

Date: 28 February 2022
Our ref: DAS UDS 7945
Your ref: Emerging Plan for Consultation and Comment (West Country Regional Water Resource Plan)



BY EMAIL ONLY

West Country Water Resources Group (WCWRG)
By Email only -

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Dear West Country Water Resources Group,

Discretionary Advice Service (Charged Advice) DAS/UDS 7945

Thank you for your consultation on the above received in January 2022 . This advice is being provided as part of Natural England's Discretionary Advice Service, and in accordance with the Quotation and Agreement dated October 2020. Our response below aligns with the advice that we have provided throughout the process of developing the Regional Water Resources Plan (hereafter referred to as 'the Regional Plan'), starting with the Environmental Ambition Workshop [for Regional Water Resource Planning] in January 2020.

Documents reviewed:

- Emerging Plan for Consultation and Comment January 2022

Natural England's key comments

We are pleased that the high-level environmental objectives set out in DEFRA's 25 year plan are referenced throughout the document, however, we remain concerned that there is little, if any, reference to the EA document '*Long-term Water Resources Environmental Destination: Guidance for Regional Groups and Water Companies, October 2020, Version 1*', which provides more bespoke requirements for the process. Whilst recognising that the implementation of this guidance is very complex in practice, especially given the timelines set for the production of the first Regional Plan, we advise that further work is done to meet the challenges set out in the aforementioned EA guidance before submission of the final draft plan. We acknowledge that such work will need to rely to some extent on further assessment and analysis within PR24. That said, we expect that the 1st Regional Plan addresses the requirements of HRA and SEA as far as possible based on information reasonably available. The Natural England paper '*Regional Water Resource Planning and the natural environment, January 2022*', provided at Annexes 1 and 2 to this letter, provides further information on this matter.

In addition to the National position referred to above, Natural England in SW has the following comments:

Meeting the needs of HRA, SEA and the Government's 25 Year Plan

Whilst the draft Regional Plan does acknowledge, at a very high level, the responsibilities on the companies in relation to the environment as part of the process, there is little information on exactly what is required, where and when. Before the Regional Plan is finalised it should be critically

reviewed against the aforementioned guidance documents to determine if the proposed remediation actions are complete compared to the current evidence base. For example, we note the lack of specific actions to restore the flow requirements of the River Camel SAC.

Assessing future water resource needs for environmental restoration

We note that the future supply-demand scenarios already indicate a challenging future, based on possible increases in demand, climate change and environmental improvements. However, we nevertheless feel that more transparent and systematic assessment of future environmental requirements is undertaken. The EA's National Framework modelling is very focused on river flows and major groundwater sources and we doubt that wider wetland restoration is adequately catered for (eg. the peatlands of the Somerset Levels and Moors).

The Government has committed to restore 280,000 ha of peatland by 2050, and where restoration is not possible, to develop more responsible management techniques. Both of these commitments will require sufficient water to re-wet and maintain a new water balance for dry and degraded peatlands. To support our understanding of new measures for peatlands on water systems and the environment, the UKCEH is conducting a detailed analysis to quantify the relative roles of surface conditions and meteorology on evapotranspiration and its influence on peatland water balance. Following steers from the Lowland Agricultural Peat Task Force, Defra will be exploring the case for new hydrological modelling to calculate water demand for peatlands. We encourage the WCWRG to scope into your long-term environmental water resource budgets, the potential water requirements for peatlands in your region and to engage with new data once it becomes available also working relevant stakeholders on integrating this into your water supply calculations. On the Somerset peatlands in particular, we acknowledge the complex interaction between peatland restoration and existing flood risk and water level management, alongside abstraction, and, in the context of the Regional Plan, we are keen to help facilitate a conversation around this with the various Competent Authorities. In the first instance, providing estimates of additional water resource requirements to rewet peat, under different site management scenarios, seems like a sensible way forward.

In addition to the above we advise that the NF modelling river flow targets are compared to the specific requirements of the designated nature conservation sites in the Region, and that wider water resource needs to allow nature recovery outside of these sites is estimated. It is conceivable that this process may actually reveal some locations where river flow targets could be relaxed.

Building environmental resilience

Whilst reductions in volumetric water abstraction are likely to be critical to meet objectives at certain sites, it also seems reasonable to assume that reduction in abstraction volume may not be feasible across all Water Bodies currently failing flow targets. Improving the ecological resilience of such sites, by helping to reinstate more naturally functioning processes is likely to bring significant environmental benefits. We advise that this avenue is considered, for some locations, in parallel to volumetric abstraction reduction.

The advice provided in this letter has been through Natural England's Quality Assurance process. The advice provided within the Discretionary Advice Service is the professional advice of the Natural England adviser named below. It is the best advice that can be given based on the information provided so far. Its quality and detail is dependent upon the quality and depth of the information which has been provided. It does not constitute a statutory response or decision, which will be made by Natural England acting corporately in its role as statutory consultee to the competent authority after an application has been submitted. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by Natural England in due course. The final judgement on any proposals by Natural England is reserved until an application is made and will be made on the information then available, including any modifications to the proposal made after receipt of discretionary advice. All pre-application advice is subject to review and revision in the light of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy,

guidance or law. Natural England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Natural England.

We would welcome any comments you might have about our service.

commercialservices@naturalengland.org.uk

We look forward to working further with the WCWRG in the refinement of the Regional Plan.

Yours sincerely

A handwritten signature in black ink that reads "MR Taylor". The signature is written in a cursive style and is underlined with a single horizontal line.

Mark Taylor
Senior Water Adviser (Wessex)

A handwritten signature in black ink that reads "J. Williams". The signature is written in a cursive style.

Jay Williams
Lead Water Adviser (Wessex)

Annex. 1 Regional Water Resource Planning and the natural environment January 2022

Natural England has prepared this paper as a non-exhaustive commentary on the interaction between the Regional Water Resource Planning process and key English legislation, emerging legislation and policy relating to the natural environment and Natural England's role in relation to the same. The paper is for distribution to the Environment Agency and Regional Water Resource Groups (hereafter referred to as 'Regional Groups').

Natural England sees the following as the key interactions between Regional Water Resource Planning (including setting a long-term environmental destination) and nature conservation legislation/policy:

- As the Environment Agency's National Framework for Water acknowledges, the process of Regional Water Resource Planning must comply with Habitats Regulations Assessment (HRA) legislation. As such, the water companies forming Regional Groups (jointly and severally the 'competent authority' for the purposes of HRA) must:
 - Carry out an HRA of the implications for European site(s) of each individual water transfer project as this comes forward during the RAPID process.
 - Carry out an HRA of the implications for European site(s) of each regional plan (including any planned water transfers integrated into such plans); and
- HRA is a two-stage process that considers: (i) the likely significant effects (LSE) of plans or projects (either alone or in combination with other plans or projects) for European site(s); and (ii) if LSE cannot be excluded, any adverse effects from the plan or project (either alone or in combination with other plans or projects) on the integrity (AEOI) of European site(s). Plans or projects may not be permitted unless AEOI can be ruled out with certainty (beyond reasonable scientific doubt) – unless there are imperative reasons of overriding public interest (IROPI) and the legal tests in HRA legislation for an IROPI derogation are satisfied.
- When developing Regional Plans and deciding on water transfers, the water companies forming Regional Groups (jointly and severally the 'competent authority' for the purposes of the Habitats Regulations) should also consider their wider duties under Regulations 9(1) and 9(3) of the Habitats Regulations.
- The Wildlife and Countryside Act (1981) contains a general duty on authorities (including statutory undertakers) to further the conservation of Sites of Special Scientific Interest (SSSIs).
- The Marine and Coastal Access Act (2009) contains a general duty on public authorities (including statutory undertakers) in respect of the conservation objectives of Marine Conservation Zones (MCZs).
- The Natural Environments and Rural Communities Act (2006) places a general duty on public authorities (including statutory undertakers) to conserve biodiversity.
- The Government's 25 Year Environment Plan and the forthcoming Environment Bill contain policy and emerging legislation that are relevant to the Regional Water Resources Planning process.

This note has primarily been written with regard to the requirements for England only, however, Natural Resources Wales (NRW) are the statutory nature conservation body for Wales. The following section is also applicable to Wales:

- Regional Water Resource Planning and Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations (2017) (Habitats Regulations)
- 2.1 General duties under the Habitats Regulations

For information on your other environmental duties with regard to Welsh legislation refer to the Water Resources Management Plan guidelines (including supplementary guidance), Welsh Government's guidance and guiding principles for water resources planning, NRW's information on protected species and areas of land, industry guidance (such as UKWIR environmental assessment for water resource planning), or contact WREPP@cyfoethnaturiolcymru.gov.uk. More detail on the above is provided in Annex 2 to this note. Please note, throughout Annex 2, the document mentions what you 'should do/look at/consider as a Regional Group or a water

company forming a Regional Group'. This is referring to instances where an authority (including statutory undertakers) has a general duty under the legislation being discussed and therefore relates to what water companies forming regional groups need to consider as part of their statutory duties.

Annex 2

1.0 Regional Water Resource Planning and Habitats Regulations Assessment (HRA) under the Conservation of Habitats and Species Regulations (2017) (Habitats Regulations)

- **Regional plans, water transfers and HRA:** As set out above, regional plans and water transfers must be subject to HRA of their implications for European site(s). Where water transfers are integrated into regional plans they will be assessed as part of the HRA for that regional plan. However, water transfers will also be subject to HRA as they come forward on an individual project basis, including the strategic resource options being prepared as part of RAPID.

- **Competent authority:** As the competent authority for the purposes of the Habitats Regulations, the water companies forming Regional Groups will be jointly and severally responsible for carrying out HRAs.

- **HRA is a two-stage process:** (i) which considers whether the plan or project (either alone or in combination with other projects or plans), will have likely significant effects (LSE) on any European sites(s); and (ii) if LSE cannot be excluded, an Appropriate Assessment (AA) must be carried out of whether the plan or project (either alone or in combination with other projects or plans), will have an adverse effect on the integrity (AEOI) of any European site(s). There must be certainty about the absence of AEOI and if AEOI cannot be ruled out beyond reasonable scientific doubt, the plan or project may not be permitted, unless a derogation can be granted for imperative reasons of overriding public interest (IROPI). IROPI derogations must satisfy the legal tests set out in HRA legislation, including the requirement to provide compensatory measures. Please see Defra's and Welsh Gov/joint guidance 'Habitats regulations assessments: protecting a European site'¹ for more information and guidance on carrying out an HRA.

- **HRAs should also consider impacts on any land that is outside, but functionally linked to, designated sites.** The indirect adverse effect which a deterioration in the quality or function of functionally linked land could have on a protected site must be scrutinised in the HRA in the same way as direct effects or acts carried out on the protected site itself. 'Functionally linked land' means those areas of habitat outside of the boundary of a European site(s) that might fulfil functions "...in terms of supporting the populations for which the state was designated or classified"²

. An example of functionally linked land would be, in the context of European sites, the land outside of a designated site that a designated species uses for feeding and that without that land, the range of species/assemblages for which the sites are designated might not be there.

- **Natural England and Natural Resources Wales are the statutory nature conservation body for the purposes of HRA** and must be formally consulted on the regional plans/water transfers if there are likely significant effects on a European site(s) and therefore an Appropriate Assessment is required. Natural England and Natural Resources Wales role as statutory consultees is to offer ecological advice to the regional group so that the water companies forming Regional Groups (jointly and severally the 'competent authority') can apply the relevant legal tests and determine whether to adopt and undertake the regional plan/water transfer under the HRA legislation.

- **Natural England and Natural Resources Wales strongly recommend that Regional Groups engage with us early in the HRA process, to agree the approach and reduce the risk of holding up the plan/water transfer process.**

2.0 Regional Water Resources Planning and general duties under natural environment legislation

Regional Groups should have regard to the below general duties when carrying out water resources planning, including preparing/adopting regional plans and proposing water transfers.

2.1 General duties under the Habitats Regulations

The Habitats Regulations places a general duty on water companies as 'competent authorities' when carrying out their functions.

The duty to protect, conserve and restore European sites must be considered in relation to regional plans and water transfers, including those which do not require an appropriate assessment (discussed in section 1 above).

The provisions in Regulation 9(1) and 9(3) of the Habitats Regulations broadly amount to a legal duty on water companies to: (i) in relation to the marine area, exercise their functions which are relevant to nature conservation so as to secure compliance with 'the requirements of the Directives'; and (ii) when exercising functions, to have regard to 'the requirements of the Directives' so far as they may be affected by the exercise of those functions.

'The requirements of the Directives' means the requirements of the Habitats and Birds Directives, which (following Regulation 3A(3)) is to be construed as if the objectives of the Directives also included the site management objectives referred to in Regulation 16A(2) of the Habitats Regulations. Article 6(2) of the Habitats Directive broadly requires the taking of appropriate steps to avoid the deterioration of European sites. Regulation 16A(2) broadly speaking sets out an objective to, so far as is proportionate, maintain at or where appropriate restore sites to Favourable Conservation Status (FCS).

This broadly translates as a legal duty on water companies to: (i) in relation to the marine area, carry out regional planning and water transfers in a way that avoids the deterioration of European sites and (so far as is proportionate) maintains or restores them to FCS; and (ii) in all other cases when carrying out regional planning and water transfers, to have regard to the requirement to avoid the deterioration of European sites and (so far as is proportionate) maintain or restore them to FCS³.

As a result of the above, if there are European Sites within a water company's area which may have limited restoration potential because of the trajectory of water supply balances, then they should be considered in the overall long-term supply balance calculations, even if there isn't a direct impact on these sites as result of a plan's proposals.

2.2 General duty under the Wildlife and Countryside Act 1981

- Section 28G of the Wildlife and Countryside Act 1981 places a duty on public authorities (including statutory undertakers such as water companies) to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of Sites of Special Scientific Interest (SSSIs) and build this into your long-term environmental destination calculations.
- For more information on how your plans should take account of SSSIs, please see the Government's on 'Sites of special scientific interest: public body responsibilities'.⁴
- The National Framework for Water's 'Long-Term Water Resources Environmental Destination' guidance expects the regional groups to consider SSSIs as they develop their regional plans and build this into their long-term supply demand balance calculations.
- Riverine SSSIs will have flow targets attributed them under the Common Standards Monitoring Guidance (CSMG), these are different from Water Framework Directive (WFD) targets and will need to be reached in order to allow sites to reach favourable condition. While these targets have been set for rivers, there are none such in relation to water resources for other water dependant SSSIs (e.g. wetlands, ditches, lakes). As such, for sites that fit into the latter, it will be difficult for regional groups to develop water budgets and use these in their long-term environmental destination assessments and bespoke, local discussions may be required for these.
- There may be specific options selected within the regional plans that, when implemented, may require assent/consent under the Wildlife and Countryside Act 1981. See the

Government's advice on consent 'Sites of special scientific interest: managing your land'⁵ and assent 'Sites of special scientific interest: public body responsibilities'.⁶

2.3 General duty under the Marine and Coastal Access Act (2009)

- Section 125 of the Marine and Coastal Access Act (MCAA) (2009) places a general duty on public authorities (including statutory undertakers) to exercise their functions in a way that best furthers the conservation objectives of a Marine Conservation Zone (MCZ) or, where that is not possible, least hinders them.
- Regarding implementation of regional plans, it is worth noting that there is also an obligation to notify Natural England where a public authority's function might significantly hinder the MCZ's conservation objectives or significantly affect an MCZ.
- the impacts of taking more water out of a freshwater system which could result in changes to hydrological function downstream in coastal and marine systems.

2.4 Biodiversity duty under the Natural Environments and Rural communities Act (2006)

- Under Section 40 of the Natural Environment and Rural Communities Act 2006, every public authority (including statutory undertakers) must in the exercise of its functions have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity in this context could include restoring or enhancing a population or habitat.⁷
- Please see Defra's guidance on the Natural Environment for more information on the general biodiversity duty on public authorities.⁸
- You should consider the above when carrying out regional water planning activities.
- You should take legal advice on the practical implications of this on the development of your environmental destination work.

3.0 Regional Water Resources Planning and natural environment emerging legislation and policy

Regional Groups should have regard to the below emerging legislation and policy when carrying out water resources planning, including preparing/adopting regional plans and permitting water transfers.

3.1 The 25 Year Environment Plan

- The Defra 25 Year Environment Plan states: "We will achieve a growing and resilient network of land, water and sea that is richer in plants and wildlife this includes[...] creating or restoring 500,000 hectares of wildlife-rich habitat outside the protected site network, focusing on priority habitats as part of a wider set of land management changes providing extensive benefits."
- The Defra 25 Year Environment Plan has ambitions to achieve a clean and plentiful water supply including "improving at least three quarters of our waters to be close to their natural state as soon as is practicable by:
 - o Reducing the damaging abstraction of water from rivers and groundwater, ensuring that by 2021 the proportion of water bodies with enough water to support environmental standards increases from 82% to 90% for surface water bodies and from 72% to 77% for groundwater bodies.
 - o Reaching or exceeding objectives for rivers, lakes, coastal and ground waters that are specially protected, whether for biodiversity or drinking water as per our River Basin Management Plans.
- Defra's 25 Year Environment Plan encourages the growth in natural capital and measurement of ecosystem services. It states that "over coming years the UK intends to use a 'natural capital' approach as a tool to help us make key choices and long-term decisions. For further information on natural capital, please see the information on Enabling a Natural Capital Approach (ENCA).⁹

3.2 Environment Act

The Environment Act (2021) received royal assent on the 9th November 2021. Over the next few months and years, the secondary legislation and guidance required by the Act will be drawn up and come into force. Not all the components of the Act will come into force immediately after Royal Assent, for example Biodiversity Net Gain (BNG) will follow 2 years later. Targets will be confirmed in October 2022 following a public consultation.

Legally binding targets will be established for air particulate matter and at least one in each of the 4 priority areas: air quality, water, biodiversity and waste and resource efficiency. There will also be a target to halt decline in species abundance. There are powers for the Secretary of State (SoS) to set targets in relation to people's enjoyment of the natural environment.

The Environment Act will contribute to the recovery of our natural environment and improving biodiversity. It will enable localised action to be taken across the country, directing investment in nature where it is most needed.

3.3 Nature recovery and net-gain

- Local Nature Recovery Strategies (LNRSs) are defined by Defra as "Local Nature Recovery Strategies are a new, England-wide system of spatial strategies that will establish priorities and map proposals for specific actions to drive nature's recovery and provide wider environmental benefits. The requirement for there to be Local Nature Recovery Strategies, what they are and how they should generally work will be established by the Environment Bill once it completes its current passage through Parliament"¹⁰
- The Environment Act includes the provision for drawing up LNRSs and these may prove to have relevance to the regional plans and SROs.
- Natural England encourage that the regional plans look to identify innovative ways, through nature-based solutions, to enhance and restore catchments, from the agricultural to urban landscape, to help improve infiltration and hydrological function. The plans should look at how catchment-based solutions could help to weave hydrological and environmental resilience into systems, reduce pressure from abstraction and perhaps even secure deployable output.

3.4 Climate change

- The Defra 25 Year Environment Plan aspires to "take all possible action to mitigate climate change, while adapting to reduce its impact".
- Inherent in the Defra's ambition above is the need to make wildlife more resilient to climate change. There are two key opportunities linked to climate change for wildlife for drought plans:
 - o Reduce the impacts of abstraction and water supply infrastructure from current levels in drought and leave more water to enable wildlife to be more resilience to climate change in its current location
 - o To reduce impacts of abstraction and water supply infrastructure from current levels and leave more water to enable wildlife to adapt to climate change and move, in particular for those freshwater species to avoid saline intrusion by migrating upstream. - Natural England considers climate change from two perspectives:
 - o Climate change adaptation: preparing for and dealing with the consequences of climate change, and;
 - o Climate change mitigation: minimising climate change by reducing greenhouse gas emissions (e.g. re-establish carbon sinks) - Natural England has developed the 'Climate Change Adaptation Manual (volume 2)¹¹' and advise that the regional groups use this manual to test how climate change resilient their plans are, based on the relative climate change vulnerabilities of priority habitats within their region, and identify ways in which these can be adapted to reduce pressure on species and habitats as we move an unpredictable climate.
- Further to this, Natural England has also developed the 'National Biodiversity Climate

Change Vulnerability Assessment (England)¹² GIS model which assesses the vulnerability of priority habitats to climate change. This is based on a climate change adaptation principle for biodiversity. This tool will help you to identify why an area of priority habitat is vulnerable to climate change and the interventions you could take to provide the most impactful increases in climate change resilience building.

- Your plan could consider the impact of climate change beyond the availability of water. You should review the cumulative pressures that could affect habitats (protected sites, priority habitats). For example, the link between climate change and eutrophication and how reduced flows/volumes could result in more significant impacts from water pollution.

Disclaimer: this paper is a commentary from Natural England and Natural Resources Wales (specifically on the Habitats Regulations for the latter) on the issues and does not constitute legal advice. Water companies/Regional Groups should obtain their own legal advice about the application of the Habitats Regulations and any other applicable laws, emerging law or policy the implications of the same for the Regional Water Resources Planning process. This paper does not fetter Natural England's or Natural Resources Wales's discretion to provide statutory consultation advice in relation to HRA or any other matter.

1. <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>
2. <http://publications.naturalengland.org.uk/publication/6087702630891520>
3. Note that consideration of the text in section 2.1 is not required for any European site subject to an appropriate assessment for a given proposal, as this appropriate assessment must consider whether what is being proposed prevents or disrupts restoration work, or the potential for future restoration, as reflected in the sites conservation objectives, i.e. the requirements set out are met by the appropriate assessment.
4. <https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities>
5. <https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest#sssi-condition-and-assessment>
6. <https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities>
7. <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>
8. <https://www.gov.uk/guidance/natural-environment#biodiversity-geodiversity-and-ecosystems>
9. <https://www.gov.uk/guidance/enabling-a-natural-capital-approach-enca>
10. <https://consult.defra.gov.uk/land-use/local-nature-recovery-strategies/>
11. <http://publications.naturalengland.org.uk/publication/5629923804839936>
12. <https://data.gov.uk/dataset/4754c2ba-ec60-4356-98ae-cbfaaa30a43e/national-biodiversity-climate-change-vulnerability-assessment-england>