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Consultation on the Principles of Marine Net Gain Consultation Coordinator  
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Dear Marine Net Gain Team,

### **Defra Consultation on “Principles of Marine Net Gain”**

#### **Response prepared by Sussex Nature Partnership**

This document has been prepared by Sussex Nature Partnership in response to the Defra consultation: *Principles of Marine Net Gain*. Several key organisations contributed to its contents including:

- **Chichester District Council**
- **East Sussex County Council**
- **Environment Agency**
- **Sussex Dolphin Project**
- **Sussex IFCA (Inshore Fisheries Conservation Authority)**
- **Sussex Wildlife Trust**
- **West Sussex County Council**

#### **Background**

Sussex Nature Partnership operates across the Tier 1 local authority areas of West Sussex County Council, East Sussex County Council and Brighton and Hove City Council and covers a large area of the South Downs National Park and High Weald AONB. Supported through donations from its key partners, it brings together over 30 organisations from across the environmental, business, research and public sectors operating in Sussex<sup>1</sup>. A core part of its work over the past year has been to engage all partners in emerging policy around ‘net gain’. Most of this work has focused on mechanisms for biodiversity net

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<sup>1</sup> See Sussex Nature Partnership website for list of current members <http://sussexlnp.org.uk/about-us/our-partners/>

gain (BNG) set out within the Environment Act, but many of our partners are actively engaged in protection and restoration of marine and coastal habitats along the Sussex coast. Their expertise in this area has been used to develop the responses in this document.

### Structure of this Response

Please see attached (**Appendix 1**) our response to the specific questions posed within the consultation document. These have also been submitted online. However, our conversations in Sussex have generated other comments which the consultation document did not provide an opportunity to include so we have added them to Appendix 1 to provide justification and additional information beyond the yes/no options included in the consultation document.

Similarly, comments were raised on several issues relating to marine net gain which were not covered by the consultation but were felt to be critical to the development of policy in this area. These are set out below.

All the comments have been developed through a process of discussion and consultation across Sussex Nature Partnership. We therefore hope it will be particularly useful as a measure of the issues being raised in the minds of those working at a local level in both the planning and delivery of nature's recovery in the coastal and marine environment.

### Issues relating to Marine Net Gain not covered by the consultation questions below

- Net gain in the marine environment must be focused primarily on delivering **net gain for biodiversity**. Like on land, it should therefore be termed '**Marine Biodiversity Net Gain**' (MBNG). We are therefore referring to it as such throughout our response. This should not preclude ensuring that design and delivery of MBNG actions can deliver other valuable secondary environmental benefits. As natural capital assets, restored habitats or species will themselves deliver environmental benefits which can be optimised through design of the interventions proposed. But the scale of pressure on marine biodiversity means that net gain in the marine environment must deliver notable gains for biodiversity. We do not feel that the consultation document prioritises biodiversity gain sufficiently to provide reassurance that an environmental gain approach would not prioritise other benefits over biodiversity such as carbon storage, coastal resilience from erosion/flood etc. It states that biodiversity will sit 'at the core of net gain'. In our view this is not tight enough wording to ensure that net gain for biodiversity is the driving factor.
- The BNG system being developed on land sets a **target for the net gain** to be achieved (minimum 10% mandatory gain). Whilst we understand that it may not be possible to take a similar approach in the marine environment, there should be some sort of target-based approach to ensure that the net gain delivered for biodiversity in the marine environment is not a negligible/insignificant amount but is meaningful and significant. Defra should investigate potential 'quantifiable measures' that could be used to set targets in a way that would be relevant to the marine environment.
- **Mitigation hierarchy**. The consultation does acknowledge a commitment to the mitigation hierarchy. However, the consultation document is confusing and at times inconsistent in its use of language in this regard. MBNG should deliver benefits once the hierarchy has been applied, i.e. it should not be used to avoid impact, provide mitigation or deliver compensation. We only support the use of MBNG to add value for biodiversity once the mitigation hierarchy has been fully applied and commitments have been made by the applicants to ensure sufficient mitigation and compensation actions. The use of the diagram on page 8 is confusing. This does not use the term 'net gain' but rather uses the term 'offset'. Under an offset approach, habitat creation interventions are used to address residual impacts as well as to provide net gain. In our view, marine biodiversity net gain should not be an offsetting approach as illustrated in this diagram - but should purely relate

to additional gain for biodiversity once mitigation and compensation has been provided. If Defra is intending to apply it within an offsetting approach, this should be transparent and clearly stated.

- We agree that it is important to identify a workable system as soon as possible to ensure that gains for biodiversity from marine development are achieved without delay. Some pragmatism will therefore be acceptable while a system is established and then refined. However, it should be made clear from the outset that the system may change and become more complex as our understanding of MBNG increases – without clearly stating this at the start of the process, it may be challenging to convince developers to change their scheme design in the future.
- We understand that it is imperative that the system is not overly onerous for industry but we were surprised to see a number of strong statements within the document which suggested that it would be designed specifically to support growth, provide maximum flexibility for developers and enable faster development. It is our strong opinion that the system must be designed **primarily** to support recovery of marine biodiversity. It must, of course, be practical and straightforward for developers to understand and use and there will be little benefit for biodiversity in making it overly onerous for developers - but this does not mean it should be designed to specifically 'enable' development or introduce unlimited flexibility for developers. The marine environment must be the ultimate beneficiary of this system.
- We also agree that any system introduced must function effectively and efficiently - and should be relatively straightforward to operationalise.
- It is not clear from the consultation document who will implement and regulate the MBNG system and how the various institutional capacity, skills and funds required to do this effectively will be introduced.
- Like BNG and Local Nature Recovery Strategies (LNRSs) on land, strategic application of MBNG should be linked to spatial marine plans at the regional level. Much more urgency, capacity and resources must be directed into these processes to ensure that they can provide the type of guidance required as to where, what and how recovery of marine biodiversity can be best supported.
- This consultation does not clarify sufficiently how the proposed MBNG system - and that being established on land (BNG) will work together - or how impacts of marine based development which occur in the intertidal area - will be considered or delivered. Much more thought and clarity as to how these two systems can be designed to work together is vital. Intertidal areas are extremely vulnerable to pressures from both land and sea and there is a risk that they will fall between the cracks unless these two net gain systems work effectively to deliver the types and levels of biodiversity gains that they so desperately need.
- If there is not a specific BNG mandate for the marine environment within the Environment Act, then Defra should work towards embedding it in an alternative legislative framework.

Sussex Nature Partnership will be happy to discuss any of the points raised within this response if that would be helpful and appreciate the opportunity to engage with this consultation.

Yours sincerely,



Kate Rice

Chair, Sussex Nature Partnership

## Appendix 1: Responses to the consultation questions.

These have also been submitted online.

The question numbers provided below are in accord with those in the on-line questionnaire. However, these differ from the question numbers in the consultation document; those numbers are provided in brackets in the question column below.

Questions	Responses
<b>GENERAL QUESTIONS</b>	
1. Name	Kate Cole
2. Email address	Kate.cole@eastsussex.gov.uk
3. Organisation	Secretariat, Sussex Nature Partnership
4. Are you responding to this consultation on behalf of an organisation or an individual?	On behalf of the Partnership. For list of constituent members see <a href="http://sussexlnp.org.uk/about-us/our-partners/">http://sussexlnp.org.uk/about-us/our-partners/</a>
5. If responding on behalf of an organisation, please briefly describe the main business activity of your company/organisation.	Sussex Nature Partnership is a local nature partnership established in 2014. It brings together more than 30 organisations across West Sussex, East Sussex and Brighton & Hove to work together on the protection and enhancement of the natural capital of Sussex. It takes a particular interest in Local Nature Recovery Strategies and Biodiversity Net Gain and works with the 11 district and borough councils in its area on these matters through its 'Local Authority Network'. See <a href="http://sussexlnp.org.uk/local-authority-network/">http://sussexlnp.org.uk/local-authority-network/</a> for more details.
6. Which regions of the UK do you live?	South East England
7. Which of the following best describes where you live? Please select one of the below  Urban – coastal  Urban – non-coastal  Rural – coastal  Rural – non-coastal	The Partnership covers a geography which has coastal, marine, urban and rural areas and habitats.  <i>The online survey only allows you to select one of these options, when in fact all apply in our area of interest. The online response is therefore inaccurate.</i>

SECTION 1: DEFINING MARINE NET GAIN

Principle 1: Marine net gain will measure impacts on habitats and species

8. (1) Do you agree that marine net gain should assess impacts on species as well as habitats?

Yes/no

(1a) Please explain your answer (free text).

(1) Yes.

(1a) The identification of BNG within the marine environment should be based on consideration of impact on both habitats and species. This provides a more holistic picture of the impact and is both logical and appropriate. Species can also act as indicators of wider ecosystem function.

We also agree with the principle of including off-site impacts.

However, we acknowledge that any process to quantify impacts through either measurement or modelling could be highly complex and costly. Results may also be subject to different interpretation. It is therefore imperative that ecological capacity/capability within the appropriate regulatory body for MBNG to deal with this difficulty in interpretation of information must be established and supported in the long term.

Examples of existing marine licenced activities off the Sussex coast have resulted in direct negative impacts on both marine species and habitats. Despite available information on these impacts, few, if any, steps are taken to modify or mitigate impacts once the licence has been issued. A notable example is pumped dredge material disposal at Brighton Marina being discharged directly into Beachy Head West MCZ.

Principle 2: Marine net gain will seek to incorporate environmental benefits underpinned by biodiversity

Principle 3: Marine net gain will take a 'nature first' approach whilst recognising wider environmental benefits

9. (2) Do you agree that marine net gain interventions should be assessed with reference to environmental benefits that biodiversity enhancement can yield?

Yes/no

(2) No.

<p>10. (2a) Please explain which extra environmental benefits and services should be included within marine net gain assessment (free text)</p>	<p>Net gain should be assessed <b>primarily</b> with reference to biodiversity. We noted in our covering letter our desire to see this mechanism concentrate on biodiversity, ensuring that it is the primary beneficiary. Any secondary gains for the wider environment (such as carbon storage, coastal erosion protection etc) of proposed interventions can be acknowledged, encouraged and designed into net gain interventions provided that biodiversity net gain is prioritised at all times and not ‘designed out’ or added in as a secondary consideration in order to deliver desirable solutions for other objectives which may lack funding from other sources.</p> <p>The statement ‘nature first approach’ is not sufficiently strong to ensure that this mechanism will drive and deliver meaningful benefits and uplifts for marine biodiversity as a priority.</p> <p>This is our greatest concern with the proposals for MBNG as they are currently written within this consultation document.</p> <p>For clarity, whilst some developments may have substantial socio-economic benefits, these should not be considered an element of marine net gain.</p> <p>Nature based solutions in the marine environment are undoubtedly important but should not rely on funding via a net gain approach, which should be based on biodiversity impact and intended to support nature’s recovery, <b>unless biodiversity is a primary beneficiary</b> and that these projects result in a meaningful uplift for nature of the ‘right type and in the right place’. Marine nature-based solutions which are primarily for coastal protection/flood risk reduction, for example, should be funded primarily from flood-related budgets.</p> <p>Of the nature-based solutions of most value in the marine environment, the following are appropriate in our view, provided these are designed and located in the right location and deliver benefits for nature:</p> <ul style="list-style-type: none"> <li>● Coastal Protection</li> <li>● Carbon storage</li> <li>● Improvements to water quality through nitrate and phosphate absorption</li> </ul>
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Principle 4: Marine net gain assessments will not include potentially positive incidental impacts whose benefits are subject to significant uncertainty

11. (3) Do you agree with our proposal to discount potentially positive incidental effects, whose benefits are subject to significant uncertainty, from marine net gain assessments?  
 Answer: yes/no  
 (3a) Please explain your answer (free text)

(3) Yes  
 (3a) We agree that these effects should be discounted from MBNG assessments. But outside the net gain system, we would like to see more done through development design to optimise these benefits and incentivise e.g. creation of artificial reef habitats. This is a very significant opportunity which to date has been poorly developed. Piling and cable protection provide real opportunities for use of materials to create habitat for numerous species, including important commercial stocks such as lobster. Other approaches to 'biophilic design' (ensuring thought is given to design and construction of marine structures to design-in benefits for nature/species) should be encouraged in all marine development.

Principle 5: Marine net gain requirements will be proportionate and appropriate to the scale and type of development

12. (4) Do you agree that we should prioritise a contributions-style approach, whilst still exploring a metric-style approach?  
 Yes/No. Please specify and explain your answer (free text)

(4) Yes  
 We agree that a solution to deliver gain for biodiversity in the marine area must be implemented as soon as possible in order to halt its decline and support its urgent recovery. A contributions-style approach has some precedent in the marine environment. In our experience, it was well applied in the marine environment through the Aggregate Levy Sustainability Fund (ALSF). This deployed funds very usefully for the identification of MCZs and enabled monitoring at a regional level which was useful. The marine element of this fund was ring-fenced for marine projects.  
 We therefore strongly support introduction of a contributions-style approach **in the short term** which is as effective in practice as the ALSF was when in operation, provided this is designed to leverage delivery of effective, ambitious and meaningful net gain for biodiversity in the marine environment. This will be relatively less complex than a metric approach in the short term and will address the need to get a beneficial system up and running quickly.  
 We have some queries about what else could be built into any contributions approach:

	<ul style="list-style-type: none"> <li>- Could contributions include non-financial contributions (e.g. time and resources to assist organisations working on net gain projects?)</li> <li>- Could a portion of the funds raised be used to further research and development (commissioned and directed by Defra) of a metric-based approach in the longer term?</li> <li>- Could weighting be given to prioritise habitats or species that are at greatest <b>risk</b>? The work of the Natural Capital Committee (particularly Georgina Mace<sup>2</sup>) flagged the value of a risk-based approach (via a risk register) when identifying how best to invest in natural capital as this does not need the same level of evidence as would be required if targeting action based on ‘condition’ of habitats. “Natural capital at risk” has been mapped in Sussex for terrestrial and coastal habitats<sup>3</sup>. Work could be carried out to extend this approach to marine habitats.</li> <li>- Could a weighting be given to proposals which ‘add’ to other project proposals and so help to deliver ‘integrated restoration’ - thereby providing ‘stacked’ funding for these projects from various funding sources and helping to deliver greater outcomes?</li> </ul> <p>Despite the support above for a contributions approach in the short term, we remain, in principle, nervous about complete disconnection of net gain from the site of impact. We understand that there may be insufficient evidence of the efficacy of marine habitat restoration efforts at the site scale and that a metric approach as per the terrestrial BNG approach may not be a directly applicable approach. It is essential that any metric approach is not overly costly and complex to implement and manage. Clearly any metric approach must be workable and measurable in a practical sense and take into consideration the costs and difficulties of conducting monitoring habitats and species in the marine environment. A metric similar to that for the terrestrial BNG system would help to ensure some level of consistency for developments that impact both the terrestrial and marine environments.</p>
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<sup>2</sup> Mace et al. 2015. Towards a Risk Register for Natural Capital. Journal of Applied Ecology. March 2015.

<sup>3</sup> See Natural Capital Investment Strategy for Sussex (2019). <http://sussexlnp.org.uk/natural-capital/>



	<p>Therefore, we would urge Defra to continue to think about how best to develop an evidence-based approach to ensuring that biodiversity in and around the site of impact can benefit from developer contribution.</p> <p>We would also urge caution: it will be difficult to move the industry towards a more rigorous metric-based approach once a much easier (for them) contributions-style approach is bedded in. Defra must ensure that it doesn't lose the ability to introduce a more rigorous system in the future through the expediency of developing a 'quick solution' in the short term.</p> <p>At no time should the MBNG process be used to deliver mitigation and compensation for marine development. If this cannot be delivered then the development should not be granted permission.</p> <p>Defra should clarify and re-state clearly its commitment to net gain only in the context of the mitigation hierarchy. If this is not realistic then this should also be clarified so that there is transparent understanding of the role of net gain in the marine environment and the cost to biodiversity of development which proceeds without sufficient mitigation and compensation.</p>
<p>13. (4a) Are there other approaches to measuring impacts that we should explore? Please specify and explain your answer (free text)</p>	<p>The use of interpretation of both acoustic backscatter, and side scan supported by ROV ground truthing should be fully utilised for habitat monitoring.</p>
<p>SECTION 2: SCOPE OF MARINE NET GAIN</p>	
<p>Principle 6: Marine net gain will be a mandatory requirement. It will apply to all marine development, subject to any minimal thresholds and other exemptions</p>	
<p>14. (5) Do you agree that marine net gain should be a mandatory requirement for new development activities within the marine environment?  Yes/no  (6) If you answered yes, do you agree with the list of consenting and licensing regimes that marine net gain</p>	<p>(5) Yes  (6) Others that should be included include de-commissioning, maintenance and repairs under the Petroleum Act 2008. Oil and gas exploration and extraction activities should be subject to marine biodiversity net gain.  Capital and maintenance dredging and impacts of dredge disposal should also be included.</p>

<p>requirements should be introduced within? Are there any others we should consider?</p> <p>Free text</p>	
<p>15. (7) Are there activities and/or sectors that are regulated by these regimes which should not be covered by net gain requirements?</p> <p>Yes/no</p> <p>(7a) If yes, please explain your answer, including any relevant de minimis thresholds for each activity or regime (free text)</p>	<p>(7) Yes</p> <p>(7a) The following should not be included:</p> <ul style="list-style-type: none"> <li>• Activities which require a marine license but are focused primarily on habitat restoration or recovery - this would be in line with the terrestrial BNG approach</li> <li>• Mariculture of native seaweeds</li> <li>• Small developments e.g. small jetty installation</li> </ul>
<p>SECTION 3: DEFINING INTERVENTIONS</p>	
<p>Principle 7: Marine net gain will incentivise both active interventions and appropriate pressure reduction measures</p>	
<p>16. (8) Which types of pressure reduction measures can be delivered by industry through marine net gain?</p> <p>Please give examples where possible</p>	<p>It is important to acknowledge that pressure reduction simply provides conditions in which habitat recovery <u>may</u> take place in the marine environment. It will not guarantee it or reflect the scale or significance of recovery that might take place. It is therefore an enabling activity - rather than a water-tight mechanism for delivering habitat recovery.</p> <p>Finding a way to reduce this pressure will be important though and will require other parties (government, regulators) to achieve this. Developers will not be able to make this happen, e.g. reducing pressure from fisheries will require regulation and/or incentives for fishing communities. A contributions fund may be able to assist with this.</p>
<p>17. (9) Are there any other types of intervention that should be encouraged, including innovative emerging techniques?</p> <p>Tell us about any other types of interventions.</p>	<p>Other types of interventions should be explored for suitability e.g. artificial reef creation.</p>

SECTION 4: TAKING A STRATEGIC APPROACH

Principle 8: Marine net gain will incentivise the delivery of strategic interventions in addition to meaningful site-based intervention

18. (10) Do you agree with the principle of taking both a site-level and a strategic approach to marine net gain as set out above?  
 Yes/no  
 (10a) Please explain your answer

(10) Yes  
 (10a) We agree that there is a role for both site-based and strategic approaches to delivering biodiversity net gain. The decision as which should apply for each application should be determined on a case-by-case basis.  
 We understand that in the marine environment, it may feel more *certain* to prioritise a strategic approach which can target net gain activities in ways (and places) where available evidence confirms that benefit will be delivered. Thus, in the short term, this may be the preference.  
 But we are also concerned that a site-based approach may be given less priority in practice because it is difficult to deliver and evidence is lacking in terms of efficacy of on-site habitat restoration approaches. However, site-based approaches should still be prioritised where they can deliver effective and meaningful biodiversity net gain (habitat, species, ecosystem connectivity) in the locality of the development. Defra should prioritise a means to determine how to identify when a site-based approach can be delivered (perhaps based on criteria such as types of development/locations/types of habitats affected etc) - and to incentivise this, for example through a weighting approach in favour of site-based approaches such as is used in the terrestrial BNG metric.  
 Monitoring and evaluation of success of net gain will be vital to identify its effectiveness and should be required of developers as part of the development approval.  
 In relation to a strategic approach, MBNG should be linked to spatial marine plans and used strategically to deliver biodiversity outcomes and opportunities set out in these plans. It should mirror the terrestrial BNG approach in this regard. Progress in developing a spatial approach to marine planning has been slow. As with Local Nature Recovery Strategies (LNRSs) set out in the Environment Act, government should prioritise the preparation of these spatial plans for marine biodiversity recovery which can then be used to guide delivery of strategic MBNG. These should be prepared at the sub-national

	level to ensure that development in an area can help to fund net gain for marine biodiversity in a relevant area of the English seas.
19. (11) What types of site-based interventions should be incentivised through marine net gain? (free text)	Restoration/enhancement of existing habitats, species and ecosystems.  Biophilic design should be expected or encouraged as an industry standard - to ensure that all marine development builds its concepts into design. MBNG should be additional to this.
20. (12) What types of strategic interventions could be incentivised through marine net gain? (Free text)	Removal of trawling pressure; removal of fishing pressure; by-catch reduction.  It would also be useful to see principles developed for this, e.g. interventions that will deliver a measurable benefit for marine biodiversity set out in a spatial marine plan; not funded by net gain if it is something that someone should already be doing either as part of mitigation hierarchy or other regulatory framework.
21. (13) Should accessing strategic interventions be conditional in some cases?  Yes/no  (13a) If yes, which site-based features should be considered priorities ('prescribed features') ahead of strategic interventions? Please explain your answer (Free text)	(13) Yes  (13a) As noted above, we are minded to support a principle that requires site-based interventions to be investigated as a default first step (against a set of criteria that could be developed to determine suitability) with access to strategic interventions only accessed once that has been done.  Strategic interventions should be set out in spatial marine plans and those chosen should satisfy the regulator of MBNG that they will create meaningful gains for marine biodiversity (can this be done?).  Developing an evidence base to support MBNG is imperative and so costs for monitoring and evaluation of all strategic projects should be factored into their delivery and funding plans.
22. (14) Do you agree that marine net gain interventions should not initially be restricted to the 'locality' of the main development?  Yes/no  (14a) Please explain your answer (free text)	(14) No  (14a) This should only be the case provided a process has been followed to rule out suitable/effective interventions within the locality of the development.  See above in response to Q21 - the urgent priority to collate and map out a suite of strategic opportunities at the regional/sub-national scale within spatial marine plans (or other suitable instrument). Fundamentally - there must be a coherent, evidence-based

	<p>approach to identifying and agreeing suitable strategic projects to implement as an alternative to site-based interventions.</p>
<p><b>SECTION 5: MARINE NET GAIN AND ADDITIONALITY IN MARINE PROTECTED AREAS</b></p>	
<p><b>Principle 9: Marine net gain will allow for improvements to designated and non-designated features of Marine Protected Areas to qualify as net gain interventions</b></p>	
<p>23. (15) Do you agree that the enhancement of designated features within statutory MPAs should be allowed in the marine environment as defined above?</p> <p>Yes/no</p> <p>(15a) Please provide evidence to support your view (Free text)</p>	<p>(15) Yes</p> <p>(15a) We agree that part of the application of marine biodiversity net gain should be to allow its use <u>within</u> MPAs but only in limited circumstances.</p> <p>If MPAs were excluded as possible sites for MBNG, this would remove a significant area of inshore waters from possible benefit.</p> <p>However, any intervention within MPAs should be precautionary and carry confidence of experts and evidence base that it will provide benefit to its overall biodiversity and the wider ecological network. Interventions that are ‘nature-based solutions’ and are designed to deliver broad environmental gains should not be permitted within MPAs unless they are primarily intended to support biodiversity in a way that is appropriate for that designated area.</p> <p>Location and design of any habitat created through MBNG should be mindful of delivering wider ambitions to create a coherent ecological network within the marine environment. This could include expansion and connection of existing MPAs where appropriate.</p> <p>In relation to application of marine biodiversity net gain to intertidal areas, this will need to take account of short and longer-term climate change impacts e.g. loss of habitat through sea level rise and storm surges. Perhaps it could help to assist with projects to help habitats transition inland.</p>