



# **OEP Call for evidence – designated sites in Northern Ireland**

## **UW Response**

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## Introduction

Ulster Wildlife is one of the largest environmental eNGOs in Northern Ireland, in existence from 1978 and one of 46 regional and independent members of the Royal Society of Wildlife Trusts (RSWT). This response is submitted by the Ulster Wildlife Environment Committee, comprised of Trustees, technical advisors & professional staff. The qualifications and experience of those involved in drafting and approving this response includes active and retired professionals with first-hand experience of assessing, designating and managing protected sites in Northern Ireland. In addition, Ulster Wildlife has experience of developing and overseeing implementation of Conservation Action Plans for Special Areas of Conservation, peatland restoration consenting and co-design of EFS (agri-environment) agreements with landowners on designated sites. The charity also owns and/or manages a range of ASSIs & SACs within its portfolio of Nature Reserves.

## Executive Summary

Ulster Wildlife supports the concept of statutory site designation and protection to preserve the best examples of NI habitats and species assemblages and view this as a critical component of regional conservation especially with the level of species decline evident within the local and global nature and climate crises.

Such legal protection however, is not effective without positive habitat management and landowner engagement and cooperation. At present, although landowners manage the majority of the most important nature sites in NI, their view of designation is largely negative, whereas they should feel proud to be part of the protected sites network, adequately supported to care for their site effectively and rewarded for positive management.

Landowners also perceive that designation brings a loss in land value associated with the restrictions to farming activities on the site and the surrounding area. As such, designations are normally **not** highlighted in brochures for land sales and are sometimes omitted from legal documents such as deeds (despite being on the Statutory Charges Register). Based on practical experience, in some cases the new owner is unaware of the designation and the requirements of the statutory designation.

This consultation has provided the opportunity for reflection on the current statutory mechanisms for habitat protection and management and we have dedicated time and resource to exploring facts, figures and case studies to support our response.

In our view, the current system has been somewhat effective at preventing loss and damage to habitats that have been designated, but it has not been effective in delivering favourable condition of those habitats. Nor has the system deterred reckless/intentional damage, mismanagement or dealt effectively or rapidly with enforcement. We would like to see open and transparent updates with an annual report on the numbers and type of non-compliance and the action taken by the Department. Biodiversity loss is still occurring and the lack of obvious penalties under this legislation sends a message to others that this kind of activity is acceptable, and so the impacts continue.

Based on the above observations and the advancement of conservation science, including the introduction of the Lawton Principles of 'bigger, better and more connected', we believe the current statutory provision needs to be improved if it is to be fit for purpose for the future and enable Government (regional and local) to deliver on clearly defined goals embedded in the legislation. We

support these views in the rest of the document with statistics and examples and we address a selection of the OEP queries in detail.

Ulster Wildlife is an advocate of the concept of 'Nature Recovery Networks' which requires habitats and natural spaces to be 'bigger, better and more connected' to be effective in delivering for nature and climate. We are a strong advocate of the principle emerging from the COP 15 agreement that '30% of land and sea is effectively conserved and managed'. It is generally understood that land must be under long-term positive management to meet this definition and that statutory conservation designations are one of the main mechanisms to reach this target.

It is therefore essential that agri-environment provision offers long term agreements (renewable after a defined period) which are sufficiently flexible to deal with the requirements of designated sites using a tiered approach to deliver effective management. Bespoke agreements similar to those used in other parts of the UK and Ireland also need to be available through a separate regional conservation fund where site management needs are too bespoke for generic policy instruments. Areas of land which are not in agricultural use need to be provided for through mechanisms such as the Management of Sensitive Sites Fund.

It is important to recognise that Environmental impact assessment Regulations are also an integral part of the tool kit in providing a deterrent for habitat damage.

A number of recommendations to enhance the protection of habitats and nature are proposed. These include:

## **1. Targeted resources and retention/development of expertise**

- i) There needs to be adequate resourcing to effectively deliver statutory duties – survey, monitoring and liaison with landowners, including compliance and reporting.
- ii) Ongoing local, on the ground engagement with landowners is required to build relationships, improve education and establish positive views on protected sites. Examples of the approach used by eNGO engagement through projects such as CANN and CABB and EFS Group Programmes highlight how this can be achieved. The fact that NIEA has dual roles encompassing wider statutory protection and nature conservation makes relationship building difficult with landowners.
- iii) Development of Conservation Management Plans comparable to that undertaken for SACs should be carried out for all designated sites. Without this coordination, actions will continue to be ad hoc and isolated. A forum or steering group comprised of experts and stakeholders on land management could support this function.

## **2. Government Structures, Legislation and Responsibilities**

- i) We believe that statutory functions associated with designated sites would best sit within an Environmental Protection Agency as this would increase focus on ensuring effective implementation of the legislation. Separating the landowner engagement from enforcement will also improve relations that are currently strained between NIEA and site owners due to their dual role.

ii) The designation process sees land put under immediate designation during a 'consultation' process to ensure no deliberate damage or destruction can occur (although an 'intention to survey' notice is issued in advance). This interim protection is essential, but loses goodwill with landowners, and is effectively not a consultation as objections are solely on scientific ground. The risk of pre-designation damage could be mitigated through the EIA (uncultivated and semi-natural land) Regulations 2007, but these are not currently applied as robustly as they could be. These Regulations should also be reviewed and their operation under an independent EPA considered.

This designation process is a critical in building long-term understanding of the natural heritage value of the site amongst landowners and dealing with their issues and concerns to provide a positive outcome, which is also intergenerational. To be effective this process requires a partnership ethos where farmers feel involved from the outset and free to raise any issues and concerns. The historic negative reaction of landowners is likely to be heightened if the buffer strip proposal around all designated sites is introduced under the ammonia strategy. Where this is required for effective conservation of the area it would be beneficial if it was included as an integral part of the designation process and compensation arrangements put in place from the start where there is a legitimate and valid case for compensation over and above regulations. However, this may require a change to the ASSI legislation, where land with no 'special' scientific interest is to be included in the designation.

iii) The Wildlife and Natural Environment Act (Northern Ireland) 2011 (the WANE Act) places a statutory duty on public bodies to conserve biodiversity. However, this has not been implemented properly or accorded the level of priority required by many departments and local authorities. The activities of DAERA, DfI and local planning authorities often have a crucial role in impacting biodiversity, and the latter are often under-resourced and lacking in sufficient ecological expertise. There is no NI body with the responsibility to oversee compliance with the Biodiversity Duty and this could be a function of an independent EPA. In Scotland, a Biodiversity Action Plan is developed by Local Authorities who report annually to stakeholders and directly to the Scottish Government. The effectiveness of local and regional planning processes will be a key success factor in halting the loss of biodiversity and ensuring protection of designated sites and priority habitats.

### **3. Evidence and Accessibility**

i) An effective network of protected sites depends upon having a strong evidence-base. Although NIEA has undertaken much survey and monitoring work across NI, there is still no comprehensive habitats inventory for NI. This has practical implications for land-use policy decisions – relevant to planning, forestry, agriculture, etc. The survey and monitoring team in NIEA needs adequate resourcing, including strong technical support on data management and GIS. This data is important to ensure coherence of wider government policies.

ii) Evidence collected should be readily available to the public – for example, figures on ASSI condition, compliance, etc should be published annually - see the Natural England

“Designated Sites View”. Currently, these figures are only available via Data Access Requests and Freedom of Information, which require considerable time and effort for both the requestor and DAERA.

#### **4. Nature Recovery Networks**

It is clear that the current system of protected sites is not preventing biodiversity loss - at least in part, because the complementary measures in the wider countryside have not been effective.

i) A mechanism to recognise and develop nature recovery networks should be introduced through legislation to ensure protected sites are part of a coherent and stable network of sites, supported by the wider landscape

ii) Most terrestrial habitats occur in a farmed landscape. Agri-environment measures have the potential to become an effective way of filling gaps in the protected sites network. However, schemes need to be sufficiently long-term to fulfil the ‘OECM’ definition.

Note that all the recommendations are interlinked and partial adoption will not be as effective.

# Specific responses to OEP questions

## The Laws and adequate resources

### 1. What aspects of these laws and their implementation are working well and what aspects could be improved?

In theory, the current laws provide adequate protection for designated sites and their features through financial and other penalties. A significant part of the original rationale for site designations was to provide protection from damage and destruction through development, peat harvesting, agricultural improvement or forestry - and that aim has in part, been achieved.

However, there is significant room for improvement, and this will be detailed in the following responses. In summary:

- The network of designated sites is not complete, with many high-quality areas not yet designated. Large areas of mapped and unmapped priority habitat exist outside the designated site network as it currently stands, all at risk from development, agricultural improvement or other damage. Current protections for habitats outside the designated site network are limited and rarely effective, leaving these areas vulnerable to damage, development and agricultural modification.
- The rate of designation of ASSIs has slowed to zero, with the last recorded ASSI designation dates on the NIEA Map Viewer listed as 2018.
- Whilst sites are protected from many forms of development and damage, there is not enough regular monitoring and landowner engagement to measure current status. Minor changes at a site level are easily missed. Numerous cases exist of boundaries being encroached and small-scale damage taking place over long periods. Overgrazing, erosion and land improvement is also happening e.g. inappropriate application of fertiliser on designated sites.
- Many sites require positive management interventions to maintain the designated features, which requires funding and landowner co-operation. Additional resources and the use of a non-statutory third party (i.e. separate from the enforcement/designation agency) to work with landowners will help move sites towards 'favourable' condition. Ulster Wildlife's work on designated sites has provided first hand evidence of landowners labouring under fear and misconceptions that the designated process transfers ownership to the state or that if they continue to farm they may be blamed for causing damage, even if following historic practices. Others were afraid to carry out any management for fear of falling foul of the law and being prosecuted.
- Modern concepts, such as 'Nature Recovery Networks' and genetic diversity of meta populations need to be considered. In addition, the impact of climate change, disturbance, eutrophication and ammonia on sensitive sites need to be factored in to the decision-making and boundary mapping of sites, to ensure a) a suitable buffer zone is applied to important core areas and b) sites are not isolated in fragmented landscapes.
- Enforcement of non-compliance needs to be quicker and more effective, which will discourage other attempts at site damage. Cases of non-compliance also need to be open and transparent to deter inappropriate actions by others.

- The 30x30 target requires a significant step up in ‘protected and well-managed land’. The ASSI mechanism cannot deliver this at the rate or scale provided, based on current performance. However, agri-environment schemes could help to deliver these targets if the schemes could align with the definition/the scope of definition of OECM (**Appendix 1**) was broadened.

**2. Are these laws and the ways in which they are being implemented fit for purpose, still relevant and achieving the objectives of halting biodiversity loss and supporting its recovery? Do any of these laws exist in tension with each other or are there gaps or inconsistencies?**

It is important that a statutory protection mechanism exists and we support the principle of ongoing statutory designation.

Since the inception of ASSIs in the mid-1980s, the concepts of nature conservation have evolved from site-specific, to landscape-scale, with Nature Recovery Networks and the need of coherent ecological networks that rely on the principles of more, bigger, better and more connected spaces for nature, the most up to date theory for effective conservation. A strategy for designation that takes the NRN concept into account and includes core and buffer areas as well as connectivity at a landscape level would be an improvement to the current approach. Since designation, many sites have become islands within their own landscapes. This black and white approach to designation (as per the current legislation) has seen the loss of habitats and species right up to the boundaries of these sites in many instances. Many of our active raised bog and fen ASSIs now exist within landscapes of improved agriculture. Not only has this left them more vulnerable to pressures from outside their boundaries but priority species are left isolated and disconnected. For example, Moneygal Bog SAC/ASSI in Co Tyrone is fortunate to still possess a significant amount of semi natural and natural habitat around its boundary. This acts as an important buffer against wider pressures and provides a more extensive reservoir for priority species. Recently, agricultural improvement took place in a priority habitat right up to the site boundary. Current legislation and enforcement measures have not proved sufficient to deter these kind of actions and prosecutions are rare.

The introduction of agri-environment schemes provided landowners with an opportunity to gain financial rewards for retaining and managing natural habitat. As these are voluntary schemes, they rely on landowner engagement and willingness and do not replace statutory designation on at-risk sites, but they do provide a more effective means of positive habitat management and payments for farmers who have designated land. Farmers can also benefit from free third-party support and advice in areas covered by EFS Group programmes, which is one of the key areas of support lacking for landowners with designated land.

The implementation of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) in 2007 was a fundamental change to legislation preventing habitat destruction. Under this Regulation, any person intending to alter the use or management of areas of uncultivated or semi-natural land were obligated to obtain prior approval from DAERA. If this was effectively implemented and enforced, there would be a lower risk of land being damaged or destroyed outside of the designated site network. The thresholds applied (over 2ha for productivity and 100ha for ‘physical restructuring’), and the assessment of applications by DAERA requires further review and consideration as they could be more robust, but this is outside the scope of this call for evidence.



Unlike ASSI owners, who are issued with a notice of the sites interest and boundaries, landowners with uncultivated land or semi-natural/priority habitats are not provided with habitat mapping and thus may use the 'negligent' defence which reduces the penalty for breaching the Regulation. Effective habitat maps, provided to farmers (overlaid on LPIS maps) may increase the effectiveness of this measure to compensate for the slow rate of ASSI designations (**Appendix 2**). It would also help to ensure that any farmer managing the land was aware of the status. We are aware of the development of 'Living Maps' but there is no publication date for this long-awaited improvement in data availability.

The Wildlife and Natural Environment Act (Northern Ireland) 2011 (the WANE Act) places a statutory duty on public bodies to conserve biodiversity. However, there is no example, or reports/statistics of this having yet been embedded or well implemented by departments and local authorities (**Appendix 3**).

### **3. Do the bodies responsible for implementing these laws have sufficient resources, skills and capacity?**

NIEA, an Agency within DAERA is responsible for designations and subsequent landowner engagement, dealing with consent requests, assessment of compliance, enforcement of breaches and condition monitoring.

The rate of designations has slowed in recent years, with no published ASSI designations since 2018 (NIEA Natural Environment Map Viewer data). This suggests there are limited resources to carry out designations, or a low appetite from the Department to allocate resources.

Due to understaffing (vacant posts) and high staff turnover/redeployment, there are fewer established and experienced officers in NIEA capable of making confident and informed decisions on site management and consenting issues. This can result in lengthy delays for decisions and unsatisfactory results for complicated site management requests, where the simplest, and safest, answer for NIEA is a refusal.

Landowner engagement can be affected negatively by both willingness to find compromise and the turnaround for consenting. If a landowner wishes to request consideration of notifiable works, it is not easy to get an officer to visit. Instead, an online form must be completed – including maps and other technical details of the activity, which would benefit from technical support. The turnaround for a response can be 3 months – with the applicant advised that 'no response should be considered as a refusal'. This is unacceptable in our view.

The current 30x30 target puts an onus on more land (and sea) to be designated and managed in favourable condition by 2030. ASSIs and other statutory designations are the main instrument to deliver this target. There is a disconnect between current staffing and rate of designation and this target which would require a 4 fold increase in designation area. Acknowledging this disconnect, this could be achieved through other measures such as agri-environment schemes, if they could meet the OECM definition (**Appendix 1**).

## Good examples and gaps in data and evidence

### 4. Are there examples, from other countries or from similar domestic regimes, that provide useful lessons?

**Appendix 2** provides information on land designation in Great Britain, Ireland and the EU27. This shows that NI is behind the average in terms of percentage of land area designated. However, this metric does not quantify the effectiveness of conservation measures or take account of other measures, such as agri-environment schemes.

### 5. Are there gaps in the available data and evidence that need to be filled to ensure this area of law is effective?

Designations (and agri-environment eligibility) are based on survey data which is translated into habitat maps, such as those presented on the NIEA Natural Environment Viewer. Through Ulster Wildlife's work with farmers in Co. Fermanagh, we have identified significant areas of species-rich grassland that are not on any map database. This suggests that there are areas of Northern Ireland where designation potential has not been adequately considered.

These gaps in habitat mapping also translate into risks of loss or damage to habitat as the land is not eligible for agri-environment measures, may not be identified under the EIA (Agriculture) Regulations (Northern Ireland) 2007 where damage has occurred and, most recently, may not be identified in the Soil Nutrient Management Scheme results, which may result in farmers being given incorrect advice regarding the application of fertilizer and other land improvers.

## Specific examples/procedures in the NI Designation process

Evidence relating to protected site designation could address issues such as:

### 6. The criteria for identifying and designating these sites and their application.

Although a relatively high proportion of the best sites have been declared as ASSIs, there remain many sites of high nature conservation interest that have not yet been designated. Ulster Wildlife operates in west Fermanagh working with farmers with HNV grasslands. There are many examples of fields (at a landscape scale) that should be classified as species-rich which are not recorded on NIEA databases and thus will be overlooked as potential ASSIs.

Applying the Lawton Principles of 'more, bigger, better, more connected' and the concept of Nature Recovery Networks to the criteria should result in a more robust network of sites, which includes buffer zones and corridors of connectivity. These do not form part of the current designation assessment, where the site boundary generally conforms to the habitat and secondary habitats of interest and can result in hard boundaries between sensitive habitat and productive farmland, where a buffer zone would be beneficial to protect the site from ammonia and nutrient enrichment. Where peatland restoration starts to occur, these buffer issues will become increasingly highlighted as sensitive vegetation close to the agricultural fringe is monitored and enrichment impacts the habitat quality.

The aim should be to have functionally well-connected ecological networks, with Protected Sites at their core, which are representative of different ecosystem types and overlap sufficiently between present and future suitable climate space, to facilitate for the protection and adaptation of species with varying spatial requirements

### **7. The role of the designating authority (this will be government or the statutory nature conservation body depending on the type of designation).**

NIEA is the designating authority. This sits within DAERA, which has a much wider remit than nature conservation. Agriculture sits within this body. As an industry critical to the Northern Ireland economy and rural communities, and a resource-intensive sector with regards to scheme administration, legislation, policy and funding, there is a risk that other sections of the Department do not get as much attention from the Minister and Permanent Secretary as they deserve. There are also conflicting views presented to the Department from the agriculture sector and environmental sector on the need for, and effectiveness of site designations. In GB, the authority responsible for designations and compliance sits outside of DEFRA, with NatureScot and Natural England fulfilling these roles. It is our view in Northern Ireland separation of functions would improve delivery, through increased focus and prioritisation on nature conservation outcomes.

### **8. The process for designation, including the role of the decision-making body/bodies and the involvement of landowners, the public and other interested parties.**

The current process for designation involves notifying the landowners that the site is designated with immediate effect, pending further consultation. This is to ensure no damage can be done to the site in the consultation period. However, this is perceived poorly by landowners who feel that designations are inflicted upon them. The Western Mourne designation process was particularly contentious, with farmers protesting at Stormont about the designation in 2014 (**Appendix 4**). This appears to have impacted the ability or appetite for Government to continue with its designation schedule, with a petering out of designations in the years after the Western Mourne. This can also reduce the willingness of landowners to engage favourably post-designation on positive site management.

Relations could be improved with more face to face engagement carried out at the early stages of the process. Land could also be protected during the consultation phase by referring to the obligations of landowners to comply with the EIA (Agriculture) Regulations 2007. Whilst also ensuring these Regulations are being robustly applied, could improve the perception of designations as it would not be applied until the end of the consultation process and landowners may be less suspicious and/or hostile to designation.

Often landowners do not have a clear understanding of what is important about their land, or what management is required. See other comments regarding use of third parties on the ground to liaise with landowners.

### **9. The process for keeping the network of designated sites under review to ensure it is achieving its objectives and keeping pace with environmental change.**

The concept of landscape scale conservation, including Nature Recovery Networks, and the impacts of climate change, eutrophication and ammonia deposition are at odds with the current site-based

designation process, where only the best examples of habitat are protected. Applying the Lawton Principles of 'more, bigger, better, more connected' and introducing adequate buffer areas around core sites should be included, and opportunities for landscape-scale positive management would better protect habitats, whilst restoring a buffer zone and targeting other sites that connect across a landscape would be more aligned with current conservation objectives.

## **10. Whether these laws have resulted in a sufficient number and area of protected sites being designated, in the right locations, to halt and reverse biodiversity decline.**

In our view, the number of protected sites in Northern Ireland is too low, and there are many candidate sites awaiting assessment and designation. This sits at odds with ongoing biodiversity declines as evidenced in the State of Nature reports and most recently, the Plant Atlas 2020 (BSBI 2023) which shows that half of all native Irish plant species have decreased since 1987 (**Appendix 6**).

The strategy for designations is not published, but we believe it to be based on a mixture of sites at risk (urgent), small and single landowner (simple consultation) and large (resilient, meets area target and EU SAC target). Landowner engagement and contentious sites have provided challenges (for example Western Mourne). We believe from discussions that 500 site designations is a long-term target, which has not yet been achieved (**Appendix 7**).

The rate of designation has slowed, with no new designations since 2018 (**Appendix 1**).

At the historic rate of 12.5 sites (and 869ha) per year and a total designated area (ASSI only) of under 8% of NI in 37 years, it is clear the 30% target of land cannot be delivered through statutory designation alone. An ambitious designation rate and alternative OECMs will be required if the target is to be met.

Benchmarked against UK, Ireland and EU, Northern Ireland lags behind on designated area, with the EU27 average at 26.4% and neighbouring Republic of Ireland at 13.9%.

The rate and scale of designation has been highly variable, with NIEA resource, political appetite, site size and landownership complexity.

The structural problems in landowner engagement, monitoring and site management mean that many sites are in unfavourable condition or have ongoing management issues through under management or intentional/unintentional damage. Therefore, statutory designation is not a guarantee that sites are adequately delivering for biodiversity. All the earlier designations need to be revisited to build in more emphasis on climate resilience given that the rate or awareness of climate change was not so prominent at the time of designation.

There is inconsistency between the application of ASSI and other overlapping designations such as SAC/SPA under the EU Habitats Directive. This can create variance in the level of protection and analysis of land area under protection difficult to analyse. As an example, almost 30,000 ha of the Slieve Beagh and Antrim Hills SPAs have not been underpinned by ASSI declaration, reducing the level of protection that is afforded to them. The overlap between SAC and ASSI appears to be more consistent.

## **11. The above issues as they apply to the designation of protected sites in England and Northern Ireland that span national boundaries, including boundaries within the UK or between Northern Ireland and the Republic of Ireland.**

Many of the largest ASSIs and SACs in Northern Ireland are on the border with the Republic of Ireland. The level of resource applied directly through statutory agencies and indirectly through agri-environment and other rural development monies and wider funding (e.g. SEUPB) has varied over time. Cross-border initiatives that covered Slieve Beagh ASSI/SPA and Cuilcagh SAC through the CANN project have recently come to an end. There has been no immediate continuation of the positive works of these projects in Northern Ireland, but a number of recent targeted initiatives in the RoI e.g. WaterLANDS, ACRES and Wild Atlantic Nature are targeted at these areas. A more joined up approach and equal investment in positive management and monitoring is required to ensure that conservation objectives are delivered across large contiguous areas. For examples the entire cross-border SAC around Cuilcagh-Anierin is almost 12,500ha (2744ha in NI and 9736ha in RoI).

Post-Brexit divergence in legislation and funding may increase the complexity of managing these cross-border sites.

## **Barriers to/Tools to deliver Site Management**

**Evidence relating to protected site management could address issues such as (excluding any matters relating to HRA):**

### **12. Do owners and occupiers of protected sites receive what they need to be able to appropriately manage these sites? Do others such as public authorities receive what they need to deliver their responsibilities to conserve and restore protected sites? For example, this might include information, guidance, advice, support and financial assistance.**

In the early years of site designation, site owners could receive compensation, when consent for activities to generate income (usually agricultural improvement) were refused. This provided some element of positive outcome for landowners, but the system was also open to abuse, where landowners with no intention of making changes could apply and receive compensation.

This mechanism ceased, and agricultural improvement or reclamation would no longer be considered to be prevented only by statutory designation following the implementation of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007, where any person intending to alter the use or management of areas of uncultivated or semi-natural land must obtain prior approval from DAERA.

Advice and support are available from NIEA, but are inadequately resourced to be effective and in depth. Additional third party support has been available to some landowners and public authorities, but it is targeted and time bound. Examples include SEUPB projects such as CABB and CANN as well as EFS (Higher) Group Programmes that assist landowners with application, management and problem-solving of agri-environment measures in designated landscapes.

Councils also have Biodiversity Officers, which could be more effective in assisting with site management advice for land owned by local authorities with adequate resourcing and training.

**13. The laws that restrict how land is managed inside protected sites, including the consenting process for operations likely to damage ASSIs and SSSIs, special nature conservation orders and stop notices for SACs and SPAs in England and powers to make byelaws for the protection of ASSIs, SSSIs, SACs and SPAs.**

Once designated, landowners find decision making to be slow and insufficient information provided, with little opportunity for in-person dealings with the Department and no opportunity for compromise or pragmatic outcomes. Whilst agri-environment schemes exist to provide support for landowners for positive management, these are also available outside of designated land and are therefore not seen as a specific benefit for landowners with statutory designations, especially where an additional layer of paperwork and permissions are required.

Ulster Wildlife runs an EFS Group Programme to work directly with farmers and landowners and we believe this type of local engagement is essential for effective land management outcomes. To be effective, this advice needs to be rolled out to all landowners, not just active farmers.

Time-limited projects such as CANN and CABB also provided on the ground support and funding for landowners to implement positive actions for species and habitats that was well received, and largely delivered by eNGOs.

Applying these models of third-party support for landowners, including education around damaging activities, developing positive plans and applications for consent are strongly recommended for future landowner engagement.

**14. Compliance with, and the enforcement of, protected sites laws. This could relate to any obligations, for example those on owners and occupiers and those on statutory nature conservation bodies or other public bodies.**

There is no published data on compliance or enforcement on protected sites. Ulster Wildlife has recently requested this data via a Data Access Request/FOI, but there is no reason these headline statistics should not be routinely published. In previous dialogue with the OEP we identified disparities in the level of public data between DEFRA and DAERA with respect to cross-compliance inspections and breaches and would suggest there is a wider issue around publication of datasets that could be explored.

We have anecdotal evidence of notifiable actions going unchecked and/or unenforced for long periods of time and enforcement actions and fines being reduced at appeal. They do not appear to be an adequate deterrent for habitat damage and destruction.

Specific examples we have been unable to find information include:

- a) woodland/habitat destruction at Knockninny ASSI – we believe the penalty was reduced at appeal.
- b) peat harvesting at Moneystaghan Bog ASSI – we cannot find the outcome of the enforcement action.

**15. Statutory tools that are available to secure the appropriate management of protected sites. This could relate to the statutory tools themselves or how they have been implemented. For example, have these tools been effective and are there any barriers to using them? Examples of these statutory tools are listed in Annex A.**

In the early years of site designation, site owners could receive compensation, when consent for activities to generate income (usually agricultural improvement) were refused. This provided some element of positive outcome for landowners, but the system was also open to abuse, where landowners with no intention of making changes could apply and receive compensation.

This mechanism ceased, and agricultural improvement or reclamation would no longer be considered to be prevented only by statutory designation following the implementation of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007, where any person intending to alter the use or management of areas of uncultivated or semi-natural land must obtain prior approval from DAERA.

One mechanism of compensation that was applied in the early years of designation with 'In Perpetuity Agreements' (IPAs). These were one-off payments to landowners for specific management practices. Some of these IPAs are over 30 years old. The land management may no longer be ongoing, land sale and transfer has not always picked up the charge/responsibility to the new landowner and the presence of an IPA has sterilised the land for eligibility to agri-environment schemes and other grants. These IPAs need to be reviewed and rescinded or updated as appropriate to ensure landowners can adhere to best practice and remain eligible for current and future schemes. In addition, climate change impacts/mitigation on habitats and environmental outcomes for a suite of ecosystem services need to be considered and integrated into site management e.g. carbon sequestration, water quality impacts etc.

## **16. The use of agri-environment schemes and other public funding to support the appropriate management of protected sites.**

Designated sites are prioritised for landowner entry into agri-environment schemes. In addition, the EFS Group programmes provide targeted support and advice to landowners in areas with statutory designations. This has improved the positive management happening on protected land.

Currently, agri-environment measures are prescriptive and don't provide flexibility to address local issues. This can discourage some landowners from participating, and the payment rates, particularly for peatland sites, are unattractive.

Ulster Wildlife has direct experience of assisting landowners to develop management plans, including capital works which are later refused or amended by NIEA as they have been assessed as a risk to the designation features of the site. This has resulted in the landowner rejecting the agri-environment agreement and a loss of positive management of the site. Examples to date include rejection of tree planting, scrub removal, machine access for fencing and variation in grazing dates. Agri-environment schemes could deliver more effectively if there was more trust and compromise given to the landowner and their planner, particularly when being delivered by an eNGO which will not be operating against the nature conservation aims of a site or habitat. A scorecard system has been demonstrated (in Rol and England) as an effective way of providing more flexible land management with an outcome, rather than prescriptive approach communicated to the landowner, with financial incentives for increasing desirable attributes on the site.

## **17. Monitoring of protected sites and the communication and reporting of the results of monitoring.**

Monitoring and Evaluation is a vital tool in demonstrating the condition of target habitats and species. The Common Standards Monitoring (CSM) approach provides a repeatable and comparable process. The only publicly available data is via the annual Environmental Statistics report which provides high level statistics only and year on year comparisons can prove challenging due to changing metrics/reporting.

As it stands condition assessment monitoring on most designated sites is behind schedule, the 6-year rotation of surveys has slipped back for most sites. This suggests that increased prioritisation within the Department and/or further resources are crucial to meet even existing targets.

Where landowners receive information, the term 'unfavourable condition' is often used, which can reduce the willingness to engage where the landowner feels they are the cause of this classification, even when this could be factors outside their control.

The proportion of designated sites in NI (ASSI's) in favourable condition is much lower than other parts of the UK (**Appendix 1 part iii**). Thus a clear need to put more resource into site management has been identified through monitoring. There is a need for flexibility of designated features in some cases where the original designated features are now unviable. This will increase in frequency as climate change impacts intensify. Reporting against fixed objectives will never yield an improving picture without this flexibility.

**18. The identification, allocation, coordination and delivery of actions to improve protected site condition. This includes actions (or remedies) for ASSIs and SSSIs and actions included in Site Improvement Plans for SACs and SPAs in England and Conservation Management Plans for SACs in Northern Ireland.**

The development of Conservation Management Plans (CMP) for all SACs in NI over recent years has been a valuable exercise. It has allowed data on pressures & threats, habitats, species, hydrology, invasive species, and much more to be pulled together in a coherent and straightforward format. It has also allowed engagement with landowners and stakeholders to take place on a scale not achieved before. However, this action has only been taken on SACs which make up a relatively small fraction of the designated site network (58 SAC's covering 3% of land). This leaves the rest of the designated network (around 5% of land area, with no CMP apart from those that are under the management of eNGOs such as Ulster Wildlife, National Trust or RSPB. Not only does this mean that delivery of targeted conservation actions is more difficult to justify, fund and initiate but also means that data of the kinds mentioned above may not have been collected and collated.

While the conservation management plans for all SACs have clearly outlined the actions required on these sites, the delivery mechanisms are still unclear. Many actions cannot be achieved through agri-environment schemes in their current form. DAERA do not currently appear to have the resources internally to deliver these actions at scale, even on state owned sites. This leaves large elements of this delivery, in many cases, with eNGOs trying to achieve large scale actions with limited resources.

**19. The use of national and site-specific targets to drive improvements in protected site management and condition. At a national level this could include any targets relating to**



**protected sites that have been included in national strategies or plans. At a site level, this may include how condition categories are defined and applied in practice.**

Our response is focused on the high level objective of achieving '30x30'. This does not appear achievable through current statutory designation approach, particularly based on current rates of designation.

At a site-level, we would like climate mitigation and adaptation to form part of the consideration in monitoring and evaluation and allow alteration, or redesignation, of different qualifying features to the original designation to take account of natural succession and/or changes brought about by climate where the original designated feature is likely to be lost and another desirable habitat type/species can be considered. For example, on heath sites with dry and damaged peat that cannot be rewet and where climatic conditions are no longer favourable, woodland should not be considered an unfavourable characteristic and added as a designable feature.

Conservation Management Plans have now been prepared for most SACs, but mechanisms for delivery of action on the ground are not clear. Although all sites have conservation objectives, there are few management plans for ASSIs. There is a need for more site-specific objectives, targets and remedies.

Currently, the main source of funding for positive management on designated sites is reliant on agri-environment schemes. The area within agri-environment is currently much lower than in previous schemes (see **Appendix 5**). Evidence from projects such as Burren Life and the EFS (Higher) Group Programmes serviced by eNGOs demonstrate that positive results for nature conservation on the ground can be delivered through close liaison with individual farmers.

## **Trans-boundary issues**

**20. The above issues as they apply to the management of protected sites that span national boundaries, including boundaries between nations within the UK or between Northern Ireland and the Republic of Ireland.**

As previously stated, the opportunity for standardised approaches across NI/ROI sites to yield better outcomes for nature are high.

Currently, variations in legislation, implementation and strategic direction on cross border sites can make correlation and collation of data on cross border sites challenging. This has knock - on impacts in terms of management both for habitats and more so for species. Even at a site management and conservation actions level there is no accepted and coordinated approach to consent for actions that span both sides of the border. For example, conservation works on the summit of Cuilcagh Mountain SAC / Cuilcagh Anierin Uplands SAC which straddled the border between Co Fermanagh and Co Cavan had to be separately screened and consented by both NIEA and NPWS for the same project. A cross border mechanism or at least a shared approach to consenting processes would have made this exercise much more efficient, allowing greater time and scope for delivery on the ground.

Current inconsistencies in approach have the potential to diverge further in the post-Brexit era.

# Appendices

## Appendix 1 - OECM definition

<https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf>

- *Devised under the U.N. Convention on Biological Diversity, “other effective area based conservation measures” (OECM) are an alternative to traditional protected areas, in that they can include any geographically defined area that has a management structure and can show a long-term positive impact on biodiversity.*
- *They are potentially a more equitable form of conservation that can work for groups previously disenfranchised or sometimes at odds with traditional conservation, such as some Indigenous groups and local communities as well as sustainable agriculture, fisheries and forestry sectors.*
- *A key aspect of the OECM definition is that these areas must effectively contribute toward biodiversity, something currently not required of a protected area; but how that is defined and measured in practice will take time to establish.*

### What is an ‘OECM’?

‘Other effective area-based conservation measures’ (OECMs) are areas that are achieving the long term and effective in-situ conservation of biodiversity outside of protected areas. From 2015 to 2018, IUCN provided technical advice to Parties on OECMs to the CBD through a WCPA Task Force on OECMs. In 2018, Parties to the CBD agreed guiding principles, common characteristics and criteria for the identification of OECMs ([CBD Decision 14/8](#)). An ‘other effective area-based conservation measure’ is defined by the CBD as:

A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values (CBD, 2018).

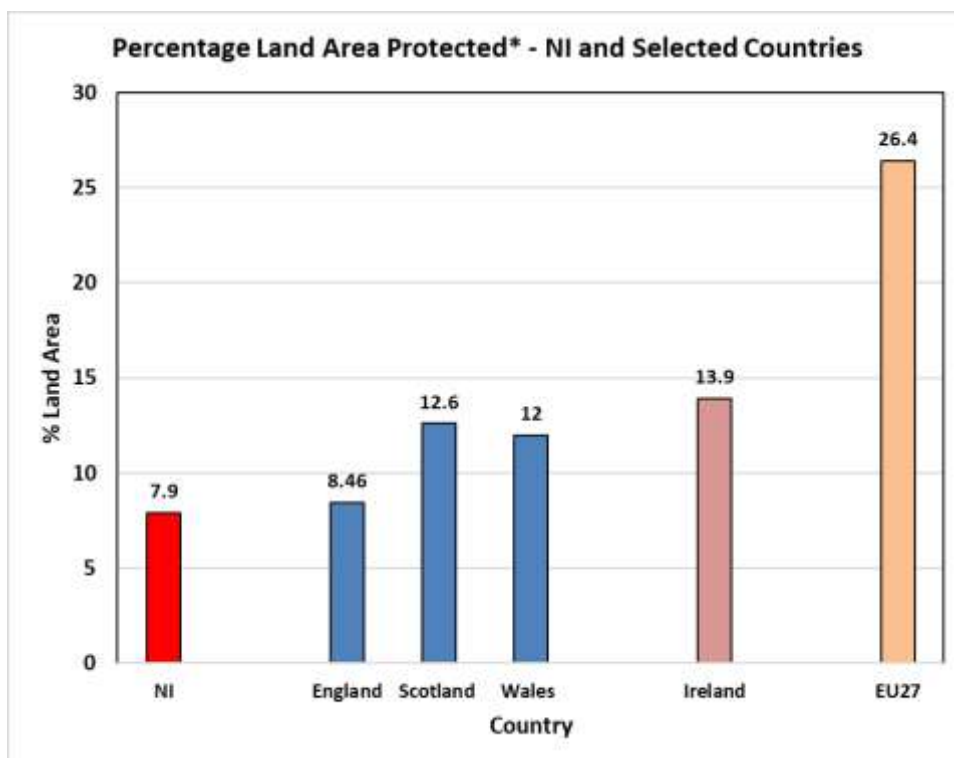
Governments, relevant organizations, Indigenous peoples and local communities are invited to apply the voluntary guidance on OECMs to identify, recognise and support OECMs, and report data on OECMs to the [World Database on OECMs](#).

Identification of OECMs offers a significant opportunity to increase recognition and support for de facto effective long-term conservation that is taking place outside currently designated protected areas under a range of governance and management regimes, implemented by a diverse set of actors, including by Indigenous peoples and local communities, the private sector and government agencies.

## Appendix 2 - Designation rate facts and figures

The current ASSI network consists of 394 ASSIs covering just under 8% of NI. (It is worth noting that a single site - Lough Neagh - accounts for nearly 3% of that total). Since 1993 NIEA and its predecessors have produced a series of targets for the final number of site declarations – the most recent target was for around 440 ASSIs by December 2016, with a longer term aim of around **500 ASSIs covering 10% of NI**.

The graph below shows that NI lags behind other UK agencies in terms of the numbers and the extent of its protected sites, and is very far behind other European countries. The figure for terrestrial SACs is even more striking, with only 3% of the land area of NI designated as SAC. It is clear that the network of protected sites in NI requires more sites and a larger overall area.

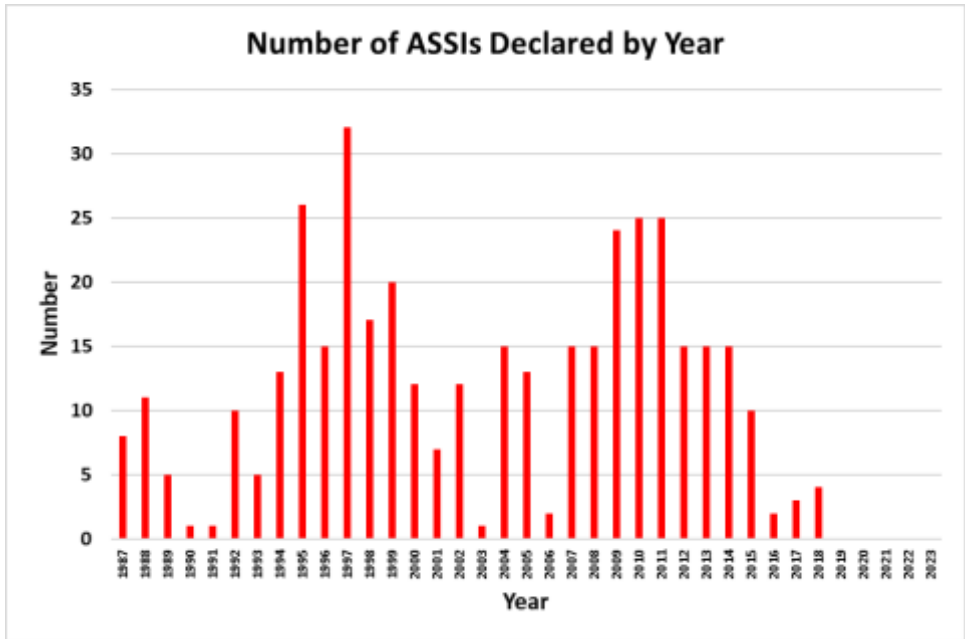


Sources: Country Conservation Agencies websites for UK; European Environment Agency 2022.

\* Figures for UK refer to lands declared as ASSI/SSSI; Ireland and EU figure refers to Natura 2000 sites, plus areas protected under domestic legislation.

### ii) Lack of recent declarations

The graph below illustrates that the numbers of sites declared annually has fluctuated markedly since 1987.

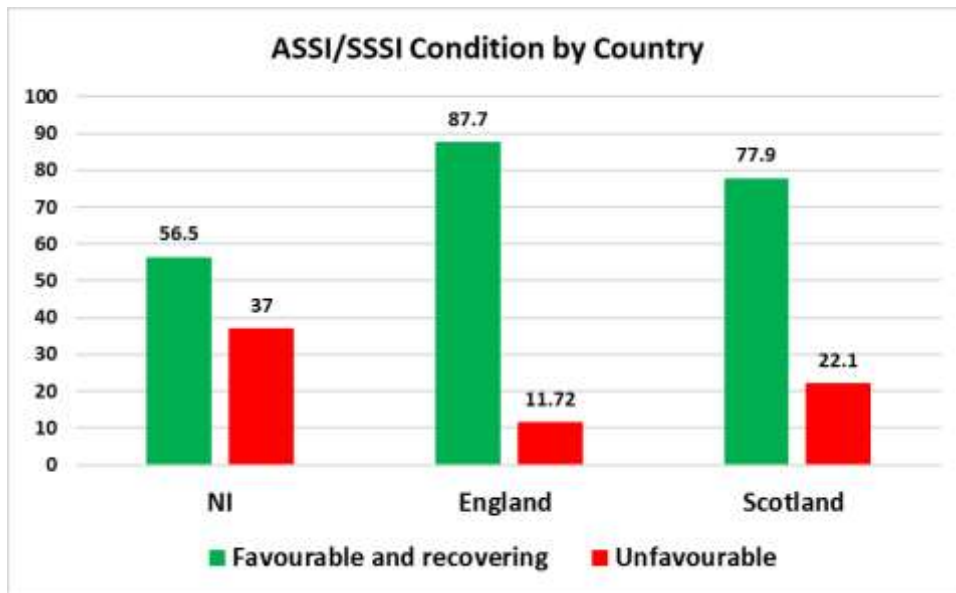


Amend caption to Number of ASSIs .....in Northern Ireland.

This variability reflects a number of factors, particularly the character of the individual sites involved – i.e. ASSIs with many landowners tend to reduce the number of sites that can be declared due to consultations with interested parties. For example, the low numbers of sites in 1990 and 1991 were due to the designations of Strangford Lough and Lough Neagh, while 2003 and 2006 were because large rivers being designated for Atlantic Salmon. The number of sites declared is also a reflection of resources and changing priorities within NIEA. Given the clear need for more protected sites (see above), the lack of ASSI declarations over the last four years is inexplicable.

**iii) Condition and management**

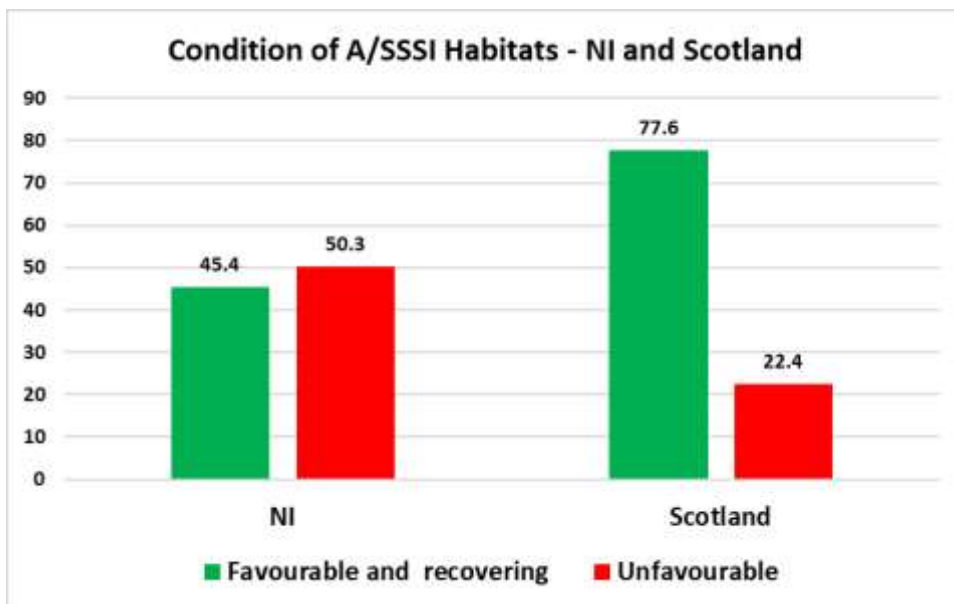
The condition of protected sites in NI lags far behind the other UK countries, with a much lower proportion of ASSI features in favourable or recovering condition (see graph below).



Sources: Country Agencies websites; NI Environmental Statistics Report 2022.

Note that SSSI condition data is only available for Scotland and England.

The comparison is even more striking for habitats with just 45% of ASSI habitats in NI in favourable or recovering condition, compared to nearly 78% in Scotland.



Sources: NI Environmental Statistics Report 2022; NatureScot website

Note: Habitats breakdown not available for Natural England

## Appendix 3 – Other Legislation

### i) WANE Act

The Wildlife and Natural Environment Act (Northern Ireland) 2011 (the WANE Act) places a statutory duty on public bodies to conserve biodiversity. However, this has not been implemented well by many departments and local authorities e.g. see DfI Rivers recent drain “maintenance” on the saltmarshes of Strangford Lough SAC/ SPA/ ASSI below.



### ii) Historic Agreements

<https://www.daera-ni.gov.uk/publications/environmental-farming-scheme-efs-higher-level-terms-and-conditions>

- EFS (H) cannot be used to fund environmental management activities that are required by law or by any legally binding contract or obligation.
- EFS (H) funding must not be used to fund actions already being funded on the same land area under another agreement or from another source (known as double funding). It is the responsibility of the Agreement holder to ensure that EFS (H) Options and Capital Items do not receive double funding.
- Agreement holders must check if they have land which is under contract or obligation to for example legacy agri-environment agreement (NICMS), Forest Service Grant Schemes, Heritage Lottery Funding, Management of Sensitive Sites (MOSS) Scheme or any other scheme.

- Other obligations such as Planning Permission requirements, ‘in perpetuity’ management agreements or DAERA landscape feature removal mitigation cannot be funded.

### iii) EIA (uncultivated and semi-natural lands) 2007

Legislation: <https://www.legislation.gov.uk/nisr/2007/421/contents/made>

DAERA advice: <https://www.daera-ni.gov.uk/articles/environmental-impact-assessment-eia-0>

Common breaches: <https://www.daera-ni.gov.uk/news/are-you-improving-land-protect-your-payments-by-protecting-semi-natural-habitats>

DAERA text: Nearly every farm has an area of unimproved land that may be earmarked for agricultural improvement. These ‘rough’ semi-natural areas are protected under both Cross Compliance and the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007. Typically they include habitats like old grassland, hay meadows, woodland, scrub, bogs, wetlands and moorland and occasionally archaeological features. Land is considered to be uncultivated if, in the last 15 years, it has not received any or minimal inputs of chemicals including fertilisers, manures or herbicides and has not been physically cultivated or re-seeded.

These semi-natural areas are agriculturally less productive compared to improved fields but they generally have greater environmental value. As well as being havens for wildlife they also provide other valuable ‘public good’ services such as water and carbon storage, flood prevention and protection against land erosion.

**Types of land covered by EIA**

The regulations apply to uncultivated land and semi-natural areas, including the following:

- 1. Unimproved grassland, such as:**
  - Historic sites
  - Coastal or floodplain grazing
  - Old cowfolds
  - Open hillwides
  - Ancient woodlands
  - Wood pasture
  - Permanent grassland
  - Parkland
- 2. Heath and moorland**  
Lowland and coastal heath including dry and wet heath. Moorland (including bog) and upland rough grazing.
- 3. Broadland**  
This applies where ood is cleared or managed in order to convert the land to arable or stock farming.
- 4. Wetlands, including:**
  - Marsh
  - Fen
  - Open water
  - Watercourse
  - Saltmarshes
  - Ditches
  - Ponds

Land will be considered under this category if the water table normally lies at or near the surface for part of the year.

**Projects covered by EIA**

Proposals to increase the agricultural productivity of uncultivated land or semi-natural areas will require consent from DARD if the area concerned is 2ha or more in area or if a screening notice has been issued by DARD.

Land is considered to be uncultivated land if it has not been subject to physical or chemical cultivation in the last 15 years.

Typically, projects likely to fall into this category might include:

- Physically cultivating soil (for example, by ploughing, digging, sub-surface harrowing, discing or rotavating);
- Land reclamation;
- Increased levels of organic or inorganic fertilizer or soil improver;
- Sowing seeds;
- Draining land or modifications to watercourses / standing water;
- Clearing existing vegetation either physically or using herbicides;
- Spreading soil or other material in excess of existing routine application rates;
- Field boundary removal.

Cultivation would not include practices which do not directly affect the soil. Mowing grass, chain harrowing or clearing scrub or other vegetation would not in themselves be considered as cultivation of land.

**Exceptions to EIA**

These regulations will not apply to any:

- projects that require planning permission;
- forestry projects;
- other projects covered under separate EIA Regulations.

ISBN: 978 1 54957 092 9

Department of Agriculture and Rural Development  
Environmental Impact Assessment  
(Agriculture) Regulations (Northern Ireland) 2007





## Appendix 4 – Farmers and ASSI (Western Mournes)



### Farming and designated sites

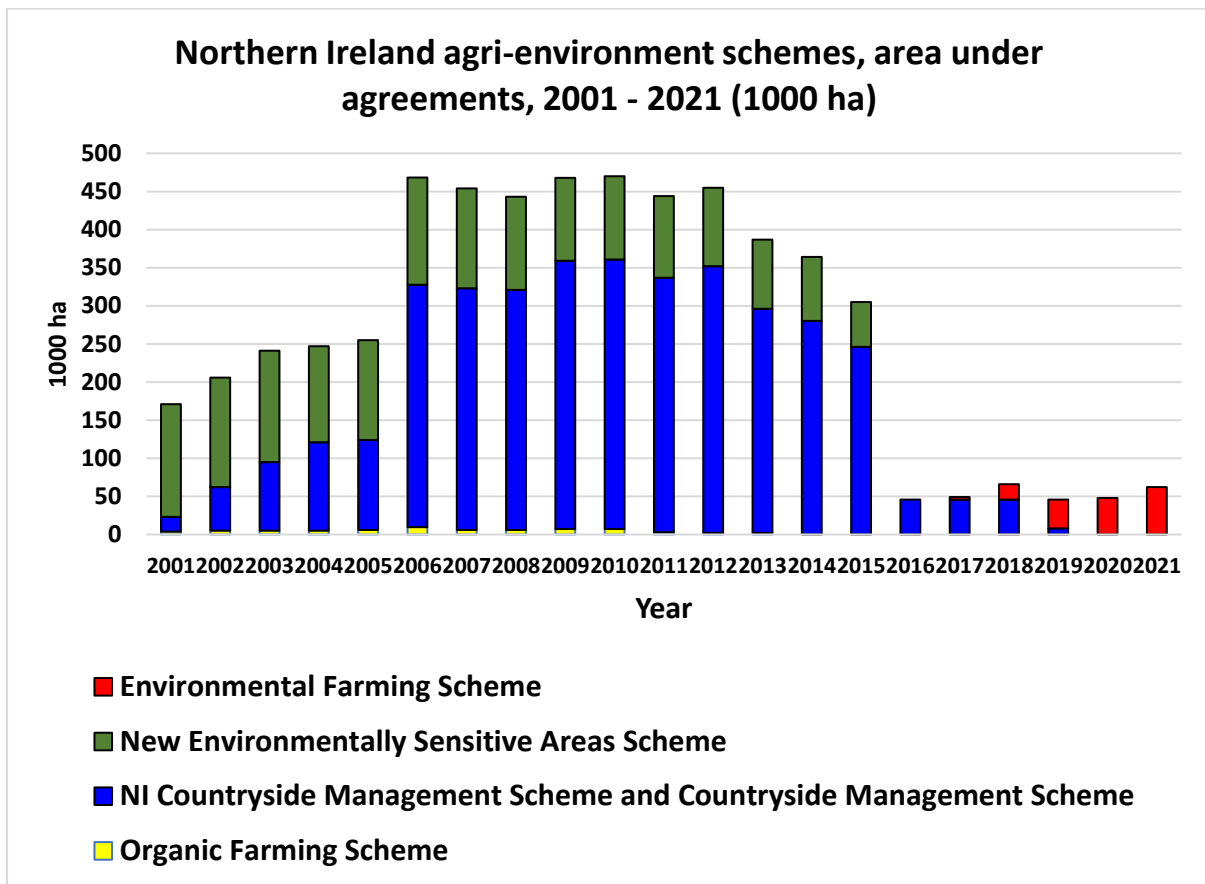
UFU article on designations and need for meaningful consultation and support

<https://www.ufuni.org/news/commodity-watch-areas-of-special-scientific-interest-assi>

NIEA and UFU Memorandum of Understanding 2017

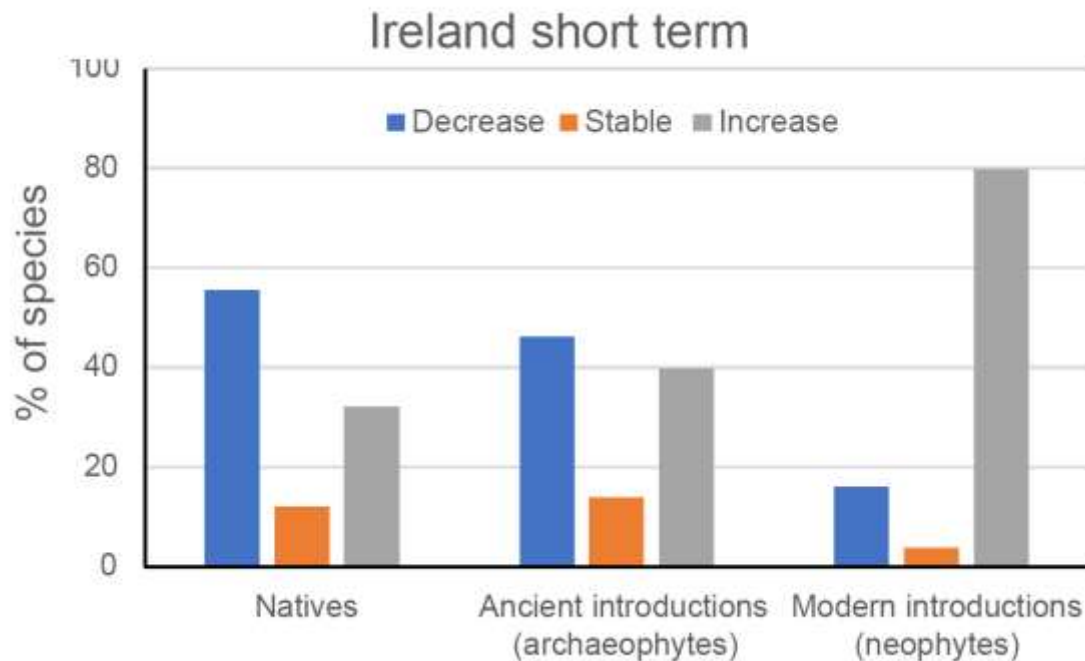
<https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Signed-NIEA-UFU-MOU.PDF>

Appendix 5 – Land under agri-environment agreement



Source: NI Environmental Statistics 2022

## Appendix 6 – BSBI Plant Atlas Irish data



## Appendix 7 – ASSI strategy and targets

EHS/NIEA produced several strategy documents from 1993 onwards:

1993 – Target 2001

2003 – Forward Programme for ASSI Declaration

2005 – ASSI Programme - Options Paper

2006 – ASSI Review

2007 – Priority List

Target 2001 was formally launched and published; subsequent documents were not published, but would have been tabled at stakeholder meetings and through published minutes of CNCC meetings.

The most recent document - the Priority List - contained a target to declare an additional 200 ASSIs over the 10 year period, aiming for around 440 ASSIs by December 2016. At that time, it was anticipated that the total ASSI network would eventually reach about 500 sites, and cover 10% of the land area of NI.