusions and exclusions can be used as a baseline.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment, criteria for modifying or replacing the policy if it does not achieve its objectives] Evidence that the population of species that have been added to the schedules are at least steady if not improving.</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The variety and scarcity of species we are protecting makes systematic monitoring specifically for assessing this action prohibitively expensive. However, we will be asking a lead organisation in each case to report back on whether they felt that the inclusion of these species on Schedules 5 or 8 was effective.</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p>



## Annex 2 – Decisions on Individual Species

Species	Recommendation	Cost	Benefit
White Skate	Protect from killing, taking ..... to 12 nautical miles	As the white skate is now extremely rare the costs involved will be minimal and will essentially involve recreational fishermen following best practice to ensure the safe return of the species if caught accidentally. There is no evidence of the species being deliberately targeted in English and Welsh waters.	Protection under the WCA is part of a wider range of measures to help in the recovery of this species. In comparison to protection under the CFP the impact of this measure will be very small.
Angel Shark	Increase protection from killing, taking ..... to 12 nautical miles	As the Angel Shark is extremely rare in English and Welsh waters this is a measure closing a loophole that bans commercial fishing but allows recreational fishing of the species. The costs involved will be minimal as Angel Shark is not seen to have a commercial value. It will essentially involve recreational fishermen following best practice to ensure the safe return of the species if caught accidentally as sale or possession would be banned.	Protection under the WCA is part of a wider range of measures to help in the recovery of these species. In comparison to protection under the CFP the impact of this measure will be very small.
Twaite Shad	Increase protection to s9(1) – protection from killing and taking.	Data does not exist to show the extent of fishing for this species so this is a precautionary measure. Costs involved for anglers will be minimal as the small numbers that deliberately target the species will be able to target other species instead. They will also need to follow best practice to ensure that fish caught accidentally can be safely returned to the	Will protect the species as it moves to its spawning grounds. Will also give further protection to the Allis Shad, which is indistinguishable from the Twaite Shad. This is one measure in a wider range of actions to protect the shad species.

		water.	
Pool Frog	Protect under 9(4)(a) and (b) only.	This species is present at only one site. There will be no cost involved as the additional protection it will receive here will only prevent reckless damage of it's site.	Will tighten legislation for this European Protected Species which already has full protection under Schedule 2 of the Conservation of Habitats and Species Regulations 2010.
Talisker Burnet and Slender Scotch Burnet	Protect under 9(5), preventing sale or possession.	The cost involved would be to those involved in the commercial sale of the species. Advertising in the <i>Entomological Livestock Group Newsletter, List 470</i> (published on 15 August 1999) offered larvae for sale at £4 per fifteen. It is unlikely that the market is significant in scale as the total population of the species is likely to be in the 100s.	Evidence has been obtained of commercial collecting of larvae, for sale as live stock, at such a large scale as to be a significant threat to this subspecies. Protecting them from sale will reduce the possibility that they will be targeted by collectors.
Rock Nail	Protect under 13(1) and (2)	In England this species has only been recorded on three sites so costs will be very localised. However, where the species is present it could require a more costly maintenance regime which may require consultants input. If Church or local authorities are proposing to stabilise and repair any potentially dangerous gravestones then additional cost will be involved in a) seeking expert advice b) putting together a license application to carry out any work. As even the handling or use of machinery to check the stability of gravestones could be extremely damaging there is likely to be a significant inconvenience.	Protection of an endangered species.
Tree Lungwort	Protect under 13(1) and (2)	Tree lungwort is an	Stamping out a

		ingredient in Chinese medicine and requires a substantial amount of live plant to be used. Currently it fetches around £9 per kilo. It is believed that it is currently sourced from overseas.	potential commercial operation building up here will help ensure that this species does not quickly become endangered.
Essex Emerald Moth	Remove protection	Extinct so no cost.	Removing protection will prevent unnecessary public restriction and enforcement action.
Tentacled lagoon worm, Lagoon Sand Shrimp, Lagoon Snail	Reduce protection to 9(4)(a) only.	This will result in reduction in cost as licenses will no longer need to be applied for.	Reducing protection will allow recording and research without a licence.
Long-leaved thread-moss, Young's helleborine, Churchyard lecanactis, Dune thread-moss	Remove protection	No cost.	Removing protection will prevent unnecessary public restriction and enforcement action.

## Annex 3 – Role of Joint nature Conservation Committee

Under Section 24 of the WCA the JNCC is required to review Schedules 5 and 8 of the WCA every five years and to advise the Secretary of State whether, in the collective opinion of the conservation agencies, any animal or plant should be added to or removed from the Schedules. The JNCC is also empowered to make recommendations at any time, outside the constraints of the five-yearly reviews. Recommendations have to be accompanied by a statement of the reasons that led to the advice.

During 2008 the JNCC carried out a public consultation in which it sought views on the addition of species to, or removal of species from, Schedules 5 and 8 of the WCA. It also asked whether existing protections should be adjusted. Once the JNCC had summarised the responses to this consultation and evaluated these, it made recommendations to the Secretary of State in December 2008.