

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

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 habitats sites¹ 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 habitats 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, designated under the Ramsar Convention on wetlands of International importance, are given the same protection as habitats sites.

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

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

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

Protecting habitats sites

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

Where a proposed plan or project is likely to have a significant effect on a habitats 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 habitats 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

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.

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 habitats site(s).

Natural England are 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 has provided guidance where there is more than one competent authority and the circumstances where a decision maker can adopt the reasoning of another body: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

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.

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.

Allowances for development can be built into permits by including a headroom allowance. For example, new development may be acceptable where it can be accommodated within the current water discharge activity permit limits of individual wastewater treatment works, i.e. where there is capacity to take the extra wastewater flows from the development whilst still treating effluent to the same standard. Local planning authorities must still ensure that the Habitats Regulations have been complied with before authorising the new development.

Regarding planning applications (e.g. housing development), the Environment Agency would expect developers, water companies and relevant local authorities to work to resolve any potential infrastructure capacity issues in a proportionate and expedient way.

Permit reviews are required to check whether permit conditions continue to reflect appropriate standards and remain protective considering experience and new knowledge. Reviews should guard against permits becoming obsolete as treatment technologies develop. The Environment Agency is required to review permit conditions in the light of new information on environmental effects, best available technologies or other relevant issues.

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

The Water Environment (Water Framework Directive) Regulations 2017 clarify that where both water body objectives and habitats 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 habitats site.

4. Natural England and Environment Agency roles in monitoring

In England, most terrestrial habitats sites are also notified as Sites of Special Scientific Interest (SSSIs). Natural England undertakes monitoring of SSSIs and habitats 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 coastal and estuarine sites, monitoring will include data gathered by Natural England as well as water quality data supplied by the Environment Agency.

5. Environment Agency intention to consider whether permits for Waste Water Treatment Works remain valid based on new evidence under the Environmental Permitting Regulations

The Environment Agency has a duty to review permits under the Environmental Permitting Regulations 2016. In the granting and onward review of waste water treatment consents, the Environment Agency is a competent authority under the Habitats Regulations. This requires the Environment Agency to assess the effects of such consents on habitats sites.

The Environment Agency will undertake a review of a permit or permits if evidence is received from Natural England which clearly demonstrates that there have been

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.

changes which could mean the permit(s) are no longer fit for purpose, for example a change in the condition of a habitats site, informed by site monitoring. For the purposes of undertaking an assessment under the Habitats Regulations, it will be important to take account of the most up-to-date information available in relation to the condition of habitats sites.

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.