

**Date**

26 June 2024

**Title**

Report of the Chief Executive

**Report by**

Natalie Prosser, Chief Executive

**Paper for information and decision****Open in part**

## Summary

1. The Board will meet the day before the general election. It will consider our readiness for the potential changes this may bring on its agenda, alongside our assessment of how we will adjust our work programme to aim to make the most difference this year.
2. The pre-election period has inevitably reduced the amount of external facing activity we have been able to undertake since my last report, but our significant work programme continues. The Board will separately consider our report on the drivers and pressures affecting biodiversity in Northern Ireland. This report updates on progress in our other key programmes, including our growing investigations and compliance activities, and provides a detailed update on the emerging findings of our scrutiny of the designation and management of protected sites on land.

## Recommendation

3. The Board is recommended to note the progress in delivery of our strategic objectives.
4. The Board is recommended to consider and comment on the emerging findings of our protected sites project set out in Annex A.

## Strategic Objective 1 - Sustained environmental improvement

### Monitoring environmental improvement in England

5. Work on the next EIP progress report is well underway and progressing as planned. An update will be provided for the Board meeting on 14 August. This will set out proposals for the content of the report and implications of post-election developments for our assessments of progress.
6. We have progressed gathering evidence to inform the assessment including on nature friendly farming as well as support on methodological development.

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7. We have continued to engage with Defra regarding the content of the Annual Progress Report 2023-24, which Defra has indicated is likely to be published on 31 July, in line with the statutory deadline. If there is a delay, we will address any implications with the Board in August. We expect to propose to retain our plan to publish our next EIP progress report in mid-January 2025 as any delay would potentially decrease its relevance in terms of informing policy development.
8. We have set out in advance a schedule of information requests to Defra in relation to our progress report. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
- 9.

### **Monitoring environmental improvement in Northern Ireland**

10. Our report on the drivers and pressures affecting terrestrial and freshwater biodiversity in Northern Ireland is to be considered separately on the Board's agenda.

### **Marine**

11. Following Board's agreement to the broad scope of the marine programme in May, work is now underway to initiate the projects discussed, including through commissioning evidence, and exploring options to secure expertise to undertake a review of marine governance via a short-term appointment or secondment.
12. We continue our regular engagement with Environmental Standards Scotland to ensure we are joining up our marine work. ESS have recently completed a review of marine litter which has recommendations which will also be of relevance to England and Northern Ireland. We have received a briefing on the outputs and will receive an early copy of the report shortly.

## **Strategic Objective 2 - Better environmental law, better implemented**

### **Protected sites in England and Northern Ireland**

13. As part of the Improving Nature Programme, we have undertaken a project to assess the effectiveness and report on the implementation of environmental law concerned with the designation, conservation, and restoration of protected sites on land in England and Northern Ireland. The Board is asked to note the update of work undertaken including collection and analysis of evidence, and expert review at Annex A.
14. In light of the General Election we plan to publish the Northern Ireland protected sites report in November and the England report in December. This is later than previously agreed but is necessary due to wider timing issues, including the publication of other reports in Northern Ireland. The Board will consider the NI report for its approval in September.
15. Through our analysis we have identified draft conditions of success for protected sites in England and Northern Ireland. These have been developed with input from Dan Laffoley (Board critical friend). We have also distilled our analysis into key findings and initial

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recommendations for Northern Ireland. These are structured around the key themes of research namely: governance, resources and financing, designation, land management (incentives, advice, and guidance), monitoring, and land management (regulatory tools). The conditions of success, findings and an early draft of recommendations are set out within Annex A. The Board is asked to consider and comment on these, noting that the recommendations are still in development.

### Other environmental law reports

16. Our report on the implementation of the Water Framework Directive (WFD) regulations in England has been laid before Parliament. The launch included extensive stakeholder engagement and was generally well received. Government's response (due by 9 August) remains outstanding, and it is unclear when this will be published in light of the election, and recess.
17. Our WFD report for Northern Ireland has been updated in light of the Board's comments and sent in advance to the relevant Northern Ireland Government departments, both to ensure no surprises, and so that the report timing does not act as an impediment to the publication of the 3<sup>rd</sup> Cycle River Basin Management Plans which remain outstanding. The report is scheduled to be laid before the NI Assembly in September.
18. Bathing waters work is continuing in England and Northern Ireland and will come to a conclusion in the autumn. The contractor work has been completed and shared with government departments for fact checking. The structure and outline of our own report has been drafted for discussion with our critical friends from the Board.
19. We have recently received the 100 Compliance Assessment Report forms (Environment Agency inspection reports for waste sites) we had requested from the EA in January, and which are supposed to be accessible from a public register. We are replanning our project timeline as a result. We are also discussing the preliminary findings from the literature review, surveys, and interviews with members of the College of Experts.
20. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
21. We received six bids for the contracted-out elements of our Local Nature Recovery Strategies project, and awarded the contract to a subsidiary of Novascope Ltd. On 5 June we held our inception meeting and are now transitioning into the delivery phase of this work. We will be updating stakeholders and setting up an advisory group to help test and steer the project.

### Interventions

22. The hearing for the Court of Appeal case *Pickering Fishery Association v SSEFRA* has now been listed for 1.5 days on 14 and 15 January 2025. We are continuing the relevant preparatory work ahead of recommending to the Board whether to apply to intervene in the Court of Appeal case. The case relates to the correct interpretation of the WFD Regulations, including several issues identified in our associated report.
23. The Supreme Court handed down its judgment in *R (Finch) v Surrey County Council* on 20 June. A majority of the Court allowed Mrs Finch's appeal, finding that an Environmental Impact

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Assessment (EIA) must assess the downstream effects on climate from combustion of oil produced from a proposed new oil well. This is a significant judgment and clarifies the law in relation to new fossil fuel projects and the requirement to assess downstream greenhouse gas emissions as part of the EIA. We can identify from the judgement how the OEP's intervention influenced the reasoning of the Court, and our submissions were explicitly recognised as being 'particularly helpful'. The Board has received a full briefing by email.

### Government consultations

24. In response to the Board's request in November, we analysed 50 environment related consultations in England and Northern Ireland to understand whether action results from government consultations, and how promptly. In 56% of instances, the consultation resulted in an identifiable outcome – for example a strategy, plan, change in law or regulation – with the average length of time from the conclusion of a consultation to the outcome being 283 days (40 weeks). For Northern Ireland, there was however no consultation that resulted in an identifiable outcome. This is likely to be a consequence of the absence of an Executive in Northern Ireland during most of the sampling period.
25. A government response was produced in 42 of the 50 consultations in our sample. The average length of time to do so was 242 days (35 weeks). This is almost three times the 12 week period set out in government's consultation guidelines. Our findings indicate there may be delays and a potential lack of opportunity for effective public participation and scrutiny at the outset of the policy and legislative process.

## Strategic Objective 3 - Improved compliance with environmental law

### Complaints and enquiries

26. Since January 2021 we have received 1,416 enquires and 127 complaints. Since my last report, we have received six new complaints and handled 81 enquiries. We have seven open complaints in the assessment phase.

### Progress in investigations

27. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

### Casework and interventions

28. Following the closure of two long-standing complaints relating to failures to protect the River Axe and the Wye catchment on publication of our WFD report for England, the complainant (Marinet) publicised their dissatisfaction with our decision. We will meet with Marinet shortly to clarify our position and understand any concerns.
29. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

### Co-operation from Defra

[Paper 24.59](#)

30. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

## Strategic Objective 4 - Organisational excellence and influence

### 2024-25 resources, budget and business plan

31. The Board will separately consider amendments to our business plan and budget in light of the welcome confirmation of £1.900m funding from DAERA for the year 2024/25, which is higher than the assumptions the Board considered in May.

32. In the interim, we are confirming and baselining the delivery plan for the year based on our existing plan, to allow effective monitoring of delivery. Recruitment to the remaining posts agreed to support the plan agreed in May is progressing as follows. Three additional temporary posts are proposed in the paper the Board will separately consider.

Type	Grade	Directorate	Role	Status
Permanent	G6	Regulatory	Head of Regulatory Projects	Appointment made
Permanent	G7	General Counsel	Principal Lawyer	Start date agreed
STA	G7	General Counsel	Principal Researcher	Start date agreed
Permanent	G7	Insights	Principal Analyst	About to be advertised
FTA	SEO	Chief of Staff	Projects and Reporting Officer	About to be advertised
FTA	EO	Chief of Staff	Project Support	Start date agreed

33. We have further BAU recruitment, including a new job share role in the finance team and backfill of a G7 role and several short term appointments, primarily in Insights. We have welcomed two new permanent starters since the Board last met: the Board Secretary, and Management Accountant.

34. Our quarter one management accounts and forecast are underway. We expect the Executive to consider them in mid July, and to report to ARAC and the Board in August. With the introduction of monthly financial close down procedures, it is envisaged that the monthly reporting cycle can be achieved more efficiently by optimising the finance system and reducing reliance on excel based processes.

### Strategy consultation

35. After the Board's last discussion, our draft strategy for consultation has now been finalised, in anticipation of a consultation launch on or around 18 July. The consultation will be open for 10 weeks to 26 September, with engagement events planned for the first three weeks in September, with invitations issued to coincide with the consultation launch. As the Board agreed, we have provided the draft strategy for information to Defra and DAERA in advance for information.

## People strategy, and action plan

36. Draft action plans for 2024 staff survey results were provided to staff on 24 June. Detailed programmes are in place to support the delivery and monitoring of staff survey action plans. The first progress report is due to be provided in October 2024.

## Working with others

46. The College of Experts has now supported 15 activities, ranging from scoping exercises, participation in expert panels and workshops and peer reviews of reports and invitations to tender from colleagues across the OEP. Feedback from OEP colleagues is very positive. Next steps planned include a College newsletter, a series of learning and development talks for colleagues, and a series of workshops exploring some of the issues raised within our horizon scanning surveys.

37. We have held a second workshop in relation to agreeing and documenting the ways we work with Defra Group's ALBs. Responses from those involved (EA, JNCC, Natural England and Forestry Commission) have been positive. We are hopeful that an agreed ways of working document may be finalised in the coming weeks.

## Other enabling services information

38. On 17 June we launched our Intelligence Management System. As the Board was informed in May, the system aims to deliver improved corporate memory and flow of information across the OEP. It contains intelligence gathered for weekly intelligence notes, since they began in summer 2023, summary complaint details, recent briefings and stakeholder engagement notes. Dashboards to visualise the intelligence are in development.

39. New procurement regulations come into force in October 2024. Our procurement staff have achieved relevant certifications in anticipation, and are actively involved in cross government communities of practice. Work has commenced to review and amend the OEP's procurement policy, procedures, guidance and templates to ensure we maintain legal compliance and good practice. Training for all staff will be delivered during Q2 and Q3.

40. As part of an ongoing efficiency improvement programme, ExCo has agreed to trial the use of Copilot (a Microsoft AI tool) across all directorates in this financial year. The aim is to explore and assess whether the tool can add value in our existing work which should allow us to make an informed decision on wider adoption and rollout before the end of this financial year.

## Impact Assessments

### Risk Assessment

41. The Board received the quarterly overview of our Strategic Risks Register in May. There are no significant changes in the assessment and mitigation of risk to report. ARAC will scrutinise further in August.

42. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

43. No material equality implications have been identified in this paper.

## Environmental Analysis

44. This report gives an overview of strategic organisational developments which support the OEP's principal objective. Consideration has been given in each case to how the activity contributes towards environmental protection and enhancement, and to ensuring the OEP meets relevant duties in environmental law. No specific proposal in this paper has a direct bearing on those duties.

Paper to be published	In part
Publication date (if relevant)	With meeting minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR).	<p>FOIA/EIR exemptions for which we propose not to publish this paper in full are:</p> <ul style="list-style-type: none"> <li>• publication would harm relations between UK and NI governments (s.28)</li> <li>• publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36)</li> <li>• publication would reveal information subject to legal professional privilege (s.42)</li> <li>• publication would harm the OEP's commercial interests (s.43)</li> </ul>

## ANNEXES LIST

*This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*