



Planning and permitting: the respective roles of Natural England and the Environment Agency in managing impacts on European¹ sites through the Habitats Regulations, the Water Environment (Water Framework Directive) Regulations, and the Environmental Permitting Regulations

Background

Many water dependent European sites fail to achieve favourable condition as a result of nutrients, which reduces the contribution of these sites to the wider conservation status. There are a range of different sources of nutrients, including discharges from wastewater treatment plants, diffuse sources from agriculture, (which are the two major contributors), storm overflows, industrial discharges and urban run-off. Nutrients from both new and existing sources must be addressed to restore sites and prevent further damage.

Natural England and the Environment Agency are developing and further refining Diffuse Water Pollution Plans and Nutrient Management Plans to identify and set out specific measures necessary to achieve site restoration. This includes consideration of the impacts and measures needed for permitted discharges. The longer-term aim is to develop these plans so that action is taken to address pollution, improve protected sites condition and create environmental capacity to enable new development, removing or lessening the need for nutrient neutrality.

Natural England and the Environment Agency have statutory roles under the planning and permitting regimes. This joint position statement summarises the respective roles of Natural England and the Environment Agency in managing the impacts on European sites through those regimes.

1. The legal and policy framework

The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) protect nature through two main mechanisms: the network of European sites, which contribute to the conservation of the natural habitat types and species identified in the Annexes of the Habitats Directives; and the protection of specific animal and plant species wherever they occur. As a matter of government policy, Ramsar sites,

¹ Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

designated under the Ramsar Convention on wetlands of International importance, are given the same protection as European sites.

The Water Environment (Water Framework Directive) Regulations 2017 apply to surface waters (including coastal waters) and groundwater (water below the surface of the ground) and set out requirements to prevent the deterioration of water bodies; protect, enhance and restore water bodies to 'good' status; and achieve compliance with standards and objectives for protected areas (including European sites).

The Environmental Permitting Regulations 2016 requires operators to obtain permits for some activities to protect the environment and human health.

Due to the requirement for the Environment Agency and Natural England to follow processes under the different regimes, this may sometimes be interpreted as a disparity in guidance and advice. However, this isn't the case, and statements set out in this paper establish an agreed position which we would expect to be applied as part of locally developed actions and solutions.

2. Natural England and Environment Agency roles in planning and permitting processes

2.1 Protecting European sites

Natural England is responsible for promoting nature conservation and protecting biodiversity, including ensuring that the network of European sites is appropriately maintained or restored to favourable conservation status.

Where a proposed plan or project is likely to have a significant effect on a European site (whether that's on or near the site), the Habitats Regulations require the decision maker to carry out an Appropriate Assessment. This maps out and analyses the possible impacts on the site features and includes details of any proposed mitigation measures to avoid harm (for example, securing 'nutrient neutrality', where proposed development may otherwise exacerbate the impact of nitrogen on European sites). While the final decision to consent a proposed plan or project rests with the decision maker (e.g. a local planning authority), Natural England is a statutory consultee to the Appropriate Assessment and the decision maker must have regard to Natural England's advice.

The proposed plan or project can only proceed at this stage if (taking account of mitigation as appropriate) there is no reasonable scientific doubt that there will be no adverse effects on the integrity of any relevant European site(s).

Natural England is the only statutory consultation body for Appropriate Assessments, whether undertaken for plans or projects. During a public consultation on a planning application, the Environment Agency can exercise its discretion over whether to comment on an accompanying Habitats Regulations Assessment (where undertaken).

Defra and the Welsh Government have provided guidance on how competent authorities must decide if a plan or project proposal that affects a European site can go ahead. This includes consideration of where there is more than one competent

authority and the circumstances where a decision maker can adopt the reasoning of another body: <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

2.2 Environmental permitting

The Environment Agency is responsible for protecting and improving the environment and fulfils these duties through a range of activities, including deciding whether to grant environmental permits for discharges to the water environment. The Environment Agency has a duty to review permits under the Environmental Permitting Regulations 2016. In the granting and onward review of permits, the Environment Agency is a competent authority under the Habitats Regulations. This requires the Environment Agency to assess the effects of such permits on European sites.

For the purposes of undertaking an assessment under the Habitats Regulations, it will be important to take account of the latest information available in relation to the condition of European sites.

The work on Diffuse Water Pollution Plans and Nutrient Management Plans will establish the evidence to enable identification of permit changes needed to restore sites. The Environment Agency can also identify changes to water company discharge permits and secure implementation as part of the water industry 5-year price review investment period.

Any persons wishing to discharge polluting substances into the environment are required to apply to the Environment Agency for an environmental permit. These permits will set limits on the amount of certain pollutants that can be included in the discharge to ensure impacts on the environment are considered, and that it will comply with relevant legislation.

Some permits can include headroom. Permit headroom is when the flow and/or concentration limits specified are higher than what is being discharged. In these instances, there is capacity for an increase in the flow and/or concentration up to the permit limits without the need for a change to the environmental permit.

This should not be confused with environmental headroom, which is where the current water quality is better than the water quality objective for the European site. The difference between the current water quality and the objective is the headroom available that can be used without having an adverse effect on the European site. European sites that are currently unfavourable for water quality therefore have no environmental headroom.

Where there is environmental headroom at a European site, and the use of the permit headroom will not cause the site to become unfavourable for water quality, then this permit headroom can be used for development. Where a European site has no environmental headroom, or where the use of any permit headroom would cause a site to become unfavourable for water quality, the use of any permit headroom may have the potential to have an adverse effect on the integrity of the site. In these situations, it cannot automatically be assumed that the use of permit headroom will be compliant with the Habitats Regulations.

Local planning authorities can rely on the Habitats Regulations Assessment of the Environment Agency, and therefore any headroom included, if since the permit was issued:

- there is no new information or evidence that may lead to a different conclusion. If there is evidence which would provide for a different conclusion from that reached originally, then it should be taken into consideration.
- the assessments already done are relevant, thorough, and correct. A local planning authority must also be satisfied that any new information or evidence that has become available since any permit was issued does not materially alter the conclusions.
- the conclusions are rigorous and robust when assessed against relevant case law.
- there is no new case law that changes the way a Habitats Regulations Assessment should be carried out or interpreted. If a local planning authority believes that new case law affects the original assessment, it must take that into consideration when considering whether it can rely on that decision for the purposes of its duties under the Habitats Regulations.

The utilisation of permit headroom is likely to be compliant with the Habitats Regulations however, if there is sufficient certainty that other conservation, preventative or other measures will bring the site into favourable condition and it will create environmental headroom for the new development (see section 2.3 below).

Any plan or project which requires planning permission, Building Regulations approval or an environmental permit from the Environment Agency must comply with the requirements of those regulatory regimes as well as what is needed to meet the Habitat Regulations. For example, all these regimes require that developments should be connected to the public foul sewerage network wherever this is reasonable. This includes areas where the Habitats Regulations apply and any need to reduce nutrient inputs in those areas should not lead to the installation of non-mains foul drainage systems in circumstances where connection to the public foul sewer would otherwise be considered reasonable. Any plan or project then connecting to mains would still need to also be compliant with the Habitat Regulations.

General Binding Rules for Small Sewage Discharges

Based on the understanding of the Habitats Regulations Assessment requirements at the time, and screening distances agreed between the Environment Agency and Natural England, no Habitats Regulations Assessment was undertaken when the General Binding Rules were introduced.

When a Habitats Regulations Assessment is undertaken for new plans or projects, current understanding and case law for the Habitats Regulations should be applied.

Discharges which comply with the General Binding Rules are defined as exempt activities under Environmental Permitting Regulations and those discharges

therefore fall outside of the permitting regime. However, competent authorities should still consider the impact of such discharges as part of the Habitats Regulations Assessments.

2.3 Nutrient neutrality, mitigation measures and wider environmental considerations

Where a site is in unfavourable condition due to nutrient inputs and there is no plan in place to restore the site that is sufficiently certain, nutrient inputs should not be increased from current levels as a result of new activities being authorised unless adverse effects on site integrity can be excluded. Nutrient neutrality offers a legally robust means of allowing development to proceed, whilst protecting sites from deterioration and not preventing them from being brought into favourable condition. This will remain the case until such time that measures or plans are in place that provide the necessary degree of certainty and create environmental headroom for new development.

Natural England will provide advice and guidance in relation to the nutrient neutrality approach. Parallel tracking of planning and environmental permit applications is recommended. Planning Authorities should consult maps (including <https://flood-map-for-planning.service.gov.uk/> and <https://magic.defra.gov.uk/>) to satisfy themselves of the suitability of a location for a particular mitigation option prior to informing the Environment Agency. The general suitability of an option will depend on the specific location and the nature of the proposed mitigation. Mitigation may be delivered either on-site or through measures outside the development site.

Natural England and the Environment Agency are committed to working jointly with Local Authorities to ensure agreed measures are appropriate to achieve nutrient neutrality, prevent deterioration, take account of wider environmental considerations and do not present a barrier to meeting objectives to achieve favourable conservation status.

3. Relationship between the Habitats Regulations and the Water Environment (Water Framework Directive) Regulations: understanding impacts at the water body and at the site feature level

Environmental Quality Standards, including those for water quality, have been established for water bodies in general under the Water Framework Directive regime by a UK Technical Advisory Group².

Conservation objectives for European sites may be underpinned by water quality targets and are established by the conservation agencies in accordance with common standards for monitoring guidance. This guidance was developed to provide an agreed approach to the assessment of condition on statutory sites

² The UKTAG (UK Technical Advisory Group) is a working group of experts drawn from environment and conservation agencies. It was formed to provide technical advice to the UK's government administrations on implementing the Water Framework Directive, including development of environmental standards and conditions.

(including European sites) designated through UK legislation and international agreements.

The Water Environment (Water Framework Directive) Regulations 2017 clarify that where both water body objectives and European site objectives apply to a water body, the most stringent objective applies.

In the case of estuaries and coastal waters, water quality targets may often be the same or similar under both regimes. However, the spatial application of these may differ, with the water quality regime being applied at the whole water body scale and the conservation objectives being applied to the designated features wherever they are within the European site.

4. Natural England and Environment Agency roles in monitoring

In England, most terrestrial European sites are also notified as Sites of Special Scientific Interest (SSSIs). Natural England undertakes monitoring of SSSIs and European sites, which informs site management actions. This may also inform off-site actions including for example managing the impact of diffuse water pollution.

In the case of freshwater, coastal and estuarine sites, monitoring will include data gathered by Natural England as well as water quality and ecological data supplied by the Environment Agency or collected by others.