

Natural England Standard Habitats Regulations Assessment (HRA)



1:0 About this standard

Background

As a public body Natural England has important statutory duties and responsibilities as defined in the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), which derive from the European Union's Habitats Directive and the Wild Birds Directive.

The Habitats Regulations require Natural England to '*secure compliance*' with the requirements of the Directives when specifically discharging its nature conservation functions and to have regard to the requirements of the Directives when exercising all of its other functions (Regulation 9).

Natural England becomes a 'competent authority' under the Habitats Regulations when the exercise of its functions will or may affect European Sites (for example classified SPAs and designated SACs¹). This will include, for example, the discharge of its roles to give consents and permissions on Sites of Special Scientific Interest (SSSIs) and to determine wildlife licence applications under a wide range of legislation. It will also include plans and projects which Natural England carries out or commissions itself, for example, when managing its National Nature Reserves, carrying out evidence-gathering and taking forward initiatives to increase or improve public access.

¹ These requirements also apply to those sites going through the formal designation process (i.e. candidate and proposed SACs, and potential SPAs), listed and proposed Wetlands of International Importance designated or proposed for their wetland features under the auspices of the Convention of Wetlands of International Importance (commonly referred to as 'Ramsar sites') and sites identified for or providing compensatory measures. These sites are afforded the same level of protection as SACs and SPAs as a matter of Government policy, and the assessment provisions of the Habitats Regulations are applied to them. A full definition of the term 'European Site' is given at regulation 8 of the Habitats Regulations.

In accordance with the Habitats Regulations, all competent authorities, including Natural England, **must** undertake a formal assessment of the implications of any new plans or projects that may be capable of affecting the designated interest features of European Sites before deciding whether to undertake, permit or authorise such a plan or project.

This assessment comprises several distinct stages which are conveniently and collectively described as a '**Habitats Regulations Assessment**' (or HRA). For all plans and projects which are not wholly directly connected with or necessary to the conservation management of the site's qualifying features, this will include formal *screening* for any Likely Significant Effects (either alone or in combination with other plans or projects). Where these effects cannot be excluded, assessing them in more detail through an *appropriate assessment* (AA) is required to ascertain that an adverse effect on the *integrity* of the site can be ruled out. Where such an adverse effect on the site cannot be ruled out, and no *alternative solutions* can be identified, then the project can only then proceed if there are *imperative reasons of over-riding public interest* and if the necessary *compensatory measures* can be secured.

This HRA process must be applied before a plan or project which may affect a European Site(s) can be lawfully undertaken or authorised. Government guidance (and for that matter European Commission guidance) on Habitats Regulations assessments² highlights that when assessing plans and projects under the Habitats Regulations it is best practice for competent authorities to clearly record and reason their decision-making process and their conclusions, taking into account the precautionary principle where there is reasonable science-based uncertainty. This approach is further supported in the case law that underpins their interpretation³.

Why is a Standard required?

A Standard on Habitats Regulations Assessment is required to ensure that Natural England:

² DEFRA, 2012. The Habitats and Wild Birds Directives in England and its seas - core guidance for developers, regulators & land/marine managers. Consultation Draft Version at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82706/habitats-simplify-guide-draft-20121211.pdf; EUROPEAN COMMISSION, 2000. Managing Natura 2000 Sites – the provisions of article 6 of the Habitats Directive. Available at http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

³For example, Case C-404/09 European Commission v Spain ('Alto Sil') [24 November 2011] and *Akester v. Wightlink and Defra* [2010] EWHC 232 (Admin)

- Operates a nationally consistent framework to delivering our statutory obligations in a way which is fair, transparent and legally compliant, whilst reflecting the guidance to regulators on these matters provided by Government⁴
- Carries out HRAs that are robust, professional, proportionate, evidence-based and reach a consistent level of quality
- Has the necessary procedure in place to ensure there is transparency and accountability in its decision-making.
- Takes management actions and decisions affecting European Sites which comply fully with the Habitats Regulations and contribute to the achievement of a site's conservation objectives and the favourable conservation status of its features in the UK.
- Gives confidence and clarity to our stakeholders and customers on our assessments and helps them to understand our actions and decisions.
- Can further its ambition as being seen as an exemplar to other competent authorities in the effective and robust undertaking of HRAs.

Who is this Standard for?

This Standard applies to all Natural England staff engaged in Habitats Regulations Assessments (HRAs) of plans or projects where Natural England is the competent authority, either undertaking or permitting plans or projects.

This Standard will therefore be particularly relevant to Natural England staff involved in applying the Habitats Regulations to their work.

General operational guidance for Natural England staff providing advice and representations on those HRAs undertaken by other competent authorities can be found elsewhere within the [Standard on responding to consultations on development](#).

⁴ See note 2 above

2:0 The Standard

The following principles and mandatory actions apply across Natural England's business where its work affects European Sites on both land and at sea. In particular, they will apply when Natural England is proposing to either undertake or permit a plan or project which may affect European Sites and is obliged to carry out a HRA to inform its decision.

1. Natural England will adopt the highest possible standards when it comes to discharging its duty to undertake HRAs

As England's statutory nature conservation adviser and a competent authority under the Habitats Regulations, Natural England will champion the importance of securing compliance with the Regulations in line with Government policy and guidance, whilst delivering natural environment outcomes and an efficient and constructive decision-making service to its customers.

Where Natural England is the competent authority under the Habitats Regulations when either undertaking or permitting plans or projects which may affect European Sites, it will be **mandatory** for a HRA to be undertaken by its staff and for this to be fully recorded and readily accessible.

Its HRAs will be clear, transparent, fully-reasoned and evidence-based with a comprehensible and logical narrative throughout.

Each HRA will firstly include an initial assessment of risk and the careful screening of the plan or project for likely significant effects if it is not wholly connected with or necessary to the management of the site for its European qualifying features. Secondly, if significant effects cannot be ruled out, the HRA will also include a detailed and evidence-led appropriate assessment in order to reach clear conclusions about the effects of the proposals on site integrity⁵. The HRA will clearly record the process and the justification for the judgements and decisions it makes.

In its role as both competent authority and a manager of land within European Sites, Natural England will take full account of any guidance provided by Government on the application of the Habitats Regulations to European Sites.

⁵ Site integrity has been defined as being 'the coherence of its ecological structure and function across its whole area which enables it to sustain the habitats, complex of habitats and/or population levels of the species for which it was classified (or designated)'.

2. Natural England staff will undertake a robust and evidence-based HRA for all relevant plans and projects which it either proposes to undertake or commission itself, or considers giving a consent, permission or licence to

Natural England will be the competent authority when discharging a number of its statutory functions and undertaking some of its core activities where European Sites might be affected. In such situations Natural England is required to produce HRAs as part of its own decision-making process. Table 1 below provides an indicative list of those Natural England functions and activities likely to be subject to the HRA process, together with the teams which would normally be responsible for making the necessary assessments.

Where Natural England itself proposes to undertake or commission plans or projects which are not directly connected with or necessary to the management of a European Site's qualifying interest features, it will always adopt a rigorous approach to first scoping and designing them to ensure the risk of likely significant effects on those sites are avoided. This will include the inclusion of appropriate avoidance measures. Appropriate assessments will always be carried out by Natural England where such risks cannot be excluded and will further consider the use of further mitigation measures to avoid adverse effects on site integrity.

Natural England will undertake its own HRAs in accordance with the precautionary principle embedded in the Habitats Regulations and supported in case law. This means that when there is sufficient scientific uncertainty about the likely effects of the proposals under consideration, the decision taken will be precautionary in nature to fully protect the qualifying features of European Sites.

Our HRAs will strive to be as clear, rigorous and robust as possible. They will demonstrate a high degree of technical credibility which is underpinned by the application of sound ecological principles and scientific evidence which conforms to our organisational evidence-based standards.

Our HRAs will be subject to appropriate quality management processes to validate the attainment of these standards and to benchmark our work against them. Further advice on quality assurance can be found in the [Quality Management Standard](#).

3. **We will adopt and implement a consistent approach to the undertaking of our HRAs**

Every individual HRA completed by staff on behalf of Natural England will comply with the following minimum standards:

- HRAs will always be documented and stored using our nationally-set template documents and in line with our supporting operational guidance to ensure there is a nationally consistent, compliant and transparent audit trail across the organisation. Importantly, these tools will guide and support staff through the HRA process and serve to expedite the assessment and decision-making process, contributing to the attainment of our customer service standards. HRAs will be made following pre-application advice and early dialogue with stakeholders over project proposals in line with our outcomes-based approach
- For the assessment of new applications for a consent, management agreement or the review of existing consents or permissions, regarding SSSIs which are also European Sites, our Regulation 24/63 HRA template should be used. Alternatively, Natural England's HRA Rapid Screening tool may be used where it is more proportionate to do so and where quicker assessment are possible for more straightforward cases.
- HRAs will be recorded as appropriate on our internal casework management systems and in accordance with their operating procedures (e.g. our casework tracker). Where necessary HRAs associated with high risk cases will also be recorded on the appropriate team's Risk and Issues Register in accordance with the criteria and principles set out in the [Risks and Issues Management Standard](#).
- The framework and context for our HRAs will always be provided by the latest published advice on [European Site Conservation Objectives](#)⁶, including any accompanying Supplementary Advice which may support them⁷.
- HRAs will be prioritised to ensure that sufficient time is allocated to meet the required quality standards and, according to the complexity of the case and the affected site, the necessity for further consultation and advice and

⁶ At the time of writing these are available for SACs and SPAs, but not Ramsar sites.

⁷ This will include 'conservation advice' for Marine Protected Areas issued by Natural England under either regulation 33, 35 or 37 of the Habitats Regulations (depending on the date of publication).

any likely risks arising to the organisation as a result. To this end the development of a HRA should be started as early as possible within the decision-making process.

- HRAs will be subject to informal external consultation with relevant stakeholders where it is considered appropriate to do so (for example, to further the gathering of information and evidence to inform an assessment).
- HRAs will be characterised by clearly-recorded conclusions and fully reasoned evidence-based judgements informed by specialist advice and opinion where required.
- The length and complexity of the HRA should always be appropriate and proportionate to the proposal being assessed.
- HRAs will in each case demonstrate how Natural England has considered or applied any avoidance and reduction ('mitigation') measures considered feasible and reasonable, and will contain a clear description of how any necessary measures have been relied upon to support the required judgement about adverse effects on site integrity.
- HRAs will be subject to the principles set out in the Natural England Quality Management Standard in accordance with the nature of any risk associated with them. The Team Leader is accountable for the overall quality management of their team's HRAs. For non-contentious or low/medium risk cases, self-assessment and peer review by at least one colleague with relevant expertise or knowledge of the site is recommended. Where a case is considered contentious or high risk, HRAs should also be reviewed by team managers and be informed by advice from technical specialists, where it is relevant to do so and as appropriate to the level of risk or uncertainty.
- The evidence we use for our HRAs will be based on the best available factual information in line with our Evidence standards. They will take into account the history, context and local circumstances of individual sites and their prevailing environmental condition at the time of each assessment. To help address any areas of uncertainty regarding the information we use, our HRAs will highlight the level of confidence that we attach to the evidence used and explain how this has influenced the views and decisions that we have reached.

4. We will deliver excellent customer service in the HRA process when we are assessing the impacts of proposed plans and projects submitted to us

Natural England will always strive to deliver its statutory requirement to undertake HRAs as part of its decision-making while maintaining its [customer service standard](#).

Where projects affecting European Sites are particularly complex, we will make it clear to applicants that the HRA process is an additional requirement placed on Natural England and as a result it may take longer than usual to determine their application. In these circumstances we will give an indication of when our decision will be made.

In line with Natural England's focus on an outcomes approach, staff will always work constructively with customers and applicants to seek solutions which allow projects to proceed as quickly as possible and our HRAs will be developed and adapted to take account of any solutions that result in voluntary modifications to the proposal. We will liaise with applicants during the HRA process, seeking further information from them where it is reasonable and necessary to do so, and informing them as to the likely timescales involved.

HRA will always be made available internally and externally upon written request. For this reason, while the assessment should be a technical, evidence-based documentation, the HRA should also, as far as is possible, be written in a way which can be readily understood by a non-technical audience and which at appropriate intervals clearly and simply articulates the justification for the professional expert judgements and statements made. A non-technical summary of the HRA should be provided where it is appropriate.

5. When undertaking our own Habitats Regulations Assessments, we will adhere to our own internal governance arrangements to ensure clear and transparent decision-making

Staff undertaking HRAs should be familiar with and abide by Part 7 of the current [Non-Financial Schedule of Delegation](#) relating to the approvals required to discharge Natural England's duties under the Habitats Regulations.

Based on these delegations, the team responsible for undertaking the HRA and determining the decision on the plan or project should ensure that;

- When Natural England is considering whether or not to give a SSSI consent or assent or to offer a management agreement, and a European

Site may be affected, a HRA should normally be completed by the site-responsible adviser in accordance with the principles in this Standard.

- Any proposed Conditioned or Refused SSSI Consents must be first submitted to a national protected sites advisor. Where a European Site is affected, a draft HRA must form part of this package.
- Where Natural England is being asked to permit or authorise other operations or activities which may affect a European Site, a HRA should normally be undertaken by the case-responsible adviser in consultation with the site-responsible adviser.
- Appropriate assessments of plans and projects likely to have a significant effect on a European Site must be signed-off by the appropriate Team Leader, in consultation with the appropriate Principal Specialist/ Adviser and Legal Adviser, where the case is considered high risk.
- Where Natural England is itself proposing to undertake a plan or project which may affect a European Site, the officer responsible for the project must undertake the HRA. However there must be consultation and close liaison with a site-responsible adviser, who in this case must also sign-off the conclusion reached by the HRA. This is needed to ensure there is added transparency in the assessment-making process of Natural England's own proposals.

Wherever a HRA is not being undertaken by a site-responsible Adviser, the assessment must always be subject to scrutiny and advice from that Adviser. Adequate time for this process should always be allowed by the assessment-making Team. The advice of the site-responsible Adviser should always be clearly incorporated into the HRA in these circumstances.

The Leader of the assessment-making Team will be responsible for ensuring that HRAs undertaken by their team are completed as necessary and in accordance with this Standard. The relevant Directors will remain accountable for the overall quality of the HRAs produced by its teams and for ensuring the necessary consultation processes with relevant colleagues in other teams is in place and working effectively.

Where a HRA undertaken as required by Regulation 24 is unable to conclude that there will not be an adverse effect on site integrity, Natural England is unable to give its consent or permission to the plan or project pending an appeal to the

Secretary of State. Such decisions must be made by the relevant Team Leader in consultation with Principal and Senior Advisers and Principal Legal Advisers.

In the unusual situation where a HRA undertaken under Regulation 63 of a plan or project being either proposed or determined by Natural England is unable to conclude that there will not be an adverse effect on the integrity of a European Site, and the assessment-making Team is still minded to proceed with or agree to that project in its current form, the decision must be made by the appropriate Director(s) in consultation with Head of Legal. However the case should first be referred to Natural England's National High Risk Casework Panel for further scrutiny, consideration and advice. To this end, the decision taking team should provide further details to the Panel, including the draft HRA, details of alternative solutions and the grounds for any imperative over-riding reasons of public interest associated with the project. It should also detail the options for securing the necessary compensatory measures which would be subject to the approval of the Secretary of State. Further advice and risk analysis should be provided by the Protected Sites team.

6. We will continually develop and maintain the skills, experience and expertise of our staff to support the undertaking of high quality HRAs

Natural England will, support the undertaking of HRAs across the business and ensure the organisation's suite of supporting internal operational guidance on the Habitats Regulations is accessible to staff and up-to-date, incorporating best practice, lessons-learnt, staff feedback and the latest key legal judgements on the interpretation of the Regulations.

Natural England HRAs will be undertaken or overseen by experienced advisers who will possess a good working understanding and knowledge of the interest features of their European Sites and possess at least Practitioner-level skills in understanding and undertaking HRAs.

As a formal part of their learning and development, all Natural England staff regularly engaged in HRAs, including those with approval or decision-making responsibility, should ensure they attain the appropriate level of skills and knowledge. Natural England's internal learning and development programme will therefore enable and facilitate this through the provision of training opportunities and learning events focused on European Sites and the Habitats Regulations.

To further support and assist colleagues and to further Natural England's aim of being seen as an exemplar in HRAs, we will develop an internal expert-level

network of Habitats Regulations Practitioners and Specialists from across the full range of our functions. Focused on Protected Sites and our application of the Regulations to them, this will seek to facilitate internal thinking and debate, review emerging case law, pool intelligence and highlight critical issues for resolution and wider dissemination within Natural England.

Ultimately, the network will contribute to maintaining Natural England's capacity to deliver high quality specialist advice to support the successful application of the Regulations. The network will be supported by regular intelligence-gathering by our national specialists through national and international networks. Dissemination of new advice and knowledge will be embedded within internal operational guidance.

Externally, we will always share best practice on HRAs with, and learn from, our sister bodies in Wales, Scotland and Northern Ireland, other public bodies, Government Departments, and from other delivery bodies in Europe.

Table 1: Examples of Natural England decision-making functions which may affect European Sites and are therefore likely to require Habitats Regulations Assessment (not exhaustive)

Natural England function or activity	Relevant assessment provisions of the Habitats Regulations	Teams with lead responsibility for undertaking the HRA
Determination of new applications for SSSI consent under s28E of 1981 Wildlife and Countryside Act (as amended) to carry out or permit operations	Regulation 24	Area Teams with national team advice and support as appropriate
Determination of new applications for SSSI assent ⁸ under s28H of 1981 Wildlife and Countryside Act (as amended) to carry out or permit operations	Regulation 63	Area Teams with national team advice and support as appropriate
Consideration of whether or not to affirm, modify or withdraw an existing SSSI s28E consent under regulation 25 of the Habitats Regulations	Regulation 24	Area Teams with national team advice and support as appropriate
Consideration of whether or not to affirm, modify or withdraw another existing Natural England permission or licence under regulation 65 of the Habitats Regulations	Regulation 63	Area Teams with national team advice and support as appropriate

⁸ In line with regulation 63 of the Habitats Regulations, where a competent authority proposes to ‘undertake’ a plan or project in the exercise of their statutory functions but in doing so may affect a European Site, they should normally complete their own HRA prior to applying for Natural England’s assent. See the [SSSI Operational Guidance](#) for further guidance.

Consideration of whether or not to give a SSSI permission for activities contained in or related to a management agreement, a management scheme or a management notice	Regulation 24	Area Teams with national team advice and support as appropriate
Determination of species licence applications, for example those required under the 1981 Wildlife and Countryside Act (as amended) and the Habitats Regulations 2017	Regulation 63	Area Teams with national team advice and support as appropriate
Design and implementation of public access and engagement projects, such as statutory coastal access schemes and management of Access Land	Regulation 63	Area Teams and Operations with national team advice and support as appropriate
Design, implementation and permitting of activities undertaken on its National Nature Reserve (NNR) Estate	Regulation 63	Area Teams, Operations with national team advice and support as appropriate
Design and commissioning of 'intrusive' survey, monitoring and research activity	Regulation 63	Area Teams, Evidence Services Team, Specialist Services Team

Quick reference

Type of Standard	Operational standard.
Purpose:	Guidance on the undertaking of Natural England's Habitats Regulations Assessments
Owner(s):	Caroline Cotterell (Director, Strategy Implementation)
Sign-off:	Samantha Somers (Manager of the Strategy to Delivery Team) Christina Cork (Principle Specialist)
Publication:	Standards library: internal version
Review date:	April 2020
Issue Number	Version 1.4

Document Amendment Record

Issue	Amendment detail	Author	Date
0.1	First draft in template	Steve Clifton / Phil Eckersley	14.12.12
0.2	Layout amendments Hyperlinks and section 5 added	Fiona Markwick Steve Clifton	03.01.13 31.01.13
0.3	Amendments following comments from R Hoskin, A Windrum, A Kimpton, E Bridges, F Markwick, R Broadbent, T Lewis and H MacVicker	Steve Clifton	15.03.13
0.4	Revised with additional hyperlinks	Steve Clifton	20.01.13
0.5	Amendments from Kay Shuard and David Harrison added	Steve Clifton	31.03.13
1.0	Comments from A Craig and J Ward incorporated, review date amended.	Steve Clifton/Fiona Markwick	11.04.13
Final V1	Published version	KH	11.04.13
Final V1	Version updated into 2014 template. No changes to content	KH	26.08.15
1.1	References to the 2010 Regulations updated following consolidation of the regulations on 30.11.2017; minor amendments to content made; team names updated; review date updated	Steve Clifton	01.12.17
1.2	Amended so as to be compliant with the operability changes to be made to the Habitats Regulations 2017 and in light of changes to case law	Richard Leishman, Steve Clifton	05.11.18
1.3	Sign off	Samantha Somers Christina Cork	19.03.19
1.4	Reformatting of text, and update of the Quick Reference and Document Amendment Record	Richard Leishman	02.04.19

