On the management of the The New Forest (SSSI, SPA, SAC & Ramsar site), Hampshire, UK, with reference to proposals to re-align Latchmore Brook

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Contents

Abbreviations for organisations mentioned in this report

C.D.A.	Commoners Defence Association
E.A.	Environment Agency
E.C.	European Commission
F.C.	Forestry Commission
F.o.L.	Friends of Latchmore
H.C.	Hampshire Constabulary
H.L.S.	Higher Level Stewardship
T.H.&.I.W.W.T.	The Hampshire and Isle of Wight Wildlife Trust
N.E.	Natural England
N.F.A.	New Forest Association
N.F.C.P.	New Forest Consultative Panel
N.F.H.L.S.C.	New Forest Higher Level Stewardship Committee
N.F.N.P.A.	New Forest National Park Authority
T.N.F.L.P.P	The New Forest LIFE II Project Partnership
V.C.	Verderers Court

Summary

This report investigates allegations of mismanagement of aspects of biodiversity protection in The New Forest. It aims to describe the concerns being raised and to help provide a platform for change and improvements. The report collates evidence and readily available information so that all concerned and involved can refer to a common point of reference.

There is a growing undercurrent of alarm and criticism regarding the management of The New Forest. It originates from concern expressed by non-government bodies, observations made within published studies and comments made through website campaigns regarding aspects of its efficacy and competence.

A wide range of information, proposals and records of practical activity within the Latchmore Brook and New Forest as a whole (much of it web-accessible) has been examined for this report. These include management plans and reports. They have been examined particularly in relation to activities that it is claimed may be unreasonable and avoidable, poor or bad practice, disturbing, damaging or destroying nature conservation interest, (the opposite of, or in conflict with their aims or purpose). A range of activities funded through European Union LIFE programmes and government funded agri-incentive payments relate principally to attempts at forestry drainage remediation by blocking and infilling watercourses and forming new ones, and the encouragement of increased grazing by ponies and cattle. The practice of heathland burning has also been considered.

These matters have been subject to a rapid review by conservation ecologist Tom Langton whose past fieldwork has included survey of the New Forest. The review is partly a result of informal contacts with a range of concerned residents, particularly those from the North West part of the forest in the first quarter of 2013. It aims to assess the validity of the concerns raised and the strength of claims with regards to any legal infringements relating to activities in the area over the last 10 years or so, and allegations of insufficient benefit from activities.

Between 1997 and 2006 three co-financed European Union funded LIFE projects were undertaken in the New Forest to study and develop management of the large proportion of the New Forest National Park (established 2005) that is a Natura 2000 European Designated Site or SAC and UK SSSI. The Forestry Commission began a programme which appears to attempt to reverse years of drainage operations.

The surveillance information on the New Forest in respect of European habitats and UK protected and unprotected species, (notwithstanding some good effort by dedicated specialists), appears out to be of date to varying degrees, incomplete and generally weak and inadequate. Available information regarding habitat and species interest often appears superficial, and does not seem to connect in any professional way to proactive management programmes to manage or recover them.

The on-going drainage remediation work being undertaken within the New Forest seems to relate only peripherally to the total management and restoration needs of the SSSI, SAC and EPS interests. In the examples investigated, these projects appear , in varying degrees, to have failed, to have

worked in part, or to have or be likely to have disturbed, damaged and destroyed important nature conservation habitats, habitat features or species.

Past and proposed drainage remediation works can currently be seen to impact in a negative way upon legally species that may or may not be components of the ecosystem whose presence qualifies the designation of the SAC, but that are protected as BAP listed or Wildlife and Countryside Act (1981 as amended) or via other legislation.

Higher Level Stewardship or related agri-incentive payments made in respect of grazing animals are insufficiently targeted and controlled to further the conservation aims of the SSSI and SAC . They are resulting in over-grazing, excessive ground poaching and do not relate to any clearly monitored and demonstrated plan or output. They appear naïve and poorly planned and may not represent good value for money in terms of habitat restoration. Very significant adjustments may be required when this is better understood?

The UK government is considered to be vulnerable in respect of breaching the UK and European legislation by carrying out management and restoration works that seem peripheral and without adequate prior surveillance or appraisal. As such, complaints regarding the nature and impact of the work may result in the case being brought as a formal complaint to the European Commission and the European Court of Justice as a substantial long-term and large scale breach of the Habitats and Species Directive and/or by case/s within the United Kingdom courts.

The suggestion that the proposed Latchmore Brook restoration may, with others, be unlawful as promoted, is based upon the apparent lack of informed analysis to support the actions and the decision-taking surrounding such projects. In particular the necessity to carry out works and the benefits that may arise requires clearer elaboration, as does the surveillance in place to demonstrate cause and effect. The adequacy of evidence to show the lawfulness or otherwise of actions carried out and pending are likely to be determined only by expert evaluation and courts of law. As this process is on-going, this report may provide evidence of a type that may be useful in both crisis management to change approaches and/or pre- court considerations.

Generally, concerns raised both by a number of local New Forest residents and national species and habitats experts, as have been examined, have resulted in consideration of the dangers of applying broad-brush management prescriptions to a range of subtly different and highly specialised habitats and species, to a point where a claim may be made that past action has allegedly been negligent. Some activities and incidents in the last two years may either still require enforcement action, or require investigation for an apparent lack of enforcement by relevant authorities.

Tom Langton May 2013

1. **Introduction**

The New Forest was designated as a National Park in March 2005, covering approximately 240 sq. km in central southern England. Recorded as a recreational hunting ground from at least the 12th century AD, it embraces the largest area of unsown vegetation in lowland England. It contains extensive areas of ecotone that were formerly common but are now generally fragmented and rare in lowland Western Europe. They include lowland heath, valley and seepage step mire, or fen and ancient pasture woodland, including riparian and bog woodland. Nowhere else in England do these habitats occur in combination and on a large scale. There are about 4,600 hectares of pasture woodland and scrub dominated by oak, beech and holly; 11,800 hectares of heathland and associated grassland; 3,300 hectares of wet heath and valley mire-fen and also 8,400 hectares of plantations dating from various periods since the early 18th century.

The New Forest is classified as having Grade 1 site quality in the 1977 Nature Conservation Review. It includes seven Geological Conservation Review sites. Selected areas were notified as SSSI in 1959 and a much larger area in 1971 with additions in 1974, 1979 and 1987.The major part of the site has been designated as a Special Protection Area (SPA) under the EC Directive 79/409 on the Conservation of Wild Birds and also as a Special Area of Conservation (SAC). It is also a designated Ramsar Site under the Ramsar Convention on Wetlands of International Importance. The site is mainly Crown Land. The SSSI citation of 1996 states ;

" together with the manorial wastes of Plaitford, Furzley, Half Moon, Cadnam, Hale Purlieu and Hightown Commons belonging to the National Trust; Hyde and Gorley Commons and parts of Rockford and Ibsley owned by Hampshire County Council; the rest of Rockford and Ibsley Commons, Minstead Manor, Kingston Great Common, Bisterne Common, West Wellow and Copythorne Common and most of the unimproved meadows are privately owned. Part of Kingston Great Common is a National Nature Reserve and there are three reserves managed by the Hampshire Wildlife Trust at Bagnum, Long Aldermoor and Holmsley. The Crown Land is managed by the Forestry Commission on behalf of the Minister of Agriculture."

A sub-set of local residents called Verderers have some statutory powers within the Forest. The Forestry Commission, along with the Verderers, New Forest National Park Authority and Natural England coordinate the annual management programmes. The New Forest Association is a dedicated charity made up from local interested people.

Natural England's general view of New Forest SSSI habitats overall is that 98% of units are in *favourable* or *unfavourable recovering* condition. However, it is the case that many are classified as in *unfavourable recovering* condition, not because of their quality but solely due to the presence of artificial drainage and irrespective of the fact that the general status of the habitat is often favourable. NE's view is that the effect of artificial drainage has been a significant contributing component, causing increased erosion within the mire and stream systems, wet heath and grassland habitats. There is reported to have been increased erosion of river beds as a result of watercourses that have been to varying extents deepened and straightened. NE feels that in many areas there is an inconsistent interaction between the watercourse and the floodplain, with the effect that these

adjacent habitats are negatively affected, limiting habitat diversity, and resulting in seasonal inundation of the surrounding grassland habitats which it considers to be undesirable.

Figure 1 is a low resolution extract from the wetland restoration proposal, dated September 2012 which gives a broad indication of many of the 50 or so locations where engineering of a significant scale has either been undertaken or is currently under consideration across The New Forest.

Fig 1. Scale and distribution of areas identified by the Forestry Commission that have been or that are under consideration for large scale engineering operations within The New Forest.

This review has been carried out following concerns raised to the author both by individual local New Forest residents and national species and habitats specialists in 2012 and 2013, with the need for an independent report being identified. Some concerned parties are active in the organisations currently involved in management or advising on management and do not wish to be identified. All share a concern towards the danger of applying broad-brushed management prescriptions to a range of subtly different and highly specialised habitats and species, to a point where a claim may be made that action has been negligent. Some activities and incidents in the last two years may either still require enforcement action, or require investigation for lack of enforcement.

The main questions to address in this review were:

- How well is the surveillance information on The New Forest integrated and utilised in conservation decision making for the area and ecological outcomes, in respect of European habitats and species?
- To what extent are the alterations to watercourses being undertaken within the North part of the New Forest related to the management and restoration of the SSSI and SAC interests or to other nationally protected nature conservation interests?
- To what extent do the works impact upon legally protected species that are not qualifying features of the SAC but that are protected as BAP listed or Wildlife and Countryside Act (1981 as amended) or through other legislation?
- Are the HLS agri-incentive payments made in respect of grazing animals sufficiently well balanced to further the conservation aims of the SAC; do they represent good value for money and what adjustments could be made?
- Are the Latchmore Brook restoration proposals lawful as currently (May 2013) described?
- Is the UK government breaching UK and European wildlife legislation by carrying out management and restoration works that are damaging overall at Latchmore and at other locations within the New Forest National Park and its vicinity?

2. Background

Between 1997 and 2006 three co-financed European Union funded LIFE projects were undertaken in the New Forest to study and develop management of key areas the New Forest National Park. The Forestry Commission have sought, with NE to attempt reversal of previous forestry drainage operations across the Open Forest in recognition that actions to improve the area for tree growing had damaged precious habitats, particularly mire habitats. Drainage was originally undertaken both within and outside woodland/plantation enclosures to reduce waterlogging in planted areas. There has tended to be a broad-brush and generic approach to this work, with very little attention to the site-specific state of the flora, fauna and habitats. Between 1965 and 1986 the Forestry Commission carried out 96 drainage projects of varying magnitude to mires, wet heaths and lawns (Tubbs 2001).

From the 1980's, drainage modification to promote forestry started to become more fully recognised as unacceptable by those wanting to accommodate sustainable protection for habitats and species in biodiversity management, not only in terms of a balanced range of habitats and their ecotones but in terms of faunal diversity. Management for animals that are both common and those with highly specialised niches must be taken forward together with habitat restoration to avoid further biodiversity decline and loss. This need however has been problematic because at the local level, the availability of data and expertise for a wide range of species and wildlife has not been

adequate, largely through lack of appropriate attention to detail, understanding and specialist management.

The provisions of the classic Stewardship schemes and more recently Higher Level Stewardship (HLS) has led to financial assistance being available for sustainable management. In particular this has been directed towards making payments to those keeping stock, largely ponies and cattle within the forest and to fund woodland-related operations and the related re-engineering of old drainage works.

The general criticism of The New Forest management over the last 10 years or more, put simply, is that the grazing management has been over-stimulated by HLS, bringing over-grazing, erosion and excessive poaching in places. This reflects the unprecedented increase in cattle to more than 30% of the total New Forest livestock as landowners seek to maximise their grant-aid entitlement irrespective of benefit.

Concerns are that European and UK funding is being used for approaches that are too simplistic and lacking in expert internal and external guidance and control. Work funded does not sufficiently contribute to biodiversity management to represent good value for money or a sustainable situation. Other techniques, more subtle and less dramatic in scale are the ones required, including reduction of the localised intensity of grazing management.

The broad-brush generic prescriptions coming out of the New Forest LIFE projects are arguably insufficiently prepared for their final purpose; to recover and restore the habitats and species for which the resources were allocated and are currently being spent.

One of the most striking observations on the upper catchment of Latchmore Brook as it passes through Island Thorns, Amberwood, and Alderhill inclosures is how large a cross-section the main stream has, aiding rapid flow of flood-water into the lower floodplain with its smaller features and scale. Historically there are a number of important points to consider with the north-west part of the New Forest. It differs from much of the rest of the forest in having less clay and more sandy soils. Accordingly, it has particular importance for species with specific niches in the UK such as sand lizard *Lacerta agilis,* and for habitats such as dry lowland heathland. The more eroded and steeply contoured valleys discharge water in a more episodic manner than is typical of parts of the east and south forest; this has been documented prior to mid- 20th century forestry activities (Kenchington 1942) and by more recent local experts such as Colin Tubbs (Tubbs 1986). To an extent, rapid run-off is a natural feature of this area, but it has just been exacerbated to a degree that now requires careful fine-tuning in a manner that is appropriate to the wildlife present.

There appears to have been a general (and arguably mistaken) assumption that because streams have been altered in more recent times, that many the New Forest streams are necessarily, according to a well-worn phrase, “disconnected from their floodplains” and that this requires rectification by extensive engineering. There are references in HLS documents to ‘*reconnecting old paleochannels’. However* these channels can be very old, and formed at times when the landscape and climate would have been quite different. A *palaeochannel* is a remnant of an inactive river or stream channel that has been either filled deliberately or buried naturally by younger sediment that can be either unconsolidated, semi-consolidated, consolidated, or lithified. A palaeochannel is

simply an old stream channel that can be of prehistoric, Medieval or 20th century or multiple temporal origins and does not necessarily represent an idealised or sustainable state in hydrological or nature conservation terms. As isolated well established ephemeral freshwaters, these now form habitats with many ecological interests and as such are valuable. Equally, deepened streams may also be of very high wildlife interest and ill-informed disturbing of them may not be the best course of action.

The simple and erroneous assumption that re-establishing or somehow recreating paleochannels is a 'good thing' is a major basis of the controversy surrounding the principal approach taken to 'restore' the area. With the very large volume of run-off involved, trying to reduce the channel volume significantly, so as to influence flood events is futile in respect of the size of even annual rain events and is likely to reduce the amount of grazing and increase erosion by concentrating crossing points for stock. It will also form new types of degraded semi-natural habitats that are far from those desired. Such action may be generally expected to be both inappropriate and potentially damaging to biodiversity and while in a few locations some desired effects may have resulted, there has not been adequate baseline monitoring to justify plans or to assess achievement and failure in any quantitative way. The current policy appears to have been instigated for the requirements of water attenuation objectives, with the biodiversity element as a secondary or missing consideration.

Because the deficiencies of the approach for over a decade have been widely recognised only very recently, it is the handling of the consequences that is the main challenge and further, finding a new way forward.

3. **Latchmore Brook, lower catchment site inspection**

The following description moves eastwards from the public car park at Ogdens at approximately SU 180 124 and ends at Alderhill inclosure.

Photo 1. The stream close to the car park is far from linear and crosses the valley floor into two shallow gravel based meanders, with close-cropped lawns and waterside trees.

Photo 2. On the north side of the brook there are very small-scale tributaries descending from the low hills where Mire habitat, such as that at Thompson Mire, have accumulated in natural basins.

Photo 3. Stream-side trees, often old and with complex mature exposed root structures offer a range of microhabitats along stable undercut stream bank that are important to invertebrates, fish and other species, having formed over decades or centuries.

Photo 4. Typical short-grazed lawn at the midpoint of the open brook with the main gravel beach & crossing point. The brook runs for about 2000 metres before entering Alderhill nclosure.

Photo 5. Further detail of Latchmore Brook crossing point showing the current meandering.

Photo 6. North of the crossing point, a natural linear outlet, from the pond and mire feature formed as a result of the gently undulating ground beside the stream, creating a surface seepage line that develops into a gradual slow lateral downhill drainage into the Brook.

Photo 7. Area on the south of the brook and east of the crossing point on rising ground: a grassland area with anthills of high importance to invertebrates such as silver-studded blue butterfly.

Photo 8. The old/ancient anthill area in closer detail. This is reported to be significant for bird species that feed on ants and that use the anthill for territorial purposes.

Photo 9.Ferns growing thickly along the stream bank base illustrating micro-habitats that have adapted to past management.

Photo 10. Further tree-lined brook with both disturbed and undisturbed woodland habitat adjoining.

Photo 11. Old undercut vertical bank with stable moss and liverwort encrustations of high suitability for Kingfisher and invertebrates using shaded bank. Note there has been recent tree-felling in this area.

Photo 12. An important brook-side pond, formed behind a stream side embankment, that looks particularly valuable as an invertebrate and amphibian breeding site, positioned midway between the central crossing and Alderhill inclosure.

Photo 13. Saturated marshy grassland with a natural seepage line at the approach to Alderhill inclosure.

Photo 14. Further saturated ground with temporary standing water close to Alderhill inclosure.

Photo 15. Heathland and grassland habitat with anthills, considered suitable for reptile feeding, shelter and basking close to the brook as it meets with Alderhill inclosure.

Photo 16. Latchmore Brook in March 2012. Temporary flash-flooding of the valley floor following heavy rain. Such inundation of the lower-ground lawns occurs several times a year during heavy rain. Flooding usually to a depth of around 300 mm subsides over a few hours and it returns to normal after around two days.

Photo 17. Latchmore Brook main crossing in November 2011 with shallow flooding.

4. **Recent developments and initial considerations**

Latchmore Brook is one small part of the total New Forest management picture, yet it is an important one that holds very high biodiversity value. Over the last two years or so, increasing concerns regarding proposed work by the Forestry Commission have given rise to both informal and formal challenges, e.g. those by The Friends of Latchmore group. These have been made in respect of non-compliance with environmental legislation and good practice.

There are views that management practices have taken place that are unlawful, and that further unlawful management practices are proposed. For example concerns were previously raised by regional fisheries experts over proposed engineering work to Highland Water. As a result the Environment Agency and Forestry Commission were required to do a formal Impact Assessment. Initially labelled as river restoration, the work was considered not to require an Environmental Impact Assessment (EIA). The Forestry Commission and Environment Agency Highland Water website subsequently presented it as a flood relief project, in this way describing it in terms that are more habitat management orientated.

LIFE 3 restoration projects listed below (that include Highland Water) do not appear to have been properly evaluated or planned in terms of need, impact and likely outcome:

- Black Water and Highland Water
- Dames Slough
- Ditchend Brook
- Fletchers Thorns
- Holmsley
- Longwater Lawn
- Ober Water
- Slufters
- Warwickslade Lawn

As a result of the challenges relating to past engineering works elsewhere and that proposed more recently, to Latchmore Brook, the proposed work will be subject to a full planning application to the New Forest National Park Authority (NFNPA) to allow statutory and third party consultation.

The NFNPA is the local planning authority as well as Competent Authority in respect of the Habitats Regulations and for planning decisions. As the Planning Authority, it has now indicated that all large New Forest restoration projects will require Planning Permission. This also applies to Wooton Riverine Woodland, Penny Moor and Soldiers Bog. (Fig 2.).

On 20 December 2012 the NFNPA had made a “screening decision” for Latchmore Brook, deciding that no EIA was necessary under the T&C Planning (EIA) Regulations, as it was not a project covered by either Schedule 1 or 2 activities. A challenge to this decision in January 2013 by The Friends of Latchmore group (FoL), representing informed local residents asked that an Appropriate Assessment should be carried out on the proposed Latchmore Brook work, under the Habitats Regulations, Town & Country Planning (EIA) Regulations or Agriculture (EIA) Regulations.

All physical work at Latchmore has been postponed to the 2015/16 period at the earliest, giving a two-year window for previous approaches to be re-evaluated and more appropriate approaches

developed. At the time of publication, the proposed work on the lower catchment of Latchmore brook is moving towards cancellation.

SSSI Unit No	Site Name	Delivery Likelihood	Notes
Wetland Restoration Programme			
39	Pitts Wood Mire	High	Felling approval
347	Woossons Hill	High	Felling approval
330	Holmsley Bog south (19.72 ha)	High	Felling approval
131	Cranesmoor	High	Felling approval
540	Slufters (snagging)	High	
123	Soldiers Bog (64.76 ha)	Medium	T&C Planning & Small watercourse
124	Blackensford Bottom (63.49 ha)	Medium	T&C Planning & Small watercourse
91	Picket Bottom (Snagging)	Medium	T&C Planning & Small watercourse
95	Buckherd Bottom (snagging)	Medium	T&C Planning & Small watercourse
428	Penny Moor	Medium	T&C Planning & Small watercourse
447	Furzey Lodge Mire	Medium	T&C Planning & Small watercourse
448	Hawkhill Mire	Medium	T&C Planning & Small watercourse
	Amberslade & Broomy (Open Forest)	Medium	T&C Planning & Small watercourse
540	Islands Thorns (Western tribs)	Low	T&C Planning & Small watercourse
539	Wootton Riverine Woodland (23.6 ha) phase 1	Low	T&C Planning & Small watercourse
SSSI Unit No	**Site Name**	**Delivery Likelihood**	**Notes**
Wetland Restoration Programme			
	Pre-felling for 2014-15 works	High	Felling approval
	FC Civil Engineering Costs (bridges/culverts)	Medium	Dependent of Sites able to be worked
Restoration of Lost Lawns			
	Restoration of Lost Lawn Sites	High	Programme to be drawn up
Plan B Sites - Could be brought forward from 2014/15 Programme			
454	Bagshot Moor	Medium	T&C Planning & Small watercourse
422	Cowleys Heath East	Medium	T&C Planning & Small watercourse
423	Cowleys Heath Central	Medium	T&C Planning & Small watercourse

Fig 2. New Forest restoration project checklist indicating suggested NFPA approval requirements. Data courtesy government source.

A response to the FoL legal letter is still pending at the time of this report. One key issue being considered is whether or not the proposed engineering works are "necessary for the management of the site". In other words, are they required to maintain or restore the European site?

With regards to this 'necessity', I have taken the view that if a return to a previous condition is either not possible, appropriate or both, then the benefit of what is being undertaken and further proposed is unproven and may even be unlawful. In making a case that the works are necessary, the clear purpose and outcome of the work must be fully identified, explained and justified, including the following factors:

• carrying out and careful evaluation of a thorough pre and post management impact study of water quality, flow characteristics and condition of all habitats and species (European national and local) for similar actions taken previously elsewhere.

• consideration of collateral risks from the engineering work, as it is experimental and may not fully achieve its aims, fail completely, and/or cause short, medium or long term damage that may require reparation.

• a cost-benefits analysis of impacts on all non-target HD and non-HD protected habitats and species disturbed, damaged or destroyed including costs of both mitigation and compensation.

In the early stages of management focusing on habitats and species of European priority, The New Forest SAC Management Plan (New Forest Life Partnership, 2001) provided a general descriptive background of conservation needs, with recommendations that, for its time appears to be a reasonable starting point, albeit lacking in surveillance (survey and monitoring and appraisal). What seems to have failed since 2001 is the taking forward of this plan in an expert and site-specific manner using quantitative surveillance and analysis techniques as a basis for developing detailed and well-presented management, restoration and monitoring proposals. Also relevant is a generic EIA and wetland management plan (2006).

In reviewing this situation there are a number of difficulties, including perhaps most obviously that there does not appear to be a clear stand-alone report readily available in respect of all SAC Qualifying Features and other wildlife interests to be managed together as a whole. This might relate the SAC management and the relationship between this and other national and regional interests (including SSSI and BAP interest). This is currently being investigated and it may be that a new 3-year period of study of the interests and fresh appraisal is needed, i.e. a moratorium on practical management work until the correct information has been gathered.

It is clearly important that the outcomes of habitat management should be both measurable and reported upon. Ultimately this information must be accurate and become a part of and contribute to the periodic Article 17 Habitats Directive UK government reporting and those relating to reporting of expenditure of European funds. Concerns surround the lack of technical expertise within the operational systems and decision-making processes of the various involved bodies. If the LIFE projects are considered to have effectively 'failed' then a learning process is required to ensure that lessons are learned and procedures improved.

More recently and partly as a reaction to the conclusion that planning application processes should be followed for large engineering work, Natural England has commissioned a hydro-geological and ecological study of the SAC from the environmental, engineering and risk assessment company JBA Consulting. A rapid desk survey and walkover has been done to consider the extent of the shortfall in information that surrounds the New Forest management process.

The JBA project reports (published in May 2013) contributes a small extent towards the theoretical approach to management options, and towards the HRA legal sense of considering 'Alternatives' to the previous broad-brush management approaches including the 'do-nothing Alternative' that is an important feature of HRA. However the overall objectives of the work remain obscure, although the reports reviewed may be incomplete drafts and so are not cited here. The reports are padded with further information but are rather general and include large amounts of repetitive cut and paste

information. There is a lack of basic hydrological and topographic detail, for example. In particular, there is no specific height or contour information (when there is ready access to LIDAR), and there are no water flow, peak, 50 or 100-year flood predictions. During the tendering of the project, however, the contractor did indicate to NE:

"although recommendations will be made regarding possible restoration options, please note that we have not included for detailed design or construction of restoration works, which may fall with the CDM Regulations. We have also not included for any detailed modelling of restoration outcomes."

In this sense the JBA work is limited in value because the general aims and predicted outcomes remain unclear in respect of water management and habitats and species conservation across the entire SAC. Proceeding on the basis of this kind of work is likely to be rapidly halted by the need for a fresh review into the necessity and desirability of the work and its alternatives. This would need to be fully informed by the necessary survey information that needs to be gathered in the coming years. Only then would there be a better definition of purpose, leading to modelling work to inform any prospects of selecting sites for physical works.

The information currently available gives the appearance of being in at an early stage of research, rather than offering sufficient detail for an implementation phase. Proposals for restoration do give some 'before and after' impact assessment but they are all descriptive only (e.g. reduces, slows, improves, increases). There are no measurable target effects. It does suggest post restoration monitoring, but none before the proposed work, for comparison. The brevity of the JBA work is worrying, as is the lack of up to date information. For example, several areas of in-filled channel are not mentioned at all in the report. This may be a result of the speed with which this exercise was conducted.

Early viewing of parts of the JBA report (as TL's report was being finalised) demonstrates how the culture in which the old approach was constructed is being perpetuated. The sameerrors and omissions, including cartographic and ecological data are being repeated. Hence the Latchmore (SSSI unit 48) and other proposals simply remain under-researched, and the work, as proposed at present, appears insufficiently justified and questionable in a legal sense.

There are 18 site reports for stream regimes which all seem to involve activities such as infilling, embankment removal and debris-jams. Greatest proposed activity seems to be at:

- Amberwood/Alderhill
- Dockens Water
- Harvest Slade
- Islands Thorns/Amberwood
- Latchmore Shade
- Linford Bottom
- Parkhill Lawn
- Wick Wood Riverine Woodland
- Wootton Riverine Woodland

Twenty three (23) other Sites are focused on Mires or Bogs with incidental drainage streams, of which a minority include ditch or channel infill and spoil bank removal. Major emphasis is at Dibden Bottom, Lay Valley Gutter (Thompsons Castle and Latchmore Mire) and Soldier Bog.

Natural England and the HLS Partners – Verderers of the New Forest, Forestry Commission, and National Park Authority have a duty with regard to proper expenditure and accounting of public funding. Alarmingly, the publicly available meeting minutes of the Higher Level Stewardship committee of the New Forest refer to current '*exposure*' of parties in any agreement to public scrutiny on several levels relating to habitat and species management and restoration work. This may imply risks from any mis-application of funding. It may also relate to inadequate habitat and species mapping and appraisal including any required research over several years or more, if necessary to prepare for practical management activities.

While it is surprising that so little collated ecological and hydrological information is available, it is understood that at least some new surveys are underway in 2013; hen harrier and nightjar population studies are currently being undertaken for example. However, there is as yet no evidence of a comprehensive approach to habitats and species evaluation on established cycles, although it is known that Natural England have asked their specialist staff advisors to consider impacts at 50 sites. Reported responses have reportedly included one suggesting that that the job is far too great to be undertaken in 2013 and needs a more integrated approach rather than a 'quick fix' to keep the project going (Anon. pers con). For obvious reasons the entire programme now needs to be re-thought, researched and studied, perhaps suspending the practical programme for several years allowing time for considerations and the seeking of additional advice and alternative approaches.

5. **Findings**

In addition to generally addressing the questions outlined in the introduction and background, I have rapidly reviewed the following areas, based upon my knowledge and experience of European Sites and Species legislation and as a practitioner familiar with aspects of UK aquatic and terrestrial habitat and species management, restoration and creation . In particular, I have examined;

1. The basis of existing and proposed management of the Latchmore Brook area, via the Latchmore Brook Restoration Project (LBRP) in the context of the conservation objectives of this area and of The New Forest as a whole.

2. The impact of the LBRP on protected habitats and species within the Special Area of Conservation.

3. Allegations of wildlife crime relating to the LBRP in 2011/2012 in respect of European and UK protected bird and other species and in respect of removal of trees outside felling approval areas by the Forestry Commission.

These are addressed below individually.

1.The basis of existing and proposed management of the Latchmore Brook area, via the Latchmore Brook Restoration Project (LBRP) (Restoration Plans 2011 and 2012) in the context of the conservation objectives of this area and of The New Forest as a whole.

The aquatic plant community associated with the streams/brooks is restricted almost exclusively to the New Forest, the only other streams of this type are those of the River Fowey on Bodmin Moor. This is because of the combination of nutrient-poor acid waters and outcrops of neutral-enriched soils. The Lymington River is the largest stream system within the Forest showing all of the typical characteristics.

The tributary known as the Ober Water is recognised in the Nature Conservation Review as a lowland base-poor stream with a very diverse flora. Surveys of the Forest streams have recorded twenty of the fifty-four British species of fish and a wide variety of invertebrates. Some streams are used by otters, a species which is recovering and which is fully protected through Schedule 5 (WACA) listing.

At Latchmore Brook it is not immediately clear how the proposed drainage remediation work might tie in with the statutory duties for management and restoration of the European habitats and species. The Brook is fed from the very large and deeply drained Island Thorns, Amberwood, and Alderhill inclosures to the east that periodically shed considerable quantities of water as can be judged by the massive culverts under the main vehicular crossing point within Alderhill. This intermittently results in downstream flooding around the west and central parts of the valley floor, in part due to its relative flatness. This has not prevented a diverse range of microhabitats developing, occupied by a very significant number of rare species.

In respect of the Environment Agencies interest, within the South West River Basin Management Plan, the unit of *Latchmore* is a part of R21/Hucklesbrook, but the plan is not biodiversity focussed

and is more designed for (drinking) water quality. The predicted change of all measured factors for the 2015 restoration targets is nil other than an increase in levels of two metals; copper and zinc, which is undesirable deterioration. In this respect, the impact of the proposed work on water quality is deterioration. The appearance is that the EA have approved/not objected to this loss of quality although it is unclear how they have assessed it other than on the crude scales implied by the tables relating to water quality in that plan.

With water quality, there appears to be a need to consider the rotting component of the proposed Latchmore Brook infill (gravel and cut trees) in that this will become activated after burial. If not rapidly washed out, heather bales and cut timber will decompose and slowly pollute the water course with organic breakdown material following inundations of the proposed infill areas along the valley floor.

Any shallow-buried anaerobic breakdown is quite unlike any aerobic natural aquatic wood component of natural riverine systems. While the inclusion of softwood/hardwood tree trunks debris in the infill is probably a mistake or simply an unchecked idea based upon using readily available material, its removal from any plans will presumably be straightforward.

If the aim of creating slightly larger meanders is to create significant attenuation space and an increase in H3110 Oligotrophic water-type habitat, then this will not be achieved. Putting aside the substantial amount of habitat and qualifying features disturbed, damaged or destroyed to try to increase meander length and volume, the very high volume of peak water that is currently involved and the poor results obtained elsewhere demonstrate its futility. Equally, measures of the kind proposed could cause summer drying-out if miscalculated and spoiling of the existing Brook side-pools and other linear, old watercourse '*paleochannel*' standing wet habitats. This strangely includes qualifying habitats that appear from the plans examined for Latchmore, to be disturbed, dug up or in-filled. This may however be a function of the habitat map (FC Vegetation Map) being less accurate than is needed or simply a lack of attention to detail. The New Forest Habitats Type Database related to the Latchmore catchment area (1:7,500 scale) is sourced from figure 14 of the Wetlands Restoration Management Plan (2006 – 2016) and from a brief ground inspection, does not relate to what is actually present on the ground.

The HLS Board is aware that the accuracy of the Dataset is suspect, and note (as previously mentioned) that it "*may cause problems in any future inspection*". Improvement of baseline information in conjunction with re-survey of the whole forest is going to be essential in order to present good habitat and species maps and hence to help inform management in a professional way.

It should be recognised that current habitats within and around Latchmore Brook have developed by adapting to the current hydrological pattern. Disrupting it will disturb and even badly damage biodiversity values including many of the European qualifying features and nationally protected habitats and species.

With Latchmore there has been an acceptance that, as with species surveillance, mapping needs to be re-appraised, especially as a part of any planning process. It would be useful for example to see

figures on net change of the European habitats and species and those protected by UK domestic law. If it were to be seriously considered, the threat to the value of the isolated 'oxbow' meanders would need to be considered in terms of, for example the *Odonata* and herpetofauna assemblages.

In any matrix of complex ecological communities, for any individual restoration proposal to be shown to be relevant, benefits from work would need to be both demonstrable and of sufficient value to outweigh the loss of or damage to the associated habitats and species, including the costs of mitigating or compensating disturbance, damage or destruction. In addition, obviously the damage to protected UK domestic species that overlap in part with BAP listed and BAP priority species and the SSSI interest ,cannot be shrugged off as 'a price to pay' for work on European priorities. The cost of any such compensatory workshould form a part of cost-benefit appraisals at the earliest consideration, as it would always influence decision making.

In order to succeed, a process is needed which includes accepting that it is not always appropriate to undertake work, and a pragmatic approach must be demonstrated in any planning application in a similar way as if the aims were for development purpose. It is not acceptable to allow (other than in extreme cases) unmitigated damage to national species interests to pursue European species interests, nor to sacrifice European species in attempts to restore European habitats or vice –versa, without extremely good evidence and with plans and safeguards that are credible, tested and proven. Any experimental approaches must clearly be identified as such, intensively studied and analysed in preceding pilots. One immediate concern for anyone looking with a fresh view on the proposals for the parts of Latchmore Brook under consideration, is how any attempt at managing the system could avoid a prior appraisal of and if appropriate, remediation to the upper part of the catchment area. Attempting to alter the lower catchment area alone as suggested would not have worked in the manner suggested and would have followed the pattern of problem outcomes (described in the New Forest sometimes under a catch-all 'snagging') and failures at other locations where the same approach has been taken in recent years in the New Forest (see later).

The localised diversion of existing Latchmore channels with heavy clay in an attempt to form new ones, and infilling of the current Brook with infill would simply move the downstream flooding further up the valley, creating flooding events along the entire valley floor and in areas where existing valuable wildlife features are present. Such flooding would produce marshy nutrified ground of far lower value (species richness and diversity) to the existing habitats. In addition, the surface water discharges from the einclosures would remain and rapidly over-run and scour out any shallow new trenches as it has done elsewhere when attempted. Such problems become compounded as has been experienced for example at **Dames Slough, Amberslade Bottom, Buckherd Bottom, Ditchend Bottom and Buckherd Bottom (photos 18-41)** that are earlier forest drainage 'experiments'. Here some shallow excavations to attempt lengthening of brooks has resulted in multiple problems that are repeated from site to site. As expected, most show no greater ability to contain run-off than the previous alignment, something that is not desirable or a natural feature of the forest anyway. Some have become thick with aquatic macrophytes and algae due to nutrient availability. Livestock have become stuck in increasingly marsh ground with post and rail fence installed to try to reduce the increased erosion of exposed banks. The effect is one of agricultural containment, nutrification and intensification rather than wilderness enhancement.

Therefore any attempt to manage Latchmore Brook and streamlets from Mires (for example the management proposed for Island Thorns (A-F) at the December 2012SSSI consultation meeting) appears grossly premature in relation to its likely inappropriate nature, its potential for polluting outcomes and insignificant impact.

Photo 18. Dames Slough. One of the earliest projects in 2001. A section of post and rail fencing to prevent stock from crossing and causing the extensive bank erosion.

Photo 19. Dames Slough Showing how silt has built up over the last 12 years. The imported hoggin used separates to form clay 'sludge', smothering the 'old' stream and killing off a valuable orchid area.

Photo 20. Dames Slough. The in-filled 'old' stream' water seepage creates an unattractive uneven poached waterlogged mess of little or no value even for grazing.

Photo 21. Dames Slough where fish were once plentiful. There are now waterlogged uneven areas with brown staining, a strong rotting smell coming to the surface, and very little life.

Photo 22. Dames Slough. A dark stained anaerobic puddle, where old streams are incompletely blocked and then erode in an uneven manner creating an unattractive species-poor eyesore.

Photo 23. Dames Slough. Further extensive stream erosion in newly created channel.

Photo 24. Dames Slough. Water quality in this new stream appears lower than that of existing streams. It suggests over-nutrification and other problems.

Photo 25. Amberslade Bottom. Gravel being scoured out along an area called 'Broomy'. The stream was filled in 2007 to the top with heather bales, clay and hoggin. This washed out in the first winter. Scouring extended onto the lawn by Dockens Water.

Photo 26. Amberslade Bottom. The surface flow on the left did not exist until the FC tried to block the one on the right with heather bales, causing localised worsening of the erosion.

Photo 27. Amberslade Bottom. Showing residues from imported clay after the clay, heather bales and gravel have been washed downstream. The gravel was level with the top of the banks when it was originally deposited.

Photo 28. Buckherd Bottom also at Ditchend, here from 2010. Bluetongue viral disease of mainly sheep and cattle is caused by Bluetongue virus (BTV). This is transmitted by the midge *Culicoides imicola* that breed in such stagnant water.

Photo 29. Ditchend. Work carried out in 2011. Erosion has killed a tree and formed brown stained pools and uneven gravel ridges with eroding banks, far from the intended outcome.

Photo 30. Ditchend. Lumps of turf pushed upside down around a newly dug channel.

Photo 31. Ditchend. Heather bales buried below gravel; an obviously unstable methodology that collapses and washes downstream.

Photo 32. Ditchend. Ridges of uneven infill, heather bales uprooted due to erosion of deposited materials and water flow being too powerful to keep them in-situ.

Photo 33. Ditchend. Old stream site - heather bales have come through, a lovely grassy 'lawn' ruined with clay silt. There have been complaints to the Verderers Court and the New Forest Consultative Panel about the loss of birds/fish/grazing.

Photo 34. Ditchend. An iconic old holly tree which was used by many cattle and ponies in the summer to 'shade' under was left water-logged and rapidly died.

Photo 35. Ditchend. Algal blooms choke aquatic plants in constructed new water channels.

Photo 36. Ditchend Bottom. In-filled around 2011. Lots of standing stagnant water.

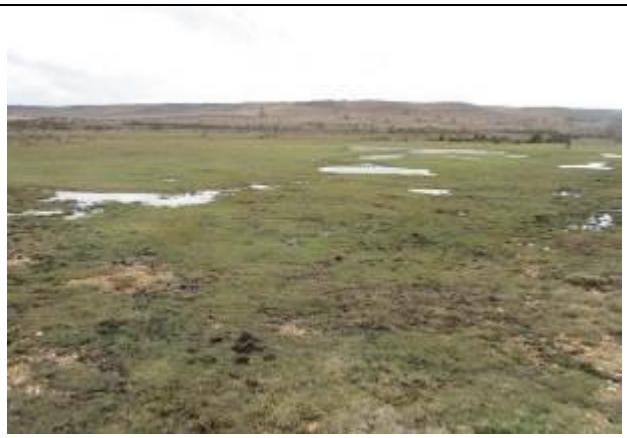

Photo 37. Ditchend Bottom. Another view showing the unsuccessful technique.

Photo 38. Ditchend Bottom. Previously attractive lawn area now ruined with clay and hoggin surfacing and spreading, reducing the area of grazing, one of the suggested improvements of the method.

Photo 39. Ditchend bottom. New stream failing - banks falling in - heather bales floating out. Erosion, uneven shifting aggregates and trapped water.

Photo 40. Buckherd Bottom. Work was carried out in 2009; heather bales and string, stakes etc. that are supposed to hold the heather in place to slow flow, are rapidly pushed away by the first heavy flows.

Photo 41. Buckherd Bottom – More erosion and displaced materials; heather bales and hoggin shift and disperse to considerable distance.

This approach does not appear to make sense , particularly when viewing the consequential loss of sensitive semi-natural features along the valley floor and reviewing further potential risk to them. The semi-natural features (see below for further details) are both of known and probable value to multiple species of significance to the status of the SSSI and SAC and many other priority BAP and UK Wildlife law protected species, in areas such as the ant-hill complex and the old isolated channel systems along Latchmore Brook.

Thompson Mire

There are signs of previous attempts to reduce and slow down the outflow from Thompson Mire where the old retention posts indicate the location of some kind of temporary dam, This is at a place eroded by livestock movement across the stream, apparently also using heather bales. The actions have clearly not been maintained but it is not clear whether this is as a result of the steepness of the slope at the point selected for blocking or the repeated damage by passing ponies/lack of repair or a combination. There is, close to the Mire some sign of natural 'repair' through fresh sphagnum accumulations in parts of the upper channel. The slope is at a gradient such that the back filling of the streamlet lower down the discharge can have almost no impact on the Mire saturation other than possibly for a few hours after rain. Infilling the ditch with permeable material would have the effect of reducing attenuation in peak flow and causing further scouring and flooding towards the valley floor which falls more than 10 metres from the Mire outlet point, over a distance of just a few hundred metres.

There are a number of alternative hydro-engineering alternatives to those proposed that will require investigation.

Photo 42.Point at which sphagnum accumulation at Thompson Mire exit point begins to break down into a slightly deepened channel. The steepening ground is a natural feature.

Photo 43. Exit from Thompson Mire, a few metres down from photo 42, view south of erosion point caused by increasing stock traffic across the stream.

Photo 44. Exit from Thompson Mire. The ground falls naturally and steeply down. Exposed remnants of posts that were part of the attempted blockage remain.

Photo 45. Drainage flow from Thompson Mire; 500mm drop-pool.

2. The impact of the Latchmore Brook Restoration Proposal to protected habitats and species within the Special Area of Conservation.

Habitats

As indicated above, there is growing local opinion that the proposals for watercourse engineering have been unsound and based upon inadequate information and understanding, accompanied by inadequate justifications.

River Avon spawning grounds for brown trout *Salmo trutta*.

In 2007, both native brown trout and sea trout were added to the UK Biodiversity Action Plan Priority Species List, ensuring that their protection and management forms a part of all development and planning decisions, as is required by government circulars.

One concern is that over the last ten years the quite extensive plans and activities have failed to take into account the need to protect aspects of the important fish communities of the River Avon, of which the New Forest is a source. There is evidence from the small amount of inspection of places where work has been done, that attempted restoration actions can significantly reduce fish recruitment and population densities, with trout and the European (Annexe II) Protected Species bullhead *Cottus gobio* most seriously reduced, as was first reported in the 2006 LIFE post-management appraisal (Gent 2006).

These appraisals concluded that on-going monitoring of this fish depletion was 'essential'. Student studies over a similar period using a small sample size indicate that in some restored streams, although trout status is reduced, other fish species can increase (Hickson 2012). Restoration will dis-benefit some fish species and this problem needs to be fully understood and closely monitored, or overall permanent damage may be caused. Rarer/protected species (such as bullhead and trout) or species which are a part of an assemblage, will not necessarily benefit from restoration, and such restoration may be misguided and inadvisable. To be done lawfully restorations must be shown to be unavoidable and will require compensation elsewhere as a part of being demonstrated as necessary. Overall however there does not appear to be enough information surrounding New Forest watercourse alteration exercises in respect of fish impacts to draw solid quantitative conclusions.

There does not appear to have been a full appraisal of the impact of restoration on fish species impact and it may already have been highly significant in causing negative effects, as is suspected by local fishery professionals. Despite the increased length of dug channels in some areas, the worry is both in terms of the long period to recovery, a lack of recovery or some recovery with overall loss in quality, including loss of spawning grounds and increase of downstream pollution. Such pollution may come from imported materials (clay soils, unwashed stone and rotting trees or heather bales) influencing water quality.

Concerns regarding stream disturbance activities in relating to fisheries have resulted in the quashing of decisions to build roads in Ireland in recent months. In The High Court judgement *Stephens* (March 2013) doubt was expressed regarding to the efficacy of the mitigation measures in

respect of the River Foyle and River Finn Special Areas of Conservation from disturbance to Salmonids, caused by road building (Stephens 2013).

The concerns regarding HLS work in The New Forest are that it has no less than "wrecked" most of the important streams for trout spawning and many used by bullhead in the forest and that Latchmore and Dockens Water are the last two good brooks remaining and that they too are under unjustified threat (Anon. local fisheries expert pers.com.).

One of the features of Latchmore Brook has been the anecdotal observations of trout each year by those who live and walk there on a daily basis. Suitable thermal conditions in streams are necessary for fish spawning and riparian woodland moderates the thermal conditions in streams. Shade requirements are finely balanced in terms of trout spawn hatching and survival rates. Riparian shade has marked influence on stream water temperature, a relatively low level of shade (20-40%) has been found to be effective in keeping high summer temperatures below the incipient lethal limit for brown trout (Broadmeadow et. al. 2010).

While the controversial tree cutting along Latchmore Brook in 2012 has probably already caused damage through removal of a large proportion of previously available stream-shade, these trees should re-coppice rapidly and given protection from grazing, recover in time according to the strength of the roots. There is hope that impact already caused will be temporary,given that the Latchmore Brook project is finally abandoned.

However, as the problems in the New Forest relate to the H&SD Annexe II Bullhead and deterioration of water quality, this matter is particularly relevant at present. This is due to a complaint regarding the quality of the River Avon to the European Commission that has been brought against the United Kingdom (UK) by the Salmon & Trout Association charity, supported by the Atlantic Salmon Trust and others.

The complaint examines the River Avon Special Area of Conservation (SAC) and is in summary that the UK has failed to protect the River Avon SAC and the species for which it is designated (Salmon & Trout Association 2012). The complaint is that the UK Government and UK statutory and public bodies have demonstrated a failure of delivery and ambition to ensure compliance with the Habitats Directive, specifically, to comply with Articles 2 and 6 of the Habitats Directive and with Article 4(1)(c) of the Water Framework Directive in respect of the River Avon. It contends that the UK has failed under Article 2(2) of the Habitats Directive to ensure adequate measures have been taken aimed at the maintenance or restoration at favourable conservation status of the natural habitats and species of wild flora and fauna of community interest in the River Avon SAC. Other aspects are;

- The UK has failed to apply a sufficiently precautionary approach to the protection of the River Avon SAC, contrary to the requirements of Article 191 of the Treaty on the Functioning of the European Union, erring instead on the side of supporting the status quo and avoiding as far as possible the need to amend, revoke or vary existing consents and permissions on the River Avon SAC.

- The UK has failed under Article 6(1) of the Habitats Directive to establish the necessary conservation measures, appropriate management plans and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types and species of the River Avon SAC for which the site has been designated. These failings relate to the impacts caused by low flows, over-abstraction of water, including for public water supply, and nutrient and other pollution of the River Avon SAC, and the plans and statutory mechanisms the UK has put in place to control those impacts.

- The UK has failed under Article 6(2) of the Habitats Directive to take appropriate steps to avoid the deterioration of natural habitats and species in the River Avon SAC, in particular, of Atlantic salmon for which the SAC is designated, as demonstrated by the failure to achieve favourable conservation status, that species' continued failure to meet its Conservation Limit and the deterioration in the population since designation of the River Avon SAC.

In this sense the matters at Latchmore and the New Forest in general in relation to fish conservation and water quality may be seen as suitable to be combined with the above complaint as relevant evidence to that potential infringement that is understood to have entered arbitration (Pilot project) in respect of the EU complaints procedure.

(H4010) Northern Atlantic heaths

Heathlands, including grass heaths and acid grasslands comprise a series of plant communities, the composition of which is related to soil structure and permeability and the effects of grazing. Dry heath dominated by heather *Calluna vulgaris*, bell heather *Erica cinerea* and bristle bent *Agrostis curtisii* grades into humid heath in which cross-leaved heath *Erica tetralix* and purple moor-grass *Molinia caerulea* are a regular component. Northern Altantic heath is well known as an important breeding habitat for many rare invertebrates, birds and reptiles including European Protected Species; dartford warbler *Sylvia undata* and smooth snake *Coronella austriaca.*

There has long been concern relating to the over-grazing of uneven-aged dry heath mosaic in the New Forest as a result of the post-war tendency to promote young heather for stock grazing by burning rather than to allow the mature habitat to develop. Even the very damaging burning of heather in April after the initiation of the bird and reptile breeding seasons has not been outlawed. The current rules relating to the burning of lowland heathland provides guidelines on the frequency of burning but sets the recommended overall target height of the regenerated heathland too low (300 mm) to provide the necessary habitat structure required to support many species requiring a mosaic that includes both tall and gappy structure that naturally occurs when areas remain un-burnt for 20 years or more.

Unlike stubble burning and heathland arson in other parts of southern England, the phasing out of such crude management practices (often mis-discribed as 'traditional') has proved more difficult due to the size of the New Forest and the resources needed to police the replacement of this undesirable culture with more sophisticated approaches. The practice of burning some heather and gorse is

strangely still endorsed by Natural England and carried out by the Forestry Commission in planned areas with the assistance of some commoners and approved by the Verderers Court. Basically a more nature-friendly system has not been introduced because it would set much lower limits to the amount of stock and grazing allowable. The problems of burning and grazing have been subject to a Natural England-supported studies in 2012 (Jofré & Reading 2012 a & b) suggesting that in the UK a crisis point is developing because of the consequential continued decline of species and habitats. The practices of creating large areas of young shooting heather relates more to game and livestock management than biodiversity protection and it is understood that a recent report by a B. Smith on the comparison of the effect of managed burning and vegetation cutting on biodiversity in the New Forest purposefully omitted consideration of the impact upon the protected reptile species. It suggests burning provides better ecological outcomes. The HLS board view appears to be that burning is a legitimate technique and that there is no evidence that burning is worse than cutting for reptiles which reflects the inexperience of that group.

Further findings of the above reports were that although grazing can be critical for the maintenance of species rich grasslands, animal dung falling on nutrient deficient habitats (acid grasslands and heathlands) together with loss of the litter layer (all habitats) that sequesters nitrogen, grazing actually speeds the rate of succession to woodland. Cattle and ponies were found not to prevent the encroachment of pine and birch trees on lowland heathland.

The lack of specific research linking the effect of grazing on natural habitats, and its subsequent impact on reptile populations was a serious omission and the hard hitting grazing report (Jofre & Reading op cit.) states:

“use of grazing to manage and ‘conserve’ natural habitats in the UK appears to be governed by a ‘one size fits all’ mentality in which the specific habitat requirements of different animal groups are ignored resulting in habitat mis-management and the conservation of nothing in particular, other than dogma.

The management of lowland heathlands in the UK, through the use of ‘conservation grazing’, amounts to little more than large scale ‘habitat gardening’ in which the primary objective appears to be the achievement of an aesthetically pleasing landscape, driven by low financial cost and the welfare of the grazing livestock, rather than concerns about habitat and wildlife conservation.”

Instead of, or as well as burning, the cutting of mature heathland to make bales has become an issue of equal concern, substituting more subtle and informed approaches and is in danger of becoming an unwelcome tradition in itself. The making of heather bales for engineering work has emerged somehow as an activity that should be promoted as a ‘good thing’ in that it involved a ‘home-grown’ product that is therefore sustainable. The thinking seems to be that heather bales and watercourse engineering go together as they complement each other. However the justification in terms of ecological effect on habitat for both is considered suspect by an increasing number of observers.

Specialist vertebrates using mature heather and tall heather and gorse dominated habitat are vulnerable to both existing and proposed management activities. Gorse cutting has been carried out along the north side of Latchmore Brook in recent years, damaging nesting and feeding potential for

dartford warbler and other birds. In the light of the increased reporting of over-grazing, over-nutrification and trampling of open forest, any plans or programmes will need to show how the fragmented habitat areas are being protected and actively recovered and re-joined, or the actions could be categorised as damage to an SSSI.

A more well informed overview plan for dry lowland heathland restoration and conservation in the New Forest is needed to include species plans for key species such as the more specialist invertebrates, amphibians, reptiles and birds including recovery planning and careful consideration of the need for reintroduction programmes for species lost or heavily reduced over the last century.

Photo 46. Land along Latchmore Brook that was known for Dartford warbler breeding, unnecessarily cut back in recent years. Woodlark *Lullula arborea* Nightjar *Caprimulgus europaeus* Wheatear *Oenanthe oenanthe* interest can be harmed where such management work is not guided by expert surveillance.

Photo 47. A similar breeding bird area at Ditchend bottom that was levelled by heavy flailing.

Species

"landscapes can be richer and poorer in species and you cannot just tell by looking at them from a distance. Species keep conservation efforts honest and there is no surrogate metric that can reliably assess conservation success or failure without knowing what is happening to populations of plants and animals in the landscape".

Extract from Making Space for Nature: A review of England's Wildlife Sites and Ecological Network Chaired by Professor Sir John Lawton CBE FRS Submitted to the Secretary of State, the Department for Environment, Food and Rural Affairs on 16 September 2010

There are three European species that are particularly important in respect of The New Forest SAC as qualifying features. These are *Coenagrion mercuriale* Southern damselfly (SD), *Triturus cristatus* Great crested newt (GCN) and *Lucanus cervus* Stag beetle (SB). The first two at least apply to the LBRP and the wider New Forest SAC area. For any planning proposals that relate to Latchmore Brook (or elsewhere for that matter) there needs to be a solid proposal showing how the breeding, distribution and dispersal of these species within the forest forms the basis of, informs and gives direction to any proposal for habitat management or restoration of European habitats and how the proposed work at Latchmore Brook might relate to such species plans.

The New Forest contains around ninety clearly separable valley mires, or fen, within about 20 different valley systems. This is thought to be more than survive in the remainder of Britain and Western Europe. They are positioned within a relatively unpolluted catchment. The mires receive the products of leaching from the higher ground and are comparatively base-enriched. The botanically most species rich mires have in excess of 150 species including many locally distributed and rare plants. Of the many ponds within the Forest the less acidic ponds support important populations of amphibians, including the rare (Sch.5 listed) GCN. The natterjack toad *Bufo calamita* is now extinct. The stag beetle does not appear to have had systematic surveys conducted but there are plans for a survey of Crown lands in 2014/15 together with a collation of existing invertebrate data.

Photo 48. An important temporary flood pool that relies on the stream for its supply. Amphibians were located in this water feature during the site inspection in 2013.

Southern damselfly *Coenagrion mercuriale*

The wetland habitats of the New Forest collectively form probably the most important single suite of habitats for dragonflies *Odonata* in Britain. Twenty-seven species breed in the New Forest including the rare southern damselfly *Coenagrion mercuriale* (RDB) and the variable, small red, scarce blue-tailed and downy emerald damselfly are present. Many of the streams and wetland areas including associated temporary ponds being modified and in-filled are vital for *Odonata* and provide ideal conditions for some specially adapted invertebrates including fairy shrimps *Chirocephalus diaphanous*. One temporary pond is the only known British locality for the tadpole shrimp *Triops cancriformi. B*oth of these are Red Data Book* (Sch.5) species.

There are locations along Latchmore Brook that form slow-flowing and standing temporary and permanent freshwater that appears very suitable for dragonflies and damselflies and that have records of around 20 species. Such richness places it well inside the SSSI thresholds for this group. Also present is the scarce blue-tailed damselfly. The past secrecy surrounding access to contact those interested and involved in dragonfly survey seems unhelpful and unnecessary for public-good bodies. It is unthinkable that such a valuable area for these species would be altered unless very careful prior thought and planning on feasibility and effect indicated the benefits to *Odonata* from doing so.

Although the ponds and slow-flowing meanders and isolates must not be removed or unduly changed and disturbed because of their *Odonata* interest, it is their value within the context of the Forest-wide plans for this key species that is uncertain and may be important in any restoration considerations, as with similar areas elsewhere. There is a duty towards surveillance and monitoring of the SAC that requires a plan for the Southern damselfly and other species with a proactive practical conservation programme. This does not appear to exist yet.

However, following enquiries for this investigation, Natural England report that a Southern Damselfly Favourable Condition assessment will be made in 2013, having been last checked in 2005 (Harvey et.al 2005)

Great crested newt *Triturus cristatus* (GCN) Annexe II H&S D.

Surveys from the 1970's located GCN particularly around the south of the New Forest. They were detected in 7 out of 139 (5%) of ponds, which is not an unexpected ratio of occupancy. In 2000 there were 13 recorded GCN occupied waterbodies in the New Forest, recorded by Martin Noble (FC -now retired) and Ian Davidson Watts (NFMP 2001).

The Pond Conservation websites states that there are up to 1,000 ponds in the New Forest "ranging from ephemeral pools on the edges of trackways, to large bodies of permanent water. These waterbodies support outstanding communities of plant and animal species including 38 pond associated BAP species and over 20 Red Data Book vascular plants. One in three ponds supports at least one Red Data Book macro-invertebrate species. The richness and quality of the New Forest ponds means that hundreds of these waterbodies qualify as Priority Ponds under the UK Biodiversity Action Plan, contributing to the recognition of the New Forest as an Important Area for Ponds, an Important Stonewort Area and, overall, as one of the most important areas for freshwater wildlife in Britain. There are currently major threats to some of the most important pond species and community types in the New Forest, with species declines, vulnerable isolated populations, changes in habitat quality and a lack of understanding about appropriate management prescriptions and the new habitat creation required to protect them.

There does not seem to have been a systematic survey within or outside the HLS programme for ponds and wet ditches. This situation is consistent with the situation described in Langton (2009) for pond s and GCN in the UK. From an infringement complaint to the European Commission in 2010, a national EU Pilot project (1126) is currently running to address the concerns that the UK has insufficiently conducted surveillance for the species. The New Forest provides a fresh example of both a large countryside area and SAC where clear duties towards Annexe II species appear overlooked, despite being within an SAC. While there is a small scale pondscape project being conducted by the charity *Pond Conservation*, this project requires much greater funding, with emphasis on strategic outputs, consultation, and clear, approved and measurable deadlines for delivery of well monitored results and adjustments for instigation in 2014 and completion by 2020.

The shortfalls across the board are quite startling given that great crested newt is one of just three species qualifying features of the SAC. It appears to have been almost completely overlooked and there is no indication as to how the species status is faring, because there is an incomplete baseline, progress has not been followed and there do not appear to be any recorded conservation actions. This is a very poor background against which to make specific planning considerations on watercourses, many of which have delicate side pools and channels. Following enquiries for this report it has been indicated that a SSSI condition monitoring for amphibians and reptiles is being developed, however no start date is available and so a full survey for GCN of all ponds within the NFNP does not appear to be in progress. The lack of survey and habitat assessment for all of the

protected herpetofauna is strange, given the relatively small scale of the exercise and its simplicity and low cost, (with appropriate expert guidance).

At Latchmore Brook there are temporary pond locations and permanent wet ditches that appear to have high potential value for GCN. This can be judged in terms of Habitat Suitability Indices indication of sufficient quality to sustain the species. I have, in passing, briefly scoped pond quality of three of these, with the conclusion that they hold sufficient potential significance to GCN to warrant survey. Early season anuran amphibian spawn was present during my inspection of these areas.

Presumably these areas have not been fully surveyed for this species and a view taken on the impact of proposals on the water retaining capacities of standing freshwater. A main point is that these pond areas may or may not be important to GCN but that could only be determined by understanding the forest-wide distribution of the species and having a strategy both to carry out conservation work and to monitor changing status.

In the absence of reliable information, ponds and the linear water features within former channels must not be removed without great care because of their actual or potential contribution to the qualifying SAC interests and for other reasons relating to legal protection of other species. It is, however, the lack of a Forest-wide plan for a wider range of aquatic or aquatic habitat dependent species that seems a glaring omission. There is a legal duty towards surveillance and monitoring of the SAC that requires a plan for GCN that does not exist. As with the Southern damselfly evaluation, these are essential required documents for habitat and species management and should be an advance undertaking to any restoration plan for the forest.

Photo 49. On the right hand side another ‘perched’ side pond, along Latchmore Brook.

Sea trout *Salmo trutta* and Bullhead *Cottus gobio*

As indicated previously, there are general concerns that any theoretical benefit of lengthening forest brooks is marred by negative effects on habitats and rare species. Although the brooks generally show a main channel, at Latchmore there is anastomisation that is both obvious and subtle, some of the branches being shallow and grassed over and perhaps only being wet in flood conditions for a few days or weeks. Others are seasonally wet according to rainfall and flood patterns.

Photo 50. Cut logs from trees cut down in 2012 that were thrown into Latchmore Brook in advance of the now challenged alignment work. Much of it was picked up and swept downstream in subsequent flooding and was removed.

It is noted that in The Forestry Commission's monthly liaison meetings with the Verderer's court that there are frequent records of the need for removal of log jams. Log jams may have a role to play, however their management requires careful thought and procedures, and should not just be a way of disposal of surplus timber as localised disturbance and damage may be caused.

Smooth snake *Coronella austriaca* and other reptiles

Latchmore Brook and surrounding areas have significant records of snake and lizard, all of which are protected by UK law and the smooth snake as an EPS. European dry heaths and other grassland with heather component are present within the proposed working area including one route that was a proposed haul road for lorries to bring aggregate materials into the area for infilling existing channels.

Photo 51. Bracken indicating the arrival of more heathy vegetation at the approach to Alderhill inclosure.

Photo 52. Lowland heathland with uneven aged mosaic characteristics, very suitable for reptiles and other specialist invertebrates and birds that would have been bisected by the proposed haul route.

In this area, recent tree clearing involved the burning of cut wood on tree stumps. The burning of cut material on old tree-root bases has long been scorned as malpractice by conservation workers as the heat overheats, boils and kills resident or temporarily hibernating specialist old-wood dwelling invertebrates as well as reptiles and amphibians. Burning in this manner should be avoided and only be done on suitable open ground. Whether such activity requires a police caution or prosecution as there is (presumably) un-surveyed protected species habitat in the immediate proximity has yet to be decided as this event appears to have been unreported..

Photo 51. Location at Latchmore Brook where, to get rid of cut material, a fire has been created on top of old tree root bases in a manner capable of killing protected species using the habitat for shelter.

With reptile species, prior to any disturbance of individual areas such as Latchmore Brook, the results of periodic reptile surveys should be consulted to determine the species present and the likelihood of sensitivities. A transfer or translocation of reptiles is normally undertaken out of any area to be heavily disturbed or damaged. This would be required from the entire watercourse areas to be excavated, to prevent them from being killed or injured. Such activity typically would require detailed planning in terms of how to safely relocate animals in suitable places, it might take most of an active season (April –September) of prior preparation to undertake.

Costs for undertaking such an exercise across a large area such a Latchmore might be expected to be in the region of low tens of thousands (£K) due to the amount of reptile exclusion fencing needed, the 60-90 days of specialist fieldwork and the prior preparation works needed on any release sites. Because of this, heavily disruptive work is normally avoided other than on development sites or brownfield sites where the removal of, for example polluted soils is essential. Clearly at Latchmore

and at many other locations in the New Forest, economic evaluation of sustainable use of public funds for such activity is also a vital part of the earliest considerations.

Bird fauna

In addition to the range of ground nesting birds within the Latchmore valley floor there are specialist birds using dry heath and stands of gorse.

The infilling of the Latchmore Brook would have resulted in the destruction of all three locations of undercut bank that are considered to be suitable for common kingfisher *Alcedo atthis* to nest in. These are in fact reported to have been used for breeding from year to year. As a Schedule 1 protected bird, this action would be highly regrettable and would require compensation if found to be a part of otherwise acceptable plans which is considered highly dubious. One of the issues in this area is that the valley is quite steep at this location and it would be impossible to create the meanders of the kind described on the old project map because of the change in levels without levelling the entire valley floor to a width of 100 metres or so which would be very ill advised.

Photo 52. Part of the damaging 2012 tree removal along Latchmore Brook in a pooled area where small fish could be viewed and with overhanging bank that was suitable for kingfisher nesting.

Photo 53. Another such similar area.

Photo 54. Another such similar area.

Silver-studded blue *Plebejus argus*

The significant and probably very old anthill colony over a large area on raised ground alongside the Latchmore Brook is spectacular. The area is an important one for silver studded blue because their larvae have a close relationship with ants and produce a sweet liquid that they feed on. In return the ants protect the larvae from predators. Black ants *Lasius niger* and *Lasius alienus* are the two most commonly associated species.

The apparent location of a part of this area within the former proposed meander creation area was presumably simply a mistake as it is topographically far too raised (see earlier c.f. levelling) to be dug up to receive water and is far too precious to disturb. Disturbance would be an act of unjustifiable environmental vandalism given the unique quality of this area.

3. Allegations of wildlife crime relating the LBRP in 2011/2012 in respect of European and UK protected bird and other species and in respect of removal of trees outside felling approval areas by the Forestry Commission.

There are allegations from local residents that in 2011 and again in 2012, reckless activities involving the unlawful disturbance of and the killing and injury of protected animal species took place at Latchmore Brook. In 2011 a local resident alerted the Forestry Commission regarding the use of rabbit burrows by Wheatears for breeding in areas being metal-detected and dug up to remove old military parachute flares and similar light ordnance items. The matter was reported to Hampshire Constabulary for investigation but it is not known what action was pursued.

This area is one of the key bird nesting areas along Latchmore Brook according to local birdwatchers. On the afternoon of 18th May 2012 it is alleged that two excessive explosive charges (shaking the windows of houses some miles away) were used and at the wrong time of the year, unlawfully disturbing and killing immediately or leading within hours to the death of eggs and fledglings of four protected bird species; wheatear, redstart, curlew and lapwing that were breeding within 200 metres of the explosion. The Forestry Commissions explanation in December 2012 was that in February when the initial surveys and investigations were carried out, the weather and ground conditions were not suitable to progress further, and ground conditions did not improve sufficiently until May. The time chosen was the first wet period following drought conditions and the appearance is that this had delayed the work and that a decision to proceed was made solely on ground conditions and not upon wildlife. Wet ground is preferred in order to absorb shock from explosion.

This does not appear to be a satisfactory defence. The wheatear nesting site (wheatears had been breeding there for many decades), is rare in the south of England and only one of two nesting sites are known in the forest.

I have not yet asked the police what procedures were carried out and whether the matter was investigated and/or referred to the Crown Prosecution service but this report may be of use in such a future inquiry.

The vast majority of the tree felling took place from February 2011 for a couple of months. At no time was a notice displayed locally to give prior warning of this felling. The project was not approved by the National Park until December 2011 - so the felling took place long before the NFNP signed up to the project and there was no prior local consultation.

Because of the serious impact upon fish, this should also be a police matter in terms of evidence gathering. The seriousness of the errors should not be dismissed. The planning authority is responsible for instigating enforcement of this breach. The matter is covered in correspondence between parties and undertakings have apparently been made to put systems in place to prevent repetition.

Taken together with the tree felling and damage to dartford warbler breeding habitat, it is my view that it is hard to justify how failing to carry out investigations towards a potential prosecution of

alleged wildlife offences could be in the public interest, and investigations are warranted into the failure to prosecute as would have been likely had the actions been taken by a non-public body. The police and local planning authority have a duty to do so.

6. Conclusions

Following this rapid review involving interviews and information gathering from around 20 individuals and 14 organisations, my current perception is that there has been a chronic lack of appropriate preparation by the principal parties prior to the initiation of management activities within the New Forest, at both the wider and smaller scales of operation.

A lack of pre- and post-works analysis, perhaps frustrated by a lack of strategic surveillance, has failed to pick up that the method of re-aligning forest brooks in the manner currently undertaken is probably not appropriate for this particular area. It is probably not appropriate for many other areas, and possibly is a method not to be used at all other than very selectively and following extensive safeguards.

A considerable proportion of the work that has been undertaken in the past, is continuing to result in damage to the very interests that the public funding is made available to support. These interests include ecological interests of national and European value. Such actions may be result ofbothstaffing cutbacks, and a lack of suitable specialist advice involvement in the management and appraisal processes. These are areas that DEFRA will need to look very closely at.

The over-subscription of European and domestic UK funds to the New Forest HLS scheme without sufficient surveillance and appraisal present a real threat to those areas involved. Any alleged improper use of the funding could lead to the enforced return of funds, enforced reparation of damage and potential prosecution.

Latchmore Brook has been a microcosm of the wider problem within the New forest, illustrating very well (because of its biodiversity richness in one of the best parts of the New Forest), the vulnerability of wildlife to ill-prepared plans. Although matters now seem to be in hand to investigate and to begin to revise the plans sensibly, potentially including the avoidance of disturbance to the entire Latchmore Brook area, there are currently no guarantees that damaging and unmitigated damage may not be caused. Vigilance is required in addition to further clarification of the issues involved and how best to resolve them by all parties working closely together.

This is not withstanding that certain criminal and infringement matters may be subject to specific enforcement action.

There are concerns that some of the involved bodies are not fully competent in wildlife matters and are not trained to recognise gaps in their own procedures, resulting in a defensive approach when questioned or challenged. The relationship between the major parties involved is under close scrutiny now. If NE has not required a suitable baseline for pre-work appraisals then they are clearly heavily exposed. This might explain any excessively defensive attitude encountered, and why the *Friends of Latchmore* pressure has ended up heading towards a legal challenge to obtain otherwise negotiable changes to procedures at Latchmore Brook.

7. Acknowledgements

Information has been sourced from the wide range of public bodies mentioned in this report and documents including Site of Special Scientific Interest citations and other public documents. I am grateful to members of the public including those that are members of Friends of Latchmore for drawing the Latchmore dispute to my attention and for providing background information on problems over the wider area, including some of the photographic evidence.

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About the author:

Tom Langton is a bachelor of science at the University of East Anglia, United Kingdom where he has an honours degree in Ecology and the Michael Graham Nature Conservation Award for 1981. He is a Chartered Biologist and Fellow of the Society for Biology. He is primarily a conservation biologist, training and working 1984-1989 while specialising in terrestrial vertebrate population ecology, species protection and nature conservation techniques with Fauna and Flora International (formerly FFPS). He has considerable international experience (Europe, Africa and the North America) with both species and habitat survey and management in temperate and tropical zones.

Focal interests include amphibians and reptiles, bats and rare plants, but also the management of vegetation for invertebrate interest. Expertise also covers the creation, management and recovery/restoration of wetlands, grassland, desert and arid lands, coastal, heathland, scrub and woodland habitats, the management of drainage techniques and invasive aquatic plant and animal management. More recently there has been considerable emphasis on impacts of wind turbines on birds and bats and legal provisions of the European Directives concerning protected species.

Since 1989 he has worked with major international, national and regional non-profit, corporate and government interests including IUCN, the European Commission and Council of Europe, and has managed over 350 consultancy and research projects, focussing on aspects of environmental impact assessment, mitigation planning and implementation in agricultural and protected area settings, the transport (principally road and rail), extractive industries (coal, clay, chalk, aggregates) and construction sectors. Work has included small, medium and large scale developments and a variety of government public and private land holding and property projects. These have involved major transport corridor networks, protected areas, endangered species management, species surveys and monitoring, reviews, design work, species reintroductions and translocations.

Around half of his time has been spent working, usually in a voluntary capacity, establishing and developing not-for-profit organisations and upon conservation programmes and aspects of protective legislative provisions for threatened and declining species. Since 2008 he has provided advisory services to local groups seeking advice and assistance on nature conservation issues.