

PAS - Workshop 1

Nutrient Neutrality for Chief Planners

31st March 2022 and 5th April 2022

Department for Levelling Up, Housing and Communities

Joanna Averley, Chief Planner



Nutrient Neutrality – Natural England

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)

Definition:

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

- All Competent Authorities 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 Habitats (aka European) Site.
- Only authorise plans or projects if they will not adversely affect the integrity of the Habitats 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.

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

Dutch Nitrogen CJEU [2018]

- Principles flow logically from Habs Regs and earlier case law
 - Focus attention on further pollution to Habitats sites already exceeding thresholds
 - In practice, led to a tightening of HRA process and legal uncertainty
- 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

Water Quality Impacts on Habitats Sites

- Water dependent Habitats 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 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



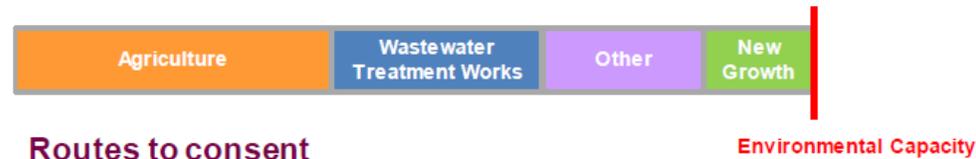
Achieving Favourable Condition – Nutrient Neutrality



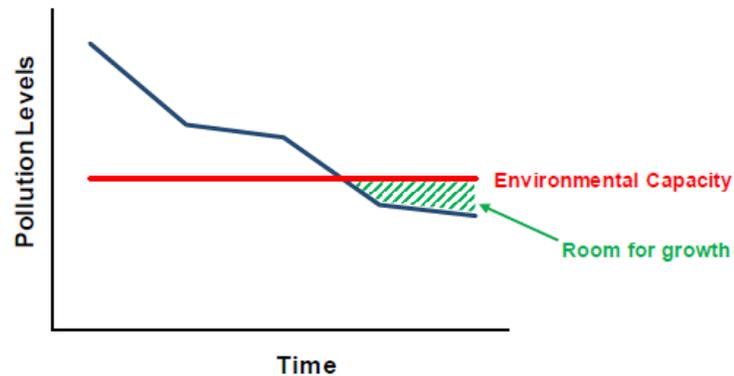
Where we are



What the Habitats Directive/Regulations are trying to achieve



Routes to consent



Nutrient Neutrality:

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



- Natural England issued advice on 16 March 2022 to Competent Authorities within 27 Habitats sites catchments (7 of these had previously received advice)
- **Natural England's Advice:**
 - Covers all types of overnight accommodation (including tourism accommodation)
 - Includes Reserved Matters approvals
 - Generally excludes business and commercial development
 - Excludes householder applications such as extensions
 - Notes that HRA requirements apply to all plans and projects and recommends a case-by-case approach for other types of development (e.g. agriculture, industry)
- **Tools Provided by Natural England:**
- Catchment Maps
- Catchment specific Nutrient Budget Calculator and Guidance
- National Generic Nutrient Neutral Methodology
- Nutrient Neutrality Principles

- **The Nutrient Neutrality approach is based on the principle of reducing existing sources of nutrient pollution to mitigate the nutrients generated by new development**
- Mitigation principles:
 - Needs to be in place before the new development causes it's effect (e.g. occupation);
 - Needs to be in place for the duration of the effect (for housing – in perpetuity);
 - Mitigation needs to be suitably located to remove the affect of new development – within the same catchment as the development; upstream of the Habitats site and/or the development
- Mitigation can be provided on a case by case basis by the project/developer; strategically by the LPA; or by third parties (e.g. Wildlife Trust)
- Examples of mitigation:
 - On-site measures such as SuDS (can also be retro-fitted to existing development);
 - Agricultural land use change (e.g intensive agriculture to woodland);
 - Treatment wetlands (WwTW, PTPs); Interceptor wetlands (agricultural run-off)
 - Replacement of inefficient PTPs/Septic Tanks with new efficient PTPs

Department for Environment, Food and Rural Affairs

Rachel Fisher, Deputy Director Land Use Policy

What are our commitments?

- 25 Year Environment Plan (75% of protected sites to good condition)
- Water Framework Directive - To achieve good ecological status by 2027
- Commitment to 30x30 - UN Pledge to protect 30% of land by 2030
- Environment Act proposed targets on Water Quality:
 - reduce nitrogen, phosphorus and sediment contribution from agriculture in the water environment by at least 40% by 2037 (against a 2018 baseline)
 - reduce phosphorus loadings from treated wastewater by 80% by 2037 (against a 2020 baseline)



A Green Future: Our 25 Year Plan to
Improve the Environment



What are the opportunities?

- Government is committed to sustainable development and building the homes the country needs for the future, whilst addressing the sources of pollution to restore our protected sites.
- Long term objective for this to be the first generation to leave the environment in a better state than that in which we inherited it.
- The Nature Recovery Green Paper sets out proposals for a protected sites system which better reflects the latest science, the impact of climate change, and our significant goals to recover nature.
- Nutrient mitigation will help to deliver additional environmental benefits – we are trialling how this can be delivered alongside Biodiversity Net Gain as part of the Government-funded nutrient market pilot in the Solent with Entrade.

Tackling nutrient pollution: wastewater

- from 2020 to 2025, water companies are investing **£2.5 billion** in measures that reduce nutrient pollution. Coupled with the improvements made in previous price reviews, this will see an **83% reduction in the total load of phosphorus** to rivers from wastewater treatment works compared to the load in 1995.
- We have made clear through the Strategic Policy Statement to Ofwat that we want water companies to go further in the next price review period (2025-2030), and that water companies should “**prioritise improvements to protected sites**”, focussing particularly on the need to “**address nutrient pollution**”.
- The Environment Act creates a statutory duty on water companies to produce Drainage and Sewerage Management Plans over a minimum 25-year planning horizon. This includes a requirement to **assess the environmental impacts of the sewerage system** and wastewater treatment works.
- For many catchments, the Environment Agency and Natural England are producing Diffuse Water Pollution Plans. These plans will clearly **identify and apportion the sources of nutrient pollution** in the catchment and recommend the most effective interventions.

Tackling nutrient pollution: agriculture

We are taking action to ensure current requirements are effectively regulated and support farmers to go further to reduce pollution and deliver for nature:

- Funding for 50 additional Environment Agency officers to provide a 10-fold increase and more targeted inspections
- Updated guidance on the Farming Rules for Water was published on 30th March to raise standards of nutrient pollution management
- Specialist, free, 1-2-1 environmental advice to farmers in England through the Catchment Sensitive Farming (CSF) partnership
- The new Farming Investment Fund to provide grants for equipment and infrastructure to help farmers increase their productivity whilst reducing pollution. The first round offered grants for items such as nutrient analysis equipment, slurry separators and low-emission spreaders
- Our Future Farming programme will reward farmers for sustainably managing their nutrients and reducing run off through the Environmental Land Management Schemes. The Sustainable Farming Incentive will include a nutrient management standard. The Local Nature Recovery Scheme and Landscape Recovery scheme will focus on habitat creation and recovery over different spatial scales, which will help to address nutrient pollution.

Tackling nutrient pollution: Improving site condition

1. To restore nature and set protected sites on a trajectory to recovery we need to address nutrient pollution. Our aim is to restore 75% of our one million hectares of terrestrial and freshwater protected sites to favourable condition by 2042.
2. The Nature Recovery Green Paper consultation launched on 16 March and closes on 11 May 2022. Government proposals aim to create a more strategic approach to better support site recovery measures. Responses to the consultation are very welcome and can be accessed [here](#).
3. Protected Site Strategies, introduced in the Environment Act, aim to put sites on a pathway to recovery. A strategy may be developed for any European site, Site of Special Scientific Interest or Marine Conservation Zone.
4. Natural England will launch the first five pilots later this spring. A number of the pilots will address nutrient pollution.

Environment Agency – our regulatory role

Helen Wakeham

Deputy Director for Water & Land Quality

The nutrients problem

- ➔ Nutrients are a major problem to achieving clean and plentiful waters
- ➔ Over many years, nutrient pollution (or nitrate and phosphate pollution in water) has caused the declining condition of internationally important and protected sites across England.
- ➔ There is too much phosphorus in rivers and too much nitrate in estuaries it kills wildlife and threatens the water we drink.
- ➔ There is no structured funding mechanism for tackling pollution from agriculture and controls are mostly through advice and voluntary.
- ➔ Water industry discharge permit limits can be made more stringent via improvement works if society wants to pay for it through water bills.

Our role in improving water quality

- ➔ We monitor all water categories (rivers, lakes, groundwater, estuarine and coastal waters) and include all measures of water quality (i.e. water chemistry, plant, invertebrates and fish)
- ➔ This tells us the level and type of nutrients (phosphorus and nitrogen) in the environment
- ➔ Modelling work shows us which sectors are contributing and in what proportion. The largest contributors are water industry discharges and agriculture, the extent of which varies by location.
- ➔ Environmental Quality Standards and other relevant targets are the parameters that are needed to be met to protect and enhance the water environment. For nutrients the standards are derived from the Water Framework Directive alongside targets set by Natural England as prerequisites for protected sites meeting favourable condition status.

Our role in improving water quality

- ➔ The EA can identify changes to water company discharge permits and secure implementation as part of the water industry 5-year price review investment period.
- ➔ 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.
- ➔ In the granting and onward review of permits, the EA is a competent authority under the Habitats Regulations. This requires us to assess the effects of such permits on European sites.

Wastewater

- ➔ From 2020 to 2025, water companies are investing £2.5 billion in measures that reduce nutrient pollution.
- ➔ For the 2025 to 2030 price review period, we will be setting more stringent nutrient targets needed to help restore protected sites
- ➔ Some WwTW permits may need to be varied to reflect the new requirements
- ➔ Water companies are working with partners to develop catchment approaches to reducing nutrients

Agriculture

- ➔ We have recruited additional officers to undertake farm inspections
- ➔ Officers will be working in catchments affected by nutrient neutrality, focusing on tackling pollution and offering advice
- ➔ We are an active partner in several programs and incentive schemes to help reduce nutrient pollution, for example ELMS, FrFW, CSF and land use strategies

A partnership approach(1)

- ⇒ We work with LPAs throughout the planning process to protect and improve the water environment. We are a competent authority under the Water Environment Regulations, and so this is where we focus our advice.
- ⇒ LPAs should engage with us and the water companies when developing their Local Plans to ensure that planned growth will be within the capacity of water infrastructure and the water environment. We help LPAs by supporting them develop the evidence base to demonstrate this (e.g. through Water Cycle Studies) and helping to identify any issues and work towards solutions.

A partnership approach (2)

- Nutrient Neutrality does not change this dynamic, and the EA can support LPAs in progressing development plans that are sustainable and in accordance with statutory environmental objectives for the water environment. However, the EA, NE and water companies approach these questions with different sets of responsibilities and drivers, which makes partnership working important.
- Your points of contact in your local EA Sustainable Places team will be able to discuss with you the specific advice and support they can provide.