



Nutrient Neutrality – Natural England



Impacts on N2K
sites, Integrity,
Likely significant
effect, In
combination
etc...

The Habitats and Species Regulations 2017 (as amended). High Level Principles



- Applies in the terrestrial environment and territorial waters out to 12 nautical miles
- Key aim is to protect and enhance sites
- Precautionary Principle is at the heart of the Regulations as a matter of law
- Where there is reasonable scientific doubt as to an impact then decision makers must err on the side of caution
- Outlines a step wise assessment process - Habitats Regulations Assessment (HRA) for plans and projects
- Likely Significant Effects and Adverse Effects (alone & in-combination)
- Consent can only be granted when the HRA concludes no adverse effects (unless Imperative Reasons of Overriding Public Interest)

Habitats Regulations – Roles and Responsibilities



NE's role when acting in a nature conservation advisor capacity

Advice	Should Natural England assist	Statutory Requirement for consultation with Natural England
<ul style="list-style-type: none"> Advice on the scope of a Habitats Regulations Assessment including an Appropriate Assessment 	Yes where possible	No
<ul style="list-style-type: none"> Advice on the Screening stage of an assessment (Likely Significant Effect) 	Yes where possible	No
<ul style="list-style-type: none"> Information on the European site or sites' conservation objectives 	Yes; refer to published advice on European Site Conservation Objectives	No
<ul style="list-style-type: none"> Advice on the measures necessary to meet these objectives 	Yes	No
<ul style="list-style-type: none"> Guidance on how the integrity of the site might be affected by the proposal 	Yes	Yes
<ul style="list-style-type: none"> Consultation on the Appropriate Assessment stage (adverse Effect on Integrity) 	Yes	Yes

Role of Competent Authorities (CA)



Definition:

“any Minister of the Crown, government department, statutory undertaker, public body of any description or person holding a public office”

- All CA's must have regard to the requirements of the Regulations when exercising their functions
- Comply with specific requirements in the Habitats Regulations when permitting operations or undertaking their own operations that may impact on a European Site.
- Only authorise plans or projects if they will not adversely affect the integrity of the European site, unless the proposal meets other exceptional criteria
- Consult Natural England before permissions are given and have regard to NE advice.
- Responsible for carrying out the HRA and decision in relation to adverse effects on integrity.

What Has Changed?

Case law has been the main driver for a change in approach

1. Wealden High Court [2017] – NE advice ‘Wednesbury unreasonable’ on in combination assessment (AQ)

2. Dutch Nitrogen CJEU [2018]
 - Principles flow logically from Habs Regs and earlier case law
 - Focus attention on further pollution to EU sites already exceeding thresholds
 - In practice, led to a tightening of HRA process and legal uncertainty

What Has Changed? Impacts on Development



- Previous HRA practices unlikely to be lawful:
 - General approach of screening out in combination effects of relatively small sectoral contributions
 - Relying on uncertain plans e.g. Diffuse Water Pollution Plans to show no harm to site integrity
- Greater awareness of long-term water quality at protected sites and regulatory levers available
- Increased political and reputational risks
- BUT Opportunities for positive environmental outcomes

Water Quality Impacts on European designated Sites (N2K)

- Water dependent European designated (N2K) sites are failing condition due to elevated nutrient levels.
- Autonomous measures such as Diffuse Water Pollution Plans (DWPP) are unlikely to provide sufficient certainty to be relied upon for Habitats Regulations Assessment (HRA), as a result of recent case law.
- Dutch N judgement means that limited development can progress in unfavourable N2K catchments as they are likely to fail the site integrity test (Appropriate Assessment) without mitigation, which in this case is Nutrient Neutrality



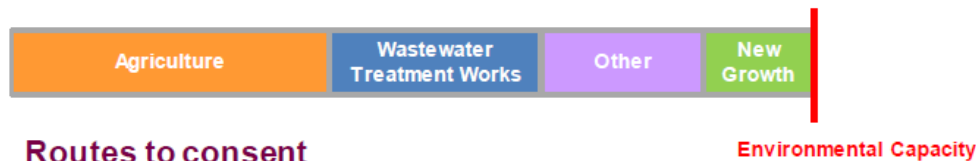
Achieving Favourable Condition – Nutrient Neutrality



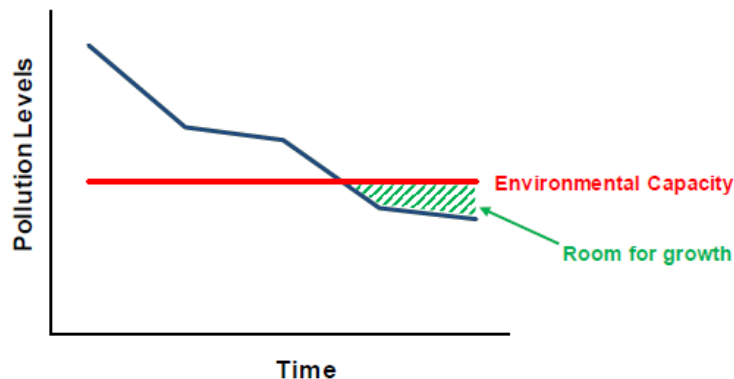
Where we are



What the Habitats Directive/Regulations are trying to achieve



Routes to consent



Nutrient Neutrality:

New development calculates its nutrient impact to the EU site from wastewater and counterbalances through mitigation = **no net increase in nutrients**

Catchments & LPAs already affected by Nutrient Neutrality



Solent				
Isle of Wight	Havant	Portsmouth City	Gosport	Fareham
Winchester City	Eastleigh	Southampton City	New Forest District	New Forest NPA
Test Valley	East Hampshire	Basingstoke and Dean	Chichester	South Downs NPA
Poole Harbour				
Dorset Council	Bournemouth, Christchurch and Poole Council			
Hampshire Avon				
Wiltshire	New Forest District	New Forest NPA	Dorset Council	Bournemouth, Christchurch and Poole Council
Somerset Levels and Moors				
Sedgemoor District	South Somerset District	Somerset and West Taunton District	Mendip District	
Stodmarsh				
Canterbury City	Ashford Borough	Folkstone and Hythe District	Dover District	Maidstone Borough
River Wye (Lugg)				
Herefordshire County Council				
River Camel				
Cornwall Council				

Existing Tools Available where Nutrient Neutrality is Currently Being Implemented



- Nutrient Neutrality Methodology in the Solent
- River Avon Phosphorous interim development plan to deliver phosphate neutrality
- Nitrogen Reduction SPD for Poole Harbour
- River Wye Interim Development Plan

Steps For Rolling out Nutrient Neutrality



1. NE issues nutrient neutral (NN) guidance
2. LPAs/NE/EA build understanding of context
3. LPAs calculate nutrient budget (supported by NE and through engagement with water companies as necessary)
4. LPAs identify feasible mitigation solutions (supported by NE and in consultation with EA)
5. LPAs identify most cost effective approaches and routes for funding
6. LPA's create/adopt strategic solutions, preferably at a catchment wide scale, identifying specific mitigation measures, costings and funding options (with agreement from NE)
7. LPAs deliver mitigation solutions (in perpetuity) and monitoring of outcomes

Benefits of Nutrient Neutrality



- Enables development to proceed without causing further deterioration to European designated sites
- Enables permanent land use change with multiple benefits to the natural environment and to people.
- Permanent contribution to Nature Recovery Network outside of designated sites, and
- At no direct cost to taxpayers

Fareham JR:

- An appeal has been submitted following the successful defence of the Fareham JR where the principle of Nutrient Neutrality was found to be acceptable.
- We are waiting to hear if permission is granted by the Court of Appeal and the timeframes involved
- NE will continue to support LPA's with existing schemes



Questions?

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