

**Dispelling the myths: providing unnecessary “over-mitigation/compensation” will not help to secure a Natural England European Protected Species mitigation licence.**



Note: This guidance is intended to be generic so the general principles can be applied to applications affecting any European Protected Species.

Natural England is aware that some ecologists and applicants believe that by proposing excessive mitigation and compensation it will help secure a mitigation licence more quickly. This is not true. Natural England expects proposed mitigation and compensation to be proportionate to the impacts of the planned works on the European Protected Species to be affected. This should be sufficient to offset the damaging effects of the project. Any additional mitigation or compensation is welcome, but crucially these additional proposals will not make up for shortcomings in the licence application. Ecologists should be mitigating against the effects the planned works may have on the population, and *not* simply to try to obtain a licence.

**What are “over-mitigation” and “over-compensation”?**

Mitigation can be defined as “*practices which reduce or remove damage (e.g. by excluding bats from buildings scheduled to be demolished, or by capturing newts from a development footprint to avoid killing them)*”. Over-mitigation is therefore the disproportionate use of such practices in relation to the impacts of a development on the species affected.

Compensation can be defined as “*works which offset the damage caused by the development (e.g. habitat creation)*”. Over-compensation is therefore the disproportionate use of such works in relation to either the impacts of a development or the size-class of the European Protected Species population. **To help prevent un-necessary over-mitigation/compensation for any European Protected Species Natural England expects:**

- A good survey to be carried out following the available published guidance. For example:
  - For great crested newts, refer to the Great Crested Newt Mitigation Guidelines (GCNMG). Our most recent guidance on what survey effort is expected for different types of cases and impacts is contained within the great crested newt Method Statement Template (WML-AL14-2) and also within the GCNMG. A sub-standard survey (too old, too few visits, too few methods used, visits carried out at the wrong time of year, not all appropriate ponds surveyed) may result in the great crested newt population size class at the

site being misrepresented or may falsely conclude absence at ponds where great crested newts are present.

- For bats, refer to 'Bat Surveys Good Practice Guidelines' (Bat Conservation Trust, 2007) and 'Bat Mitigation Guidelines' (English Nature, 2004).
- Natural England's published guidance on appropriate mitigation and compensation to be followed. There are links provided to the available guidance at the end of the article.

If, however, an applicant wishes to create additional compensation for the affected European Protected Species (over the minimum expected amount to offset the planned works) then this is welcomed. However, it is not something that Natural England expects applicants to provide in order to secure a licence.

**Examples of when Natural England sees 'over-mitigation' proposed to try to secure a great crested newt or bat mitigation licence:**

- Where the requirement to carry out a survey in line with the guidance could delay the application and hence the development for several months. In such cases, mitigation licence applications are occasionally knowingly submitted with a sub-standard survey. To compensate for this, applicants may propose mitigation consistent with that required for a larger population size class than that identified in the survey, e.g. proposing 90 days trapping effort for great crested newts when less may have sufficed if an adequate survey had been undertaken or proposing a much larger bat roost than might actually be required.
- When great crested newts or bats are discovered after construction works have started. Sometimes applicants do not wish to delay the development until the following year, so no survey is carried out and over-mitigation is proposed. Natural England cannot make a decision on the Favourable Conservation Status test without adequate survey results.

If the constraints to the survey can be justified, with sound ecological reasons, the method statement should explain these reasons and propose proportionate mitigation. If the survey constraints cannot be justified, a new survey should be carried out in accordance with the appropriate guidelines.

**Why is proposing over-mitigation a problem?**

Taken in isolation, this practice is not necessarily problematic. For example, with great crested newts a lengthy capture period may simply represent a very cautious approach to removing the animals. However, over-mitigation can be a problem in the following situations:

- If attempting to compensate for a sub-standard survey, mitigation may not be targeted in the right areas. Suggested mitigation practices or compensation works in other areas may not actually alleviate the development impacts on the population.

- In cases where little or no survey has been carried out, there is no way of knowing whether the conservation status of the population would be maintained at a favourable level over time.
- It can be exceedingly costly to the applicant and can in itself cause lengthy delays to developments. The costs of the “additional” mitigation may, in fact, be of negligible value to the conservation of the population.
- If mitigation consistent with the recommendations for a large population size class of a European Protected Species is proposed, Natural England would expect post-development monitoring and maintenance to be consistent with such a population size class. As a result, Natural England may also expect additional documents such as a Habitat Management and Maintenance Plan, and legally binding commitments to further safeguard the population in the long term. These measures may not be warranted by the true scale of the impacts, thereby passing unnecessary costs onto the developer.

**How does this relate to compensation works to offset the damage cause by development (e.g. habitat creation)?**

Again, over-compensation in itself is not necessarily problematic. For example, creating very large areas of aquatic or terrestrial habitat for great crested newts or high quality heated bat roosts could be a welcome gesture by a conservation-minded developer, or a response to a planning authority request.

In order to meet the licensing tests, habitat creation need only be proportionate and should replace qualitatively what is being lost (see GCNMG section 8.3 and Bat Mitigation Guidelines section 7.2). Should a method statement propose additional compensation, e.g. pond creation where no ponds are being lost through development or a larger, better quality bat roost than that being lost, this could result in a positive overall impact from the development and could help maintain or improve the conservation status of the population. Natural England welcomes ‘additional’ habitat creation to provide a positive impact. An application would not be issued with a “minded to refuse” response simply because it proposes additional habitat creation. The problem arises when this additional work is used to offset shortcomings in other parts of the method statement. Typically this is a sub-standard survey. In such cases, a minded to refuse response would be issued.

**Summary point: It is a myth that applications proposing ‘over-mitigation’ or ‘over compensation’ will stand a better chance of obtaining a European Protected Species mitigation licence.** Proposing additional mitigation or compensation will not make up for shortcomings in your mitigation plans. Applicants and consultants are therefore advised to follow the published guidance. If deviating from standard recommendations it is necessary to fully justify and explain this within the method statement itself.

**Useful guidance:**

**European Protected Species – How to get a licence document:**

[http://www.naturalengland.org.uk/Images/WML-G12\\_tcm6-4116.pdf](http://www.naturalengland.org.uk/Images/WML-G12_tcm6-4116.pdf)

**General Natural England Wildlife Management web-link:**

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>

**European Protected Species – Natural England internet page:**

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/europeanprotectedspecies.aspx>

**European Protected Species application forms and associated guidance internet page (all species):**

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/applicationforms.aspx#2>

**Handy Hints (Great crested newts):**

[http://www.naturalengland.org.uk/Images/wmlq04\\_tcm6-4112.pdf](http://www.naturalengland.org.uk/Images/wmlq04_tcm6-4112.pdf)

**Handy Hints (Bats):**

[http://www.naturalengland.org.uk/Images/bat-handy-hints\\_tcm6-15663.pdf](http://www.naturalengland.org.uk/Images/bat-handy-hints_tcm6-15663.pdf)

***Great Crested Newt Mitigation Guidelines (2001):***

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/advice/advisoryleaflets.aspx#newts>

**Bat Mitigation Guidelines (2004)**

<http://naturalengland.etraderstores.com/NaturalEnglandShop/product.aspx?ProductID=77002188-97f9-45a5-86a6-326a7ea3cd69>

**Bat surveys Good Practice Guidelines (2007):**

[http://www.bats.org.uk/download\\_info.php](http://www.bats.org.uk/download_info.php)

***The Dormouse Conservation Guidelines – second addition***

<http://naturalengland.etraderstores.com/NaturalEnglandShop/IN29>

**Dormice – European Protected Species**

<http://naturalengland.etraderstores.com/NaturalEnglandShop/SIN005>

**FAQs (Bats and great crested newts):**

[http://www.naturalengland.org.uk/Images/wlmsfaqs\\_tcm6-3859.pdf](http://www.naturalengland.org.uk/Images/wlmsfaqs_tcm6-3859.pdf)

**Otter guidance**

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/otters.aspx>