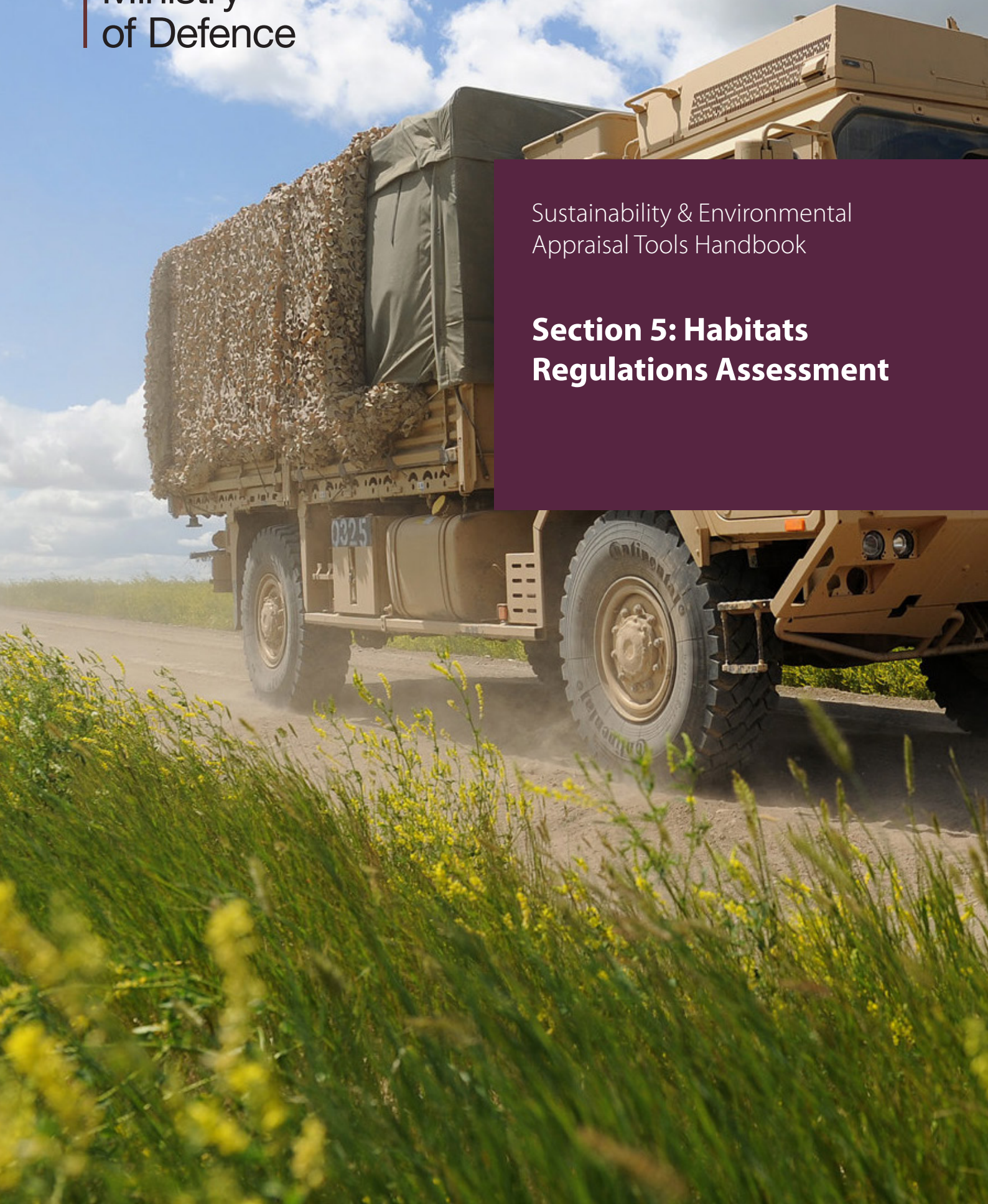




Ministry
of Defence

Sustainability & Environmental
Appraisal Tools Handbook

Section 5: Habitats Regulations Assessment



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How to use this Guidance

This section provides practical guidance for undertaking Habitats Regulations Assessment (HRA). The structure of this guidance is summarised below.

[Chapter 5.1:](#) Introduces the legislation and circumstances where Habitats Regulation Assessment may be needed.

[Chapter 5.2:](#) Illustrates the stages that have to be followed with the assistance of a MOD Competent individual.

[Chapter 5.3:](#) Highlights key guidance documents.

Who is the guidance aimed at?

Chapter [5.1](#) of this section of the Handbook provides a basic level of guidance to meet the requirements for legal compliance within MOD and is targeted at MOD staff and contractors involved in project management:

- Infrastructure development and disposal programme and project management
- Changes in estate management of sites with relevant designations
- Changes in defence activities including training, test and evaluation and operational activities, where these might affect sites with relevant designations.

Chapter [5.2](#) provides more detailed practitioners guidance on the HRA process and is aimed at DIO Ecologists and consultants.

For HRA of defence activities in the marine environment, refer also to the Royal Navy's Environmental Protection Guidelines (Maritime) and Maritime Environmental and Sustainability Assessment Tools (MESAT)

Box 5.1 – HRA Guidance and Policy

HRA Guidance and Implementation:

DIO Environmental Support and Compliance: DIO-EcologyTeam@mod.gov.uk

HRA Policy

[JSP 850 – Infrastructure and Estate Policy](#)

[FMC Capability Infrastructure](#)

MOD is always seeking to learn from good practice to improve the ways that guidance is provided. Please email any **suggestions or feedback** to DIO-EcologyTeam@mod.gov.uk

5.1 What is Habitats Regulations Assessment (HRA)?

- 5.1.1 “Habitats Regulations Assessment” (HRA) refers to an iterative series of assessments, including Judgement of Likely Significant Effect (JLSE) and Appropriate Assessment (AA), that may be required under the EC ‘Habitats’ Directive (92/43/EEC) and the UK ‘Habitats’ Regulations (see [Box 5.2](#)) for any plan or project that could affect internationally important sites for nature conservation. A list of the types and descriptions of these internationally important sites is given in [5.1.6](#).
- 5.1.2 HRA differs from SEA and EIA in that it only considers effects on the nature conservation objectives and features for which the site was designated, not all environmental consequences. EIAs are usually produced to accompany town and country planning or other licensing applications by the Applicant, but HRAs are produced by a decision-making (or ‘competent’) authority.
- 5.1.3 The legislation does not specify how an HRA should be undertaken, but it should be appropriate and sufficient. For some plans or projects, a simple and brief assessment may be appropriate. Other plans and projects may require comprehensive scientific investigation before a conclusion can be reached. The phases of assessment are summarised in [Figure 5.1](#) and the outline details of undertaking each stage is given in [Chapter 5.2](#). A list of the wide variety of further guidance is available in [Chapter 5.3](#).

Box 5.2. Statutory Requirements for HRA within MOD

The EC ‘Habitats’ Directive

European Community (EC) Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (92/43/EEC).

Provides for the designation and protection of SACs and the protection of SPAs.

- Interpreted in England and Wales by: [The Conservation of Habitats and Species Regulations 2017](#). SI 2017/1012
- Interpreted in Scotland by: [The Conservation \(Natural Habitats &c.\) Regulations 1994](#) (as amended). SI 1994 No. 2716
- Interpreted in Northern Ireland by: [The Conservation \(Nature, Habitats etc\) Regulations 1995](#) (as amended). Statutory Rule 1995 No. 380
- Interpreted in UK offshore waters by [The Conservation of Offshore Marine Habitats and Species Regulations 2017](#):. SI /2017 No. 1013

The EC Wild Birds Directive

EC Directive on the Conservation of Wild Birds (2009/147/EC).

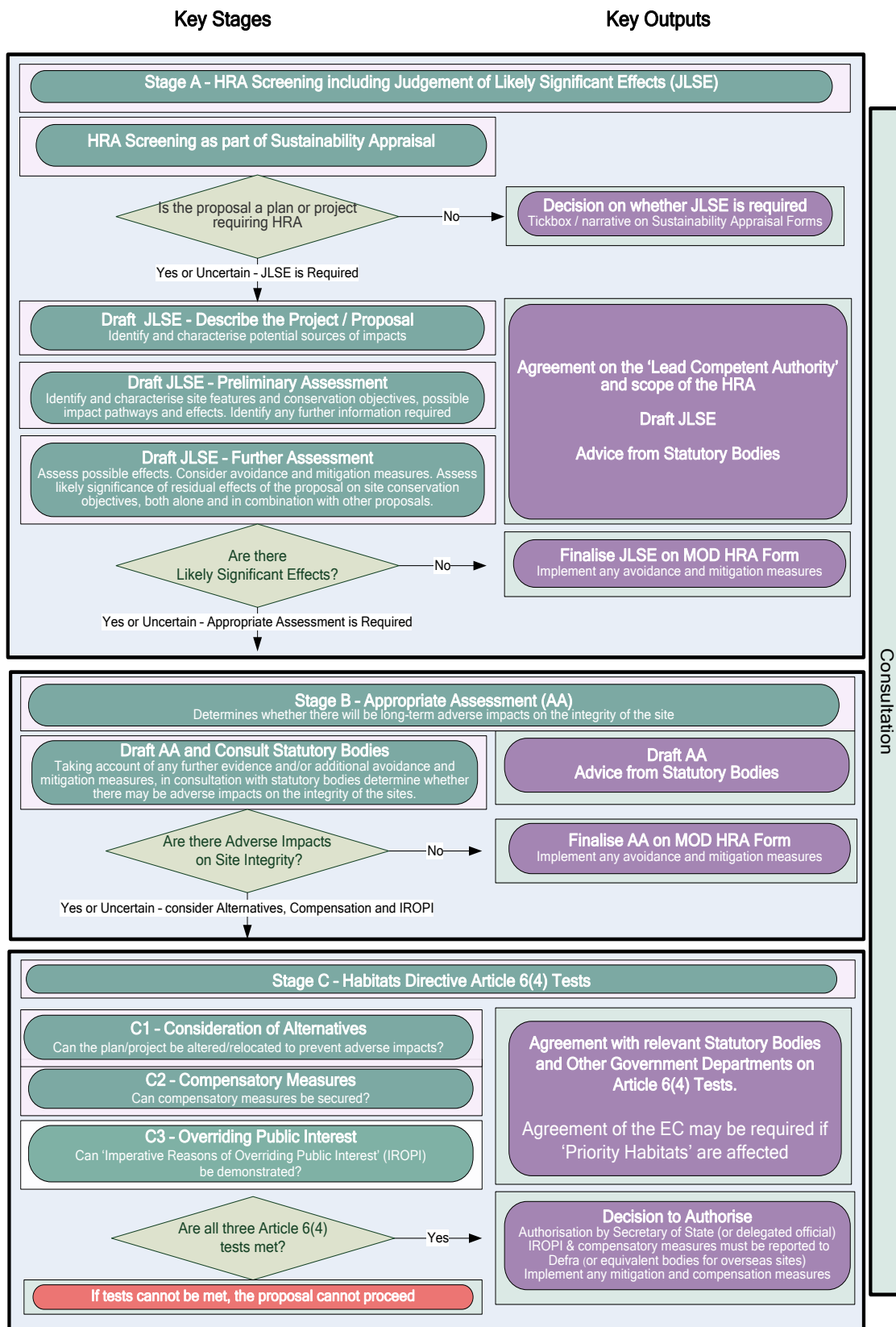
Provides for the designation and protection of SPAs.

- Interpreted in England and Wales by [The Wildlife and Countryside Act 1981](#) (as amended).
- Interpreted in Scotland by the [Wildlife and Countryside Act 1981](#) (as amended) and the [Nature Conservation \(Scotland\) Act 2004](#).
- Interpreted in Northern Ireland but the [Wildlife \(NI\) Order 1985](#) (as amended).

Ramsar Sites

Sites designated under the United Nations Convention on Wetlands of International Importance (signed in Ramsar, 1979) are protected by UK government policies which mandate the treatment of Ramsar Sites in the same manner as sites protected under the Birds and Habitats Directives.

Figure 5.1: Key Stages of HRA



Why undertake HRA?

- 5.1.4 The requirement for undertaking HRA for MOD plans and projects is driven by a statute which is outlined above and in [Box 5.2](#). MOD policy underlines the need for HRA ([JSP 850 – Infrastructure and Estate Policy](#)). As discussed previously, this statutory requirement applies to certain internationally important sites for nature conservation.
- 5.1.5 International sites are selected and designated on scientific criteria to protect certain species, habitats and physical features. Responsibility for site selection and the protection of the sites falls to the relevant government department for England, Scotland, Wales or Northern Ireland, and their statutory advisers, the national nature conservation agencies. Sites are protected as soon as their international importance is recognised by notification as ‘possible’, ‘proposed’ or ‘candidate’ sites. To check whether a plan or project may affect any internationally important site, please check online mapping resources such as the [UK Multi-Agency Geographic Information for the Countryside](#) and [JNCC Marine Protected Area Mapping](#) and/or consult [DIO Ecologists](#). Please note that online mapping resources may not show internationally important sites that are still under consultation.

Special Protection Areas (SPAs)

- 5.1.6 SPAs are classified under the EC Birds Directive to ensure the survival and reproduction of certain wild bird species that are in danger of extinction, vulnerable to habitat change, rare, or otherwise requiring attention; and for the protection of important habitats for regularly occurring migratory species.

Special Areas of Conservation (SACs)

- 5.1.7 SACs are designated under the EC Habitats Directive to protect habitat types that are in danger of disappearance, have a small natural range, or are highly characteristic of the region; and to protect species that are endangered, vulnerable, rare, or endemic and requiring particular attention. In the UK, sites (or parts of sites) below high water (out to 12 nautical miles) are also called European Marine Sites. The offshore marine Conservation Regulations 2007 apply the Directive from 12-200 nautical miles.

Wetlands of International Importance (Ramsar Sites)

- 5.1.8 Wetlands of International Importance are designated under the Ramsar Convention (1971) to protect biological and physical features of wetlands, with special attention given to waterfowl habitats. Ramsar sites often overlap with SACs and SPAs and UK planning policy determines that they should be accorded the same importance when developments are proposed.
- 5.1.9 MOD currently owns land on, and/or has direct management responsibility for 136 SPAs, SACs or Ramsar Sites in the UK. In addition, there are a many SPAs, SACs and Ramsar sites adjacent to or close to MOD sites, or where MOD has licence to train, or which may otherwise be affected by MOD activities. A [Sustainability Appraisal](#) (see Section 2, Theme J) should identify whether the proposed plan or project could have any effect on a SPA, SAC or Ramsar site, but if there is any doubt, then a MOD Environmental Adviser should be consulted.

When should an HRA be undertaken and on what activities?

- 5.1.10 Sustainability Appraisal of proposals should identify the potential need for HRA. There are specific trigger questions within the [Sustainability Appraisal](#) process (see Section 2 Appendix C Theme J and Appendix 2A Evaluation of the Requirements for Assessments, Consents and Licenses form) to highlight whether there is any likelihood of effects on a SPA, SAC or Ramsar site that must be considered.
- 5.1.11 Effects could arise from MOD proposals for estate development or rationalisation, changes in or intensification of training patterns, or the type of equipment being used, changes in drainage or abstractions and discharges, and/or changes to land management regimes e.g. public access levels or grazing patterns. Plans and projects that are directly related to the conservation management of a site do not usually require HRA. However, HRA may be required if management for one feature species or habitat will negatively affect other feature species and habitats.
- 5.1.12 Where required, HRA must be completed before deciding to undertake or approve any plan or project which, either alone or in combination, could significantly affect the special features of a SPA, SAC or Ramsar site. In practice HRAs should be undertaken:
- Before Main Gate Business Case decisions for major projects (and an initial draft HRA should be prepared to inform Initial Gate Business Case decisions)
 - Before applications for statutory approvals (e.g. Planning Permission, Marine Licence, SSSI Assent) are submitted (and an initial draft HRA should be prepared to inform pre-application consultations);
 - Where no planning permission or other authorisation is required, eg for Minor New Works, before the MOD decides to undertake or approve a plan or project;
 - Before MOD reviews a decision to undertake a plan or project or reviews an authorisation for plans or projects that are incomplete

Plans including Integrated Rural Management Plans (IRMPs)

- 5.1.13 HRA may be required for MOD plans that are likely to have a significant effect on an international site. Current legal advice is that HRA is required for IRMPs which form the MOD's mechanism for managing steady-state activities where these relate to Natura 2000 or Ramsar sites. Seek [DIO ecologist advice](#) for other types of plans

Permitted Development and Activities Exempt from Marine Licensing

- 5.1.14 Permitted Developments and activities that are exempt from Marine Licensing are still subject to HRA and existing consents and activities should be reviewed when a new nature conservation site is identified or designated.

Distant, Indirect and Temporary Effects

- 5.1.15 Likely significant effects may occur even if the plan or project is some distance away from an SPA, SAC or Ramsar site and may be direct or indirect, temporary or permanent. Direct effects include habitat destruction and disturbance but distant effects may include pollution carried by air or water. Construction of a new barracks near a site may cause temporary direct effects during erection, but longer-term indirect effects may be caused from intensified backdoor training by the extra personnel.

Who is responsible for undertaking HRA?

- 5.1.16 The MOD is a “Competent Authority”, under the UK Habitats Regulations. This means that MOD can make the judgements as to whether its plans or projects are likely to have significant effects on SPAs, SACs or Ramsar sites, with advice from the Statutory Bodies, and, where required, carry out Appropriate Assessment. The MOD has created a Register of Competent Individuals who are appropriately qualified and experienced to comply with this requirement, and only these competent individuals may sign-off any decision on JLSE or AA. A copy of the current Register of Competent Individuals can be found in [Appendix 5B](#).
- 5.1.17 For infrastructure development or disposal proposals, the Requirement and/or Project Manager is accountable for identifying (usually through the SA process) the potential that their plan or project could have detrimental effects on an internationally important site and that further action is required with respect to HRA. If following this initial indication, there needs to be further investigation, one of MOD’s registered Competent Individuals must be contacted to assist with completing the stages of the HRA process.
- 5.1.18 For changes in estate management, the Head of Establishment or contractor may be responsible for identifying the potential that their plan or project could have detrimental effects on an internationally important site
- 5.1.19 For changes in defence activities including training, test and evaluation and operational activities, the Head of Establishment and unit Commanding Officers or exercise planners may be responsible for identifying the potential that their plan or project could have detrimental effects on an internationally important site.
- 5.1.20 MOD’s decision-making role as a Competent Authority cannot be transferred to a private partner or contracted out. Technical consideration in support of a HRA can be undertaken by the Partner/Consultants following the initial decision on the significance of the effects but the content and approach of the Technical Consideration must be guided, reviewed and approved by a Competent Individual within MOD.
- 5.1.21 New surveys or scientific investigations may be required, depending on the nature of the plan or project and available information. Surveys may need to be done at certain times of year (e.g. breeding, flowering, over wintering or migrating seasons), which may not fall neatly into planning timeframes, and any survey requirements should be identified at an early stage. The HRA decision is made on the best available scientific information as to whether or not there will be adverse effects.

5.2 HRA Methods and Approach within MOD

- 5.2.1 This chapter provides guidance on the Stages that need to be followed in the HRA process. As discussed in paragraphs [5.1.16-5.1.21](#) the process should be undertaken with the assistance of, and must be signed off by a MOD Competent Individual (see [Appendix 5B](#)).
- 5.2.2 Consultation should begin at the earliest opportunity. The formal MOD policy for liaison relating to SPA, SACs and Ramsar Sites can be found in:
- The Memorandum of Understanding on the Habitats and Birds Directives between MOD, Defra and devolved administrations.
 - The Declarations of Intent between the MOD and the relevant statutory nature conservation bodies for England, Scotland, Wales and Northern Ireland, and with JNCC for Offshore sites.
 - Consultation with relevant statutory bodies for Cyprus and Germany as detailed within their respective Regulations.
- 5.2.3 In almost all cases the HRA process can identify restrictions, modifications or mitigation works to avoid or reduce negative effects to a level at which there will be no adverse impact on the integrity of the SPA, SAC or Ramsar site.
- 5.2.4 As a Competent Authority, MOD must maintain a record of all decisions made on projects and activities across the MOD Estate. An example template for recording such decisions, MOD Form 2223 (Revised) Habitats Regulations Assessments (HRA) - is included in [Appendix 5A](#).

HRA Screening and Judgement of Likely Significant Effect (JLSE) (Stage A)

- 5.2.5 Screening, using the MOD Sustainability Appraisal handbook and matrices, is an initial stage establishing whether the given activity is a relevant plan or project and thus determines whether JLSE is required. For advice on screening contact a MOD Competent Individual. MOD Form 2223 may also be used to record HRA Screening decisions.
- 5.2.6 When undertaking JLSE, the following must be considered:
- all aspects of the proposal, alone and in combination with other proposals;
 - the qualifying interest features and conservation objectives of the SPA, SAC, or Ramsar Site¹;
 - avoidance and mitigation factors and measures that reduce the likelihood of significant effects, except where those measures are specifically required to protect the special features of a SPA, SAC or Ramsar Site;
 - best available scientific evidence on potential impact pathways and significance
 - residual likely significant effects of the proposal for which further assessment will be required.
- 5.2.7 In accordance with the 'precautionary principle', where it is uncertain whether or not a plan or project is likely to have a significant effect, an AA will be required. The relevant statutory nature conservation body should be consulted at the earliest opportunity and an audit trail must be recorded of all relevant correspondence and decisions.
- 5.2.8 MOD Form 2223 ([Appendix 5A](#)) can be used to record HRA JLSE decisions, although for very simple projects with no likely significant effects an email from the Competent Individual may suffice.

¹ Candidate SACs are considered in the same terms as fully designated sites.

Appropriate Assessment (AA) (Stage B)

- 5.2.9 If an AA is required, its scope is determined by the Judgement of Likely Significant Effects. JLSE and AA may be sequential steps undertaken at different project stages, but more usually within MOD a JLSE and AA will be drafted together as the full HRA outcome is required to inform project decisions. A typical example is where short term significant disturbance cannot be ruled out in a JLSE, but the subsequent AA is able to determine that there will be no adverse impacts on site features in the long-term.
- 5.2.10 An audit trail must be recorded of all relevant correspondence and decisions during the HRA process. MOD Form 2223 ([Appendix 5A](#)) must be used to record HRA AA decisions.

Imperative Reasons of Over-Riding Public Interest and Compensation (Stage C)

- 5.2.11 Under certain circumstances it is possible to proceed with a plan or project despite a negative assessment of the implications for the site. To do this, the three tests set out in Article 6(4) of the EC Habitats Directive must be met:
- i. There are no alternative solutions
 - ii. Any necessary compensatory measures are secured to ensure the overall coherence of the network of SPAs, SACs and Ramsar sites
 - iii. There are imperative reasons of over-riding public interest (UK policy is that defence need constitutes an IROPI)
- 5.2.12 If it can be demonstrated in an auditable fashion that there are no reasonable alternative solutions, the competent authority will consider whether compensation can be secured and whether there are imperative reasons of overriding public interest that require the project to proceed. Compensation may include recreation or restoration of comparable habitat at a new or existing site. If any of these tests are not met the plan or project cannot proceed.
- 5.2.13 Under the Memorandum of Understanding, this decision may be delegated to a Director level committee. An audit trail must be recorded and the Secretary of State, National Assembly of Wales, Scottish Government or Northern Ireland Government notified, as appropriate. The Defra Secretary of State is responsible for reporting all derogations to the European Commission.
- 5.2.14 MOD Form 2223 ([Appendix 5A](#)) must be used to record HRA IROPI decisions.

Habitat Banking

- 5.2.15 It may be necessary or desirable to design and implement habitat mitigation and compensation measures in advance of HRA being concluded and damage occurring, a process known as 'habitat banking'. Habitat banking may be done on a project-specific basis, or through a pooled approach. MOD guidance on habitat banking is at [Appendix 5C](#)

5.3 REFERENCES

EC Legislation and Guidance:

- [European Commission \(2009\) Community Directive on the Conservation of Wild Birds \(2009/147/EC\) \[The 'Birds' Directive\].](#)
- [European Commission \(1992\) Community Directive on the Conservation Natural Habitats and of Wild Fauna and Flora \(92/43/EEC\) \[The 'Habitats' Directive\].](#)
- [EC Guidance document on Article 6\(4\) \(January 2007\)](#)
- [EC Guidance document on the Assessment of Plans and Projects significantly affecting Natura 2000 sites \(November 2001\)](#)
- [EC Guidance document: Managing Natura 2000 sites \(2000\)](#)
- [Interpretation Manual of European Union Habitats - EUR27](#)

MOD Policy

- The Memorandum of Understanding on the Habitats and Birds Directives between the Ministry of Defence and Defra, CLG, SG, WAG & NIE
- Declarations of Intent between the Ministry of Defence, Natural England, Scottish Natural Heritage, Natural Resources Wales and JNCC.
- [JSP 850 – Infrastructure and Estate Policy](#)

APPENDICES

MOD Form 2223 (Revised 07/2018)



Habitats Regulations Assessments (HRA)²:

Consideration of Plan/Project (P/P)

Judgement of Likely Significant Effect (JLSE)

Appropriate Assessment (AA)

Consideration of Alternatives, Compensation and Imperative Reasons of Over-riding Public Interest (IROPI)

Copies of all completed and authorised Habitats Regulations Assessment forms should be submitted to:

*Post: DIO TS EPS ES&C Ecology Team, Defence Infrastructure Organisation
Building 88, Westdown Camp, Tilshead, Salisbury, Wiltshire, SP3 4RS
Email: DIO-EcologyTeam@mod.gov.uk*

This Decision Form should be completed in conjunction with guidance provided in Section 5 of the Sustainability and Environmental Appraisal Tools (SEAT) Handbook for the MOD Estate, and the DIO Practitioner Guidance – Designated Sites.

Title of Proposal: [Insert Title of Proposal]

Name of Natura 2000 and Ramsar³ Site(s):

- **[Insert Name of Sites]**

This Decision Form is a record of the assessment, undertaken by the Defence Infrastructure Organisation on behalf of the Ministry of Defence in respect of the above plan / project, in accordance with the EC Habitats Directive (92/43/EEC) and transposing Regulations.

The Habitats Regulations require that a Competent Authority carries out an Appropriate Assessment (AA) before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which is likely to have a significant effect on a European site.

This Decision Form can cover the four key stages of a Habitats Regulations Assessment (HRA):

- 1. Considering whether the proposed activity is a Plan or Project under the Habitats Regulations*
- 2. Judgment of Likely Significant Effects (JLSE): is the Plan or Project likely to have a significant effect on the achievement of Conservation Objectives for a SPA, SAC or Ramsar site Feature?*
- 3. Appropriate Assessment (AA): can the Plan or Project be modified, or Avoidance and Mitigation Measures be secured to avoid any adverse impact on the integrity of a Site*
- 4. If adverse impacts cannot be avoided or mitigated, whether the Plan or Project must go ahead for imperative reasons of overriding public interest, whether there are any satisfactory alternatives, and whether compensatory measures have been secured to ensure that the overall coherence of the Natura 2000 network will be maintained.*

² The 'Habitats Regulations' differ between UK nations:

England and Wales - The Conservation of Habitats and Species Regulations 2017 SI 201/1012

Scotland - The Conservation (Natural Habitats, etc.) Regulations 1994 (as amended in Scotland);

Northern Ireland - The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 SI 95/380 (as amended)

Offshore - The Conservation of Offshore Marine Habitats and Species Regulations 2017 SI 2017/1013

³ Wetlands of International Importance identified under the 1971 Ramsar Convention: it is Government policy to also apply the Habitats Regulations Assessment processes to the special features of Ramsar Sites

Summary of the Project

Full details of the plan/project should be referenced or Annexed.

References:

- A. [e.g. Proposal Description / User Requirement Document]
- B. [e.g. Proposal Sustainability Appraisal]
- C. [e.g. Applications for Statutory Approvals and supporting EIA]
- D. [e.g. Survey Reports]
- E. [e.g. other Plans and Projects]

Annexes:

- 1. [e.g. Location Maps and Plans]
- 2. [e.g. Technical Consideration Summary Table]
- 3. [e.g. Summary of Avoidance and Mitigation Measures]
- 4. [e.g. Summary of Compensation Measures]

1. What are the Plan/ Project proposals?

- 1.1 [Insert project summary, referring to eg References and Annexes as appropriate]

2. What Consents, Permissions and Authorisations are required from other Competent Authorities under the Habitats Regulations?

2.1 [Insert summary, eg “The MOD will apply for planning permission for the works from XXX Borough Council, and will decide whether to undertake the project.]

2.2 Therefore, both the MOD and [e.g. LPA, EA, SEPA, MMO] are ‘Competent Authorities’ with decision-making roles regarding the project. The MOD proposes to act as ‘Lead Competent Authority’ and has prepared this draft HRA for consultation with [eg. Natural England and the LPA].

3. What other designated sites or protected species may be affected?

3.1 [Insert summary or refer to References, eg “The proposed works are within unit 14 of Colony Bog and Bagshot Heaths SSSI” or “Possible impacts on other designated sites and protected species are addressed in the EIA at Reference X]



Consideration of Plans and Projects under the Habitats Regulations

4. **Is the proposal a Plan or Project?**

4.1 This is a record of the consideration undertaken by Defence Infrastructure Organisation, on behalf of the Ministry of Defence to determine whether the above proposal is a 'plan or project' in terms of the EC Habitats Directive (92/43/EEC) and transposing regulations, and to determine whether the PP is directly connected with or necessary to the [conservation] management of the site.

4.2 [Insert summary of any consultation, and if appropriate, "The conclusions of this consideration are in accordance with NIEA's/ SNH's/ NRW's/ NE's/ JNCC's advice and recommendations"]

4.3 The MOD considers that:

- a) The proposal is a 'plan or project' in terms of the EC Habitats Directive (92/43/EEC) and transposing regulations.
- b) The proposed project is not directly connected with or necessary to the [conservation] management of the sites concerned.

Judgement of Likely Significant Effects (JLSE)

This section should consider the implications of the P/P on the conservation objectives of the sites concerned. Following European Court of Justice Caselaw in 2018 It should not take account of any avoidance or mitigation measures that have been integrated into the P/P specifically to protect SPA or SAC features. It must take a precautionary approach in considering whether the P/P is likely to have significant effects on site features, both alone and in combination with any other relevant plans and projects that are likely to have residual effects on the site. A technical consideration may be presented in an accompanying report or Environmental Statement, but should be summarised in the table in Annex 1. The technical consideration should refer to site Conservation Objectives and favourable condition tables for each feature. Impacts may include for example, physical habitat loss, physical habitat damage, non-toxic contamination, toxic contamination, noise disturbance, visual disturbance (not exhaustive).

5. What SPAs / SACs or Ramsar Sites may be affected by this Plan or Project; what are the qualifying interest features and their conservation objectives?

5.1 [e.g. Thames Basin Heaths SPA⁴

This site qualifies under Article 4.1 of the Directive (79/409/EEC) by supporting populations of European importance of the following species listed on Annex I of the Directive: During the breeding season:

Dartford Warbler *Sylvia undata*, 445 pairs representing at least 27.8% of the breeding population in Great Britain (Count as at 1999)

... and so on]

5.2 [e.g. Thursley, Ash, Pirbright & Chobham SAC⁵

Annex 1 Habitats that are a primary reason for selection of this site:

4010 Northern Atlantic wet heaths with *Erica tetralix*

This site represents lowland northern Atlantic wet heaths in south-east England. The wet heath at Thursley is NVC type M16 *Erica tetralix* – *Sphagnum compactum* and contains several rare plants, including great sundew *Drosera anglica*, bog hair-grass *Deschampsia setacea*, bog orchid *Hammarbya paludosa* and brown beak-sedge *Rhynchospora fusca*. There are transitions to valley bog and dry heath. Thursley Common is an important site for invertebrates.

... and so on]

5.3 The Conservation Objectives for each of these features are to maintain them in favourable condition, with the caveat that maintenance implies restoration if the feature is not currently in favourable condition.

6. What is the current and potential condition of the qualifying interest features?

6.1 [Insert Summary]

7. What are the possible impacts of the Plan/Project?

⁴ From the SPA Review Site Account at [e.g. <http://jncc.defra.gov.uk/default.aspx?page=2050>]

⁵ From the SAC Site Account at [e.g. <http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0012793>]

7.1 [Insert Summary, or simply refer to the Annex e.g. "Possible impacts are summarised in the Technical Consideration at Annex B / below."] *No need to duplicate*

8. Is Appropriate Assessment Required?

8.1 The MOD's decision is that [mitigated, Appropriate Assessment is / is not required for this project.]

MOD Decision

If the judgement is that the effects will not be significant, the formal record of decision must be completed and signed off by the Authorising Officer.

If there are likely significant effects, or if additional information is required to enable the competent authority to decide whether the proposed P/P would adversely affect the integrity of the site, Appropriate Assessment will be required

Appropriate Assessment [if required]

This section may be used to record detailed assessments into whether significant effects identified in the JLSE will have an adverse impact on the integrity of the site, and/or may consider whether specific impact avoidance or mitigation measures could be implemented, and assess whether there are any remaining residual adverse impacts on the integrity of the site.

9. What additional evidence might be considered or avoidance and/or mitigation measures have been integrated into the project design or might be imposed to avoid the P/P having an adverse impact on the integrity of the SPA/SAC/Ramsar Sites?

9.1 [Not Applicable] / [Insert Summary e.g. The proposed avoidance and mitigation measures are described in the Technical Consideration (Annex B) and the Summary of Avoidance and Mitigation Measures (Annex C)]

10. After considering impact avoidance and mitigation measures or factors, what are the likely residual effects of the proposal on the international nature conservation interests of the SPA/SAC/Ramsar Sites?

10.1 [Not Applicable] / [Insert summary of residual effects].

11. Will the P/P have an adverse impact on the integrity of the SPA/SAC/Ramsar Sites?

11.1 [Not Applicable] / The MOD's decision is that [Insert Decision.]

MOD Decision

The Formal Record of HRA Decision must be completed and signed off

If there are remaining residual adverse impacts on the integrity of the site that cannot be avoided or mitigated, the plan or project sponsor will need to consider alternatives. If there are no alternatives the MOD will need to consider if the plan or project must proceed for imperative reasons of overriding public interest, and if so will need to liaise with Defra or devolved administrations to identify whether sufficient compensation can be secured to enable the project to proceed. The 'Article 6(4) Tests' section of this form will need to be completed.

Article 6(4) Tests [if required]

For projects which may have an adverse impact on the integrity of a site, this section may be used to record the outcome of the Article 6(4) tests:

- i. Are there alternatives to the proposal?
- ii. Must the proposal proceed for imperative reasons of overriding public interest (IROPI)?
- iii. Have Compensatory Measures been secured?

12. Are there alternatives to the proposal?

12.1 Eg Alternative solutions are considered at Reference X , eg EIA / Annex X / below

12.2 The MOD's decision is that there is an absence of alternative solutions [because...]

13. Must the proposal proceed for imperative reasons of overriding public interest (IROPI)?

13.1 Imperative reasons of overriding public interest are considered at Reference X , eg EIA / Annex X / below

13.2 The MOD's decision is that the project must proceed for the following Imperative reasons of overriding public interest (amend delete as appropriate)

- social or economic (in the absence of priority habitat/species)
- human health
- public safety
- beneficial consequences of primary importance for the environment
- other imperative reasons of overriding public interest (may require consultation with the EC)

14. Have Compensatory Measures been secured?

14.1 Foreseen compensatory measures and timetable are considered at Reference X , eg EIA / Annex X / below

14.2 The MOD's decision is that compensatory measures have / have not been secured.

MOD Formal Record of HRA Decisions

This HRA Decision Form may be prepared by MOD staff or consultants, but must be authorised by an MOD Competent Individual (refer to List of Competent Individuals in the SEAT Handbook for details of those authorised to approve JLSE and AA).

Consultation

Have Relevant Statutory Bodies (NE, CCW, SNH, NIEA, JNCC), and any other bodies, been consulted? Briefly explain why and describe any comments received, etc.

[Insert Summary of Consultation].

MOD Decision: Judgement of Likely Significant Effects (JLSE)

The MOD's decision is that the PP, as proposed, **is / is not** likely to have a significant effect on the conservation objectives.

MOD Decision: Appropriate Assessment (AA)

The MOD's decision is that the PP, **following further analysis and/or the imposition of additional avoidance or mitigation measures, will / will not** adversely affect the integrity of any SAC/SPA/Ramsar Site.

MOD Decision: Article 6(4) Tests: Alternatives, Imperative Reasons of Over-riding Public Interest (IROPI) and Compensation [Only to be used in exceptional circumstances, Ministerial approval may be required]

If adverse effects on the integrity of the site cannot be avoided or mitigated, significant discussions and agreement is required between MOD and Defra or the devolved administrations to consider the following three criteria:

- i. Are there alternatives to the proposal? Select decision: **Yes / No**
- ii. **ii.** Must the proposal proceed for imperative reasons of overriding public interest (IROPI)? Select decision: **Yes / No**
- iii. Have Compensatory Measures been secured? Select decision: **Yes / No**

Detail of any discussions about alternatives, IROPI and compensation, and final agreement is to be annexed to this document.

MOD COMPETENT INDIVIDUAL AUTHORISATION:

Prepared by:

Authorised by:

Contact no:

Contact no:

(Electronic) Signature:

(Electronic) Signature:

Date:

Date:

MOD ENDORSEMENT FOR ANY ARTICLE 6(4) TESTS: [IF REQUIRED]

(MOD FMC Cap to advise appropriate signatory on case by case basis)

Name:

Post:

(Electronic) Signature:

Contact Details:

Date:

PROJECT or ACTIVITY MANAGER ACKNOWLEDGEMENT:

Where an HRA has identified the potential for likely significant effects, or adverse impacts on the integrity of a site, and/or a requirement for avoidance, mitigation and/or compensation measures, the Project Manager or Official/Officer responsible for the proposed activity must (e-)sign this form to demonstrate that they acknowledge that those measures are required and must be appropriately allocated and implemented.

I acknowledge the conclusions of this HRA as set out in **Annex B** and *[if appropriate]* the requirements for avoidance, mitigation and /or compensation measures as set out in **Annex C/D**. I understand that there may be legal implications if these measures are not appropriately allocated and implemented and as a result damage or disturbance to site features occurs.

Name:

Post:

Project / Activity Role:

(Electronic) Signature:

Contact Details:

Date:

Annex A: [e.g. Location of Proposed Works]

Annex B –e.g. Technical Consideration [NB this table may be adapted as appropriate]

SPA / SAC / Ramsar Site Feature	Conservation Objective / Favourable Condition Attribute	Potential Hazards of the plan or project	Avoidance and Mitigating Factors or Measures (if appropriate)	Probability, Magnitude, Likely Duration and Reversibility of residual impacts	In Combination Effects (if appropriate)	Conclusion

Annex C – Summary of Avoidance and/or Mitigation Measures [if required]

Avoidance or Mitigation Measures	How will the measure avoid or reduce adverse impacts on the site	How, by whom and when will the measure be secured and implemented	Degree of confidence in likely success	If/how the measures will be monitored, and, should mitigation failure be identified, how that failure will be rectified

Annex D – Summary of Compensation Measures [if required]

Compensation Measures	How will the measure avoid or reduce adverse impacts on the site	How, by whom and when will the measure be secured and implemented	Degree of confidence in likely success	If/how the measures will be monitored, and, should mitigation failure be identified, how that failure will be rectified

Appendix 5B: Register of MOD Competent Individuals

List of Suitably Qualified and Competent Individuals for Sign-Off of Judgements of Likely Significant Effect and Appropriate Assessment Decisions

The decision-making role of MOD as a Competent Authority under the Habitats Regulations, in determining whether a proposal is a) likely to have a significant effect on the integrity of a site, and b) will have an adverse impact on the integrity of a site; must be undertaken by a suitably qualified and competent ecologist, or any other suitably qualified and competent individual specifically authorised to make such decisions by MOD FMC Infra Pol.

Applications for additional inclusions on this list should be made to FMC-Cap-InfraPolSustEste@mod.gov.uk

The following individuals are currently registered as suitably qualified and competent individuals:

Name	Post
Stuart Otway	DIO Senior Ecologist
Oliver Howells	DIO Senior Ecologist
Moira Owen	DIO Ecologist
Julie Swain	DIO Ecologist
Sarah Jupp	DIO Ecologist
Marina Pugh	DIO Ecologist
John Black	DIO Ecologist
Hanna Etherington	DIO Ecologist
Lisa Wade	DIO Ecologist
David Reynolds	DIO Mediterranean Environmental Advisor
Pantelis Charilaou	SBA Environment Officer

Note: Suitable Qualifications for individuals would include a relevant 2nd Class Honours Degree plus five years appropriate experience, or HNC / HND plus 10 years experience, or Degree standard membership of a relevant professional institution plus relevant experience. Competence and experience of individuals wishing to be added to the list will be assessed by the DIO Senior Ecologists based on evidence provided, in particular draft HRAs using the MOD forms.

Note: List of MOD Competent Individuals accurate as at July 2018. Contact DIO-EcologyTeam@mod.gov.uk for up to date details of Competent Individuals.

Appendix 5C: MOD Habitat Banking Principles

1. Aim

The aim of this document is to summarise the legal and policy frameworks relating to ‘habitat banking’ on the Defence Estate, particularly with reference to ‘European Sites’ protected under the EC Habitats Directive; to agree principles for what measures can be considered and developed as banked mitigation and compensation, and the governance, development, monitoring and adaptive management of habitat mitigation and compensation banks. This document is written as a guidance leaflet within the MOD Sustainability and Environmental Appraisal Tools Handbook.

2. Introduction: Mitigation and Compensation under the EC Habitats Directive

2.1. The effective and sustainable use, operation and management of MOD defence estate is vital for UK interests. Much of the estate has been in constant use for over a century and as such has largely been protected from agricultural intensification, urbanisation and habitat fragmentation. Many areas have been given international nature conservation designations⁶ in recent decades, giving recognition of the continued high value of the habitats and species, but also introducing increased responsibilities and processes for management and protection of the special features. However, the defence estate cannot be preserved in time, and must be continually reconfigured to meet evolving defence needs. Practical and pragmatic approaches to managing change are needed to ensure legal compliance and fulfilment of statutory duties without imposing unnecessary and disproportionate administrative burdens on the MOD, Statutory Bodies (SBs), Local Planning Authorities (LPAs) and Other Government Departments (OGDs).

2.2. When developing infrastructure within European Sites, wherever possible, significant effects on features are avoided or minimised by targeting development within the footprint of existing developments or other areas of lower ecological value. This is not always possible, and also there may be residual effects. The MOD and SBs have previously adopted an approach of balancing habitat loss and damage by habitat creation and improvement within the same European Site boundary. This approach may involve removing existing infrastructure, such as hardstandings, tracks, jetties, targetry or woodlands which have never formed part of the special nature conservation interest of the site (termed ‘site fabric’), or restoring areas of degraded habitat where agreed to be above and beyond what is required to meet conservation objectives. The MOD, SBs and LPAs have routinely treated such measures as acceptable ‘mitigation’ in ‘Habitats Regulations Assessments’ (HRAs) under Habitats Directive Article 6(3) / Regulation 61.

2.3. The EC Habitats Directive and UK Habitats Regulations do not define mitigation or compensation. In May 2014 there was an ECJ Preliminary Ruling (the ‘Briels Judgment’ – Reference A) on when measures can be considered mitigation and when they must be considered compensation. Natural England have published an article on their approach to considering habitat creation as mitigation following the Briels Judgment (see Appendix A). In accordance with this approach the MOD, SBs, LPAs and OGDs will continue to consider habitat restoration and creation measures within European Sites as ‘mitigation’ as part of Article 6(3) / Regulation 61 Appropriate Assessments only in strictly limited circumstances. In other circumstances the measures will be considered ‘Compensation’ as part of Article 6(4) / Regulation 62 Assessments.

2.4. In order to keep track of the large number of potential requirements and opportunities for mitigation, MOD proposes to operate ‘Habitat Banking Trackers’ of habitat losses and gains which will be maintained as live Annexes to establishment Integrated Rural Management Plans (IRMPs).

⁶ International nature conservation designations include Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites.

3. General Principles for Habitat Banking

3.1. Mitigation Hierarchy

In accordance with the national planning policies and BS 42020:2013: (Biodiversity — Code of practice for planning and development, Reference B), the mitigation hierarchy is to be applied. This seeks:

- as a preference to avoid impacts
- then to mitigate unavoidable impacts, and
- as a last resort, to compensate for unavoidable residual impacts that remain after avoidance and mitigation measures.

3.2. Project Design

During the design stage the overall aim should be to avoid or prevent harm to existing biodiversity assets, delivering at least no net loss for biodiversity, and to deliver further benefits for biodiversity, i.e. a net gain, wherever possible.

3.3. De Minimis Impacts

Habitat loss impacts identified as being ‘significant’ (due to a combination of the scale of the impact and the relative value of the habitat being affected), either alone or in combination with impacts of other projects, should be identified as requiring mitigation / compensation Plans or projects that have no appreciable effect on the site are excluded.

3.4. Conservation, Enhancements, and Mitigation / Compensation Habitat Banking

3.4.1. Mitigation and Compensation Measures must be above and beyond what is required to fulfil MOD’s statutory duties, in particular those towards designated sites. For example, in England and Wales s28G of the WCA states that the Authority’s duty towards SSSIs is

“in exercising its functions, to take reasonable steps, consistent with the proper exercise of the Authority’s functions, to further the conservation and enhancement of the...features by reason of which the site is of special scientific interest.”

3.4.2. The MOD considers that agreed European Site and SSSI Conservation Objectives and Favourable Condition Tables are the appropriate baseline to determine what MOD is required to deliver to fulfil its statutory duties. Measures that may have been undertaken by MOD in delivering conservation objectives since designation of European Sites and SSSIs include plantation and scrub clearances, arable reversions, and habitat restoration projects including grazing reintroductions that have been agreed through the IRMP and SSSI management planning processes.

3.5. Mitigation and Compensation Habitat Bank Trackers and Governance

3.5.1. As actual opportunities are identified, allocated and realised they will be captured in Mitigation and Compensation Habitat Bank Trackers. For Salisbury Plain Training Area (SPTA) an agreement has been reached between MOD, NE and the LPA that the Tracker will form an annex to the SPTA Integrated Rural Management Plan (IRMP) and that governance will be via the SPTA Environmental Steering Group (ESG). A similar approach may be appropriate for other large establishments, but in other areas a regional approach may be more appropriate. A generic template for MOD habitat bank trackers, based on that agreed for SPTA, is at Appendix B.

3.5.2. Formal agreements on site and regional trackers, and on individual mitigation measures, and allocations of identified or banked credits to specific mitigation or compensation requirements will be through local liaison with MOD, SBs and LPAs – see section 3.7 below.

3.5.3. As well as Trackers, DIO will maintain GIS mapping of agreed developments, conservation, enhancement and banked mitigation and compensation measures, for comparison with baseline mapping and to ensure no double-counting.

3.6. Timing, Extent and Certainty of Success

3.6.1. Measures must be secured before impacts occur. This includes ensuring all legal, technical and financial arrangements are in place.

3.6.2. In accordance with the Natural England approach as set out in Appendix A, mitigation measures agreed as part of an Article 6(3) of the Habitats Directive Appropriate Assessment must be delivered and fully functioning before an impact on a European site occurs.

3.6.3. Where compensatory measures are to be secured under Article 6(4) they should normally be delivered and fully functioning in advance of the impact, as this ensures the continuity of ecological function, reduces the chance of harming the network of sites and also ensures there is no loss during the period before the compensatory measures are implemented. However, in certain situations impacts on European sites may necessarily occur before secured compensatory measures are fully functioning. There may also be circumstances where the compensatory measures will take a long time to become fully-functioning. In such circumstances it may be acceptable to put in place measures which do not provide a complete functioning habitat before losses occur, provided undertakings have been made that the measures will in time provide such a habitat and additional compensation above the ratio of 1:1 is provided to account for this. However, measures which can be delivered prior to impacts or with a short timescale for delivery should be prioritised over others with long time delays. To ensure delivery, we must demonstrate that secure and binding plans are in place to deliver and manage the measures on an ongoing basis. We should put in place monitoring and reporting requirements to ensure the plans are fulfilled. Such cases require careful consideration by the MOD and SBs.

3.6.4. The extent of measures should take full account of the extent and quality of the asset being lost or degraded, and the risks associated with or time required for the creation of new habitats or the restoration of existing ones. Developing guidance on biodiversity offsetting may inform this assessment, noting that this guidance was not intended specifically for offsetting impacts within designated sites. The MOD and SBs (and the Secretary of State for cases considered under Article 6(4)) must have confidence that the measure will be sufficient to offset the harm. This can be a complex judgement and requires consideration of factors including:

- Distance from the affected site: in general measures close to the original site will be preferable, but there may be instances where a site further away will be better suited, in which case it should be selected.
- Time to establish the measures to the required quality, quicker solutions may be preferred to those likely to take a long time to deliver.
- Whether the re-creation / restoration methodology is technically feasible using credible, tried and tested methods
- If there is significant uncertainty or unavoidable time lag between harm to the site and the establishment of measures, a larger area may be needed, coupled with a monitoring and adaptive management strategy that would secure remedial action if the measure is not successful.
- Mitigation and compensation measures must achieve like for like replacement of affected qualifying habitat and species.
- The environmental impacts of any land use change to create mitigation/offset habitat.

3.6.5. Decisions will be made on a case-by-case basis on whether there is adequate confidence for measures to be considered as mitigation, avoiding adverse effects on the integrity of the site in the first place. Where there isn't full confidence, measures will be considered Compensation under Article 6(4) / Regulation 62.

3.7. Assessments and Approvals for Habitat Banking Opportunities

3.7.1. All proposed habitat banking measures will be subject to internal review which may trigger further detailed assessments of possible impacts on military operations, heritage, ecology, access and recreation, forestry, tenants and estate management activities.

3.7.2. Habitat banking measures may be subject to external approvals such as SSSI Assent, Felling Licences or Environmental Impact Assessment (Forestry) Opinion. Where possible, measures will be pooled and applications for statutory approvals submitted as 'environmental conservation programmes'. This will enable improved certainty for all involved, and where possible will allow works to be undertaken and 'banked' in advance of the requirement for mitigation and compensation arising.

3.7.3. Where 'environmental conservation programmes' involve the removal of woodland the proposals will need to be present information that shows how the proposal meets the Government's [Open Habitats Policy](#) for England (and devolved equivalents).

3.7.4. Habitat Banking Trackers must include columns to capture summaries of internal and external assessments and approvals. Measures will be classified as 'identified' in the tracker until internal and external approvals are secured. Measures will then be classified as 'unallocated' or 'allocated' depending on whether they have been attributed to specific mitigation requirements.

References

- A. 'The Briels Judgment': JUDGMENT OF THE COURT (Second Chamber), 15 May 2014, (Environment – Directive 92/43/EEC – Article 6(3) and (4) – Conservation of natural habitats – Special areas of conservation – Assessment of the implications for a protected site of a plan or project – Authorisation for a plan or project on a protected site – Compensatory measures – Natura 2000 site Vlijmens Ven, Moerputten & Bossche Broek – Project on the route of the A2 's-Hertogenbosch-Eindhoven motorway) <http://curia.europa.eu/juris/document/document.jsf?text=&docid=152343&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6391>
- B. BS 42020:2013: Biodiversity — Code of practice for planning and development

Appendix 5C(A) – Natural England’s approach to considering habitat creation as mitigation following the *Briels* Judgment *Christina Cork, Richard Broadbent, Ginny Swaile & Steve Clifton*

[Original appeared in The Habitats Regulations Assessment Journal, Issue 3, pages 8-9) The Habitats Regulations Assessment Journal, Issue 3, Pages 8-9]

In May 2014, a judgment was handed down by the Court of Justice of the European Union (‘the Court’), which provides a further, authoritative interpretation of parts of the Habitats Directive, and consequentially the Habitats Regulations 2010 (as amended). This relates to the *Briels* case (refer Graham Machin’s article on page 25 of the July 2014 issue) This case centred on what types of measures are relevant to consider as mitigation, when coming to a conclusion as to the effect on European site integrity of a proposed plan or project. The Court ruled in this case that the habitat creation on land within a SAC proposed to avoid an overall loss of habitat was in fact a compensatory measure and not eligible to be included as mitigation against damaged or lost habitat of the same type. As such this should not be taken into account until later in the formal Habitats Directive decision making process i.e. after the consideration of alternative solutions and only having measure could be taken into account during the appropriate assessment stage of a HRA. These cases are likely to be extremely rare, however.

These limited circumstances would be defined by four key criteria which would apply, over and above the baseline of achieving ‘no net loss’ of designated habitat. Under this approach, any proposed creation of habitat within a European Site must be:

- confined to areas which are not designated SAC feature habitat or SPA supporting habitat (site fabric),
- small in scale,
- technically feasible with a high degree of certainty of success, and
- timed to ensure it can be completed (present and functioning appropriately) rapidly and before the predicted harmful impact is allowed to occur.

This potential habitat creation must be above and beyond any measures required to meet the definition of established overriding public interest in the project. In coming to this view the Court placed particular weight on the typical uncertainty of success and timescales which can be associated with habitat creation. In light of the judgment, Natural England will not normally consider any proposed creation (including translocation) of either designated or supporting habitat within the same European Site, in response to a predicted loss, to be “mitigation”.

It is Natural England’s view, though, that there may be a very limited set of circumstances where habitat creation within a European site provided as a mitigation measure is compatible with the *Briels* judgment (as described in sections C.5.4 and C.5.5.1 of the Handbook), that is where new plans or projects can be compatible with achieving the Conservation Objectives of the site and the maintenance of site integrity. We would consider that in these particular situations such a favourable condition, in terms of measuring both the extent and quality of the feature, and these restorative measures would need to be guaranteed before agreeing the additional creation. It is difficult to apply this approach on a site with an objective to restore the extent of the feature in question, unless the recovery to favourable condition was near complete. A full and detailed Habitat Mitigation Plan, which formally incorporates the above, should be an enforceable condition or restriction of any permission granted in these circumstances.

If any of these criteria above cannot be satisfied, and reasonable scientific doubt remains as to the certainty of successful habitat creation within a short timeframe, Natural England would advise that a predicted loss cannot be mitigated for by habitat creation, and must instead constitute an adverse effect on site integrity. The project must then pass the tests given in regulation 62 of no alternatives and only proceed from there on the basis of there being imperative reasons of overriding public interest. At that point, compensatory measures for the lost or damaged habitat would need to be provided by the usual means to satisfy regulation 66 as required.

It is further noted that due to tightly-drawn boundaries notified at the time of designation, site-fabric is not prevalent in many protected sites and using creation of habitat from site fabric to mitigate loss has not been common practice in the past. Natural England will continue to work with applicants to find alternative solutions which do not result in loss of habitat and seek other types of mitigation where needed. Natural England will continue to take into account clarifications in the law when giving its advice to competent authorities on plans and projects likely to significantly affect European sites.

Footnotes

1. ‘Site-fabric’ is a general term used by Natural England to describe land and/or permanent structures present within a designated site boundary which are not, and never have been, part of the special interest of

a site, nor do they contribute towards supporting a special interest feature of a site in any way, but which have been unavoidably included within a boundary for convenience or practical reasons. Areas of site-fabric will be deliberately excluded from condition assessment and will not be expected to make a contribution to the achievement of conservation objectives.

Appendix 5C(B) – Habitat Banking Tracker Example Template

Mitigation Option Ref No.	Mitigation Option Name	Central Grid Reference	Designations (e.g. SSSI / CWS / None)	Current Habitat Type	Potential Habitat Type	Area (ha)	Potential Biodiversity Offsetting Credits	Cost Estimate to Implement, including long term monitoring and adaptive management if appropriate	Status (1. Identified - Provisional; 2. Agreed - Unallocated; 3. Agreed - Allocated; 4. Complete - Unallocated; 5. Complete - Allocated)	Project Allocation	General Comments including monitoring and adaptive management	MOD Head of Establishment Comment / Approval	DIO LMS Comment / Approval	DIO Ecology Comment / Approval	DIO Archaeology Comment / Approval	DIO Forestry Comment / Approval	DIO Access Comment / Approval	Statutory Body Comment / Approval
1																		