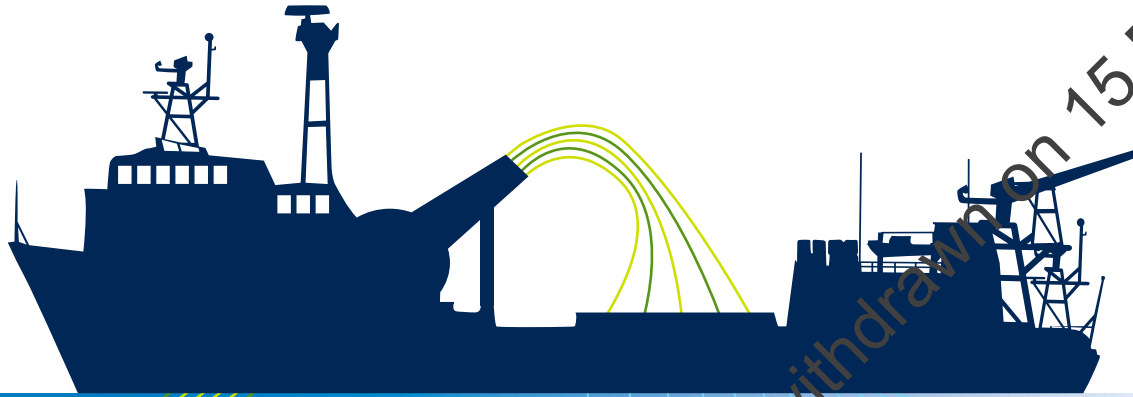




Environment
Agency



Clearing the waters

A user guide for marine dredging activities –
Understanding the implications for decision making

May 2012

This document is out of date and was withdrawn on 15 December 2016.

Understanding the implications for decision making

Introduction

Having applied as much or as little of the methodology as required by this draft guidance framework, decisions need to be made: whether or not the proposed dredging or disposal activity can proceed and, if so, whether any measures are required to help ensure compliance with the WFD. Such decisions will typically be made by the relevant regulator (or by the statutory port or harbour authority) in consultation with us as appropriate.

In the first instance, they will consider the quality of data used to inform the process and in particular any significant data gaps or areas of low confidence. Maintenance dredging and disposal activities can only be assessed against the WFD parameters for which adequate baseline data exist. For WFD parameters where there are gaps in our information, such maintenance activities should continue pending re-assessment when a new licence is required or once the necessary information becomes available.

All other situations are represented on Figure 5 which provides an overview of the possible routes through the draft guidance framework. It highlights the potential outcomes for different types of projects.

Actions for which no assessment is required

Screened-out activities

The screening process as applied to maintenance dredging and disposal activities may “screen out” an activity because it will not cause deterioration or failure of the water body to meet its WFD objective. In such cases, this conclusion must be documented and the licensing or consenting process should continue. The activity can also proceed if it is being carried out by a statutory port or harbour authority under its own powers.

Assessment demonstrates no effect on status at water body level

One outcome of an assessment, whether WFD-specific or undertaken as part of an EIA, environmental appraisal, etc is that there will be no effect on status at water body level. In such cases, the licensing or consenting process should continue. The activity can also proceed if it is being carried out by a statutory port or harbour authority under its own powers.

If it is demonstrated that the dredging or disposal activity will not affect status at water body level, or where a potential effect on status can be successfully mitigated, the activity is WFD-compliant and the licensing or consenting process can continue.

Assessment demonstrates an effect on status at water body level

Where an assessment concludes that the status of the water body could be affected, mitigation measures will need to be identified and evaluated. There are a number of potential outcomes in this case, as follows:

Technically feasible and not disproportionately costly mitigation measures exist

Where technically feasible and not disproportionately costly measures exist the licensing or consenting process should incorporate these measures as a condition or similar. Thereafter the licensing or consenting process should continue on the basis that the activity is WFD compliant. Where the activity is to be carried out by a statutory port or harbour authority under its own powers, the authority will need to ensure that the necessary mitigation measures are implemented and maintain appropriate documentation for submission to us if required.

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Mitigation measures are not technically feasible or are disproportionately costly

Where potential mitigation measures exist but are not technically feasible or are disproportionately costly, it will be necessary to explore the provisions for exemptions under the WFD.

Mitigation measures may exist but the activity will still cause the water body to fail to meet its WFD objective

In some cases, even if technically feasible and not disproportionately costly measures exist and could be implemented, the dredging or disposal activity will still cause the water body to fail to meet its WFD objectives. It will therefore be necessary to explore the provisions for exemptions under the WFD.

WFD exemptions

There are a number of exemption provisions in the directive. See article 4 of the EC Water Framework Directive.

Dredging or disposal will cause deterioration in status at water body level

Very few WFD exemptions apply if an activity will cause deterioration in status at water body level. Article 4(6) allows for temporary deterioration due to natural causes but is very unlikely to be applicable to dredging and disposal activities. The only possible exemption is for physical modifications (hydromorphological changes) which are required to support a defined sustainable human activity such as navigation.

If the assessment process concludes that there will be deterioration in status at water body level due to a new physical modification, the tests under Article 4(7) of the WFD will have to be applied:

- all practicable steps are being taken to mitigate the effect on status;
- there are reasons of overriding public interest or the benefits *inter alia* to human health or safety or sustainable development outweigh the benefits of achieving the relevant WFD objective(s);

- there are no technically-feasible, environmentally-better and not disproportionately-costly alternatives; and
- the reasons for the physical modification are explained in the relevant River Basin Management Plan. (European guidance provides a potential retrospective route for this test only.)

In all other cases where dredging or disposal would cause deterioration in the status of one or more WFD parameters at water body level – for example if dredging would cause a chemical status failure in a water body which currently passes on chemical status – the proposed activity may not be able to proceed. You will need to seek our advice.

If a dredging or disposal activity would cause deterioration as a result of a physical modification, it may be possible to seek an exemption under Article 4(7) of the WFD so that the activity can go ahead.

Where an activity would cause any other type of deterioration at water body level, there is no provision in the WFD for an exemption and advice will need to be sought from us.

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Dredging or disposal will cause failure to achieve one or more WFD objectives

Provided there is no further deterioration in the status of the affected water body, Articles 4(4) and 4(5) of the WFD make some provision to extend deadlines for achieving WFD objectives or for setting less stringent targets.

Deadlines can be extended from 2015 to 2021 or to 2027 if it is not technically feasible or if it is disproportionately costly to achieve the objective.

A reduced target may be set if the measures required to achieve the relevant target are not technically feasible or disproportionately costly. This assumes there are no alternatives which **are** technically feasible, environmentally better and not disproportionately costly.

If a dredging or disposal activity would result in the water body failing to meet its WFD objective, it may be possible to seek an exemption so that an extended WFD deadline or less stringent WFD objective can be set and the activity can go ahead.

In both cases you would need to seek advice and agreement from us and the relevant regulator.

If an exemption can be applied, the operator/regulator must document the decision-making process. We would take appropriate action to include this information at the time of reviewing the relevant River Basin Management Plan.

If an exemption cannot be justified, any dredging or disposal activity will therefore cause the water body to fail to meet its WFD objective, that activity may not be able to proceed. You will need to seek our advice on possible alternative options.

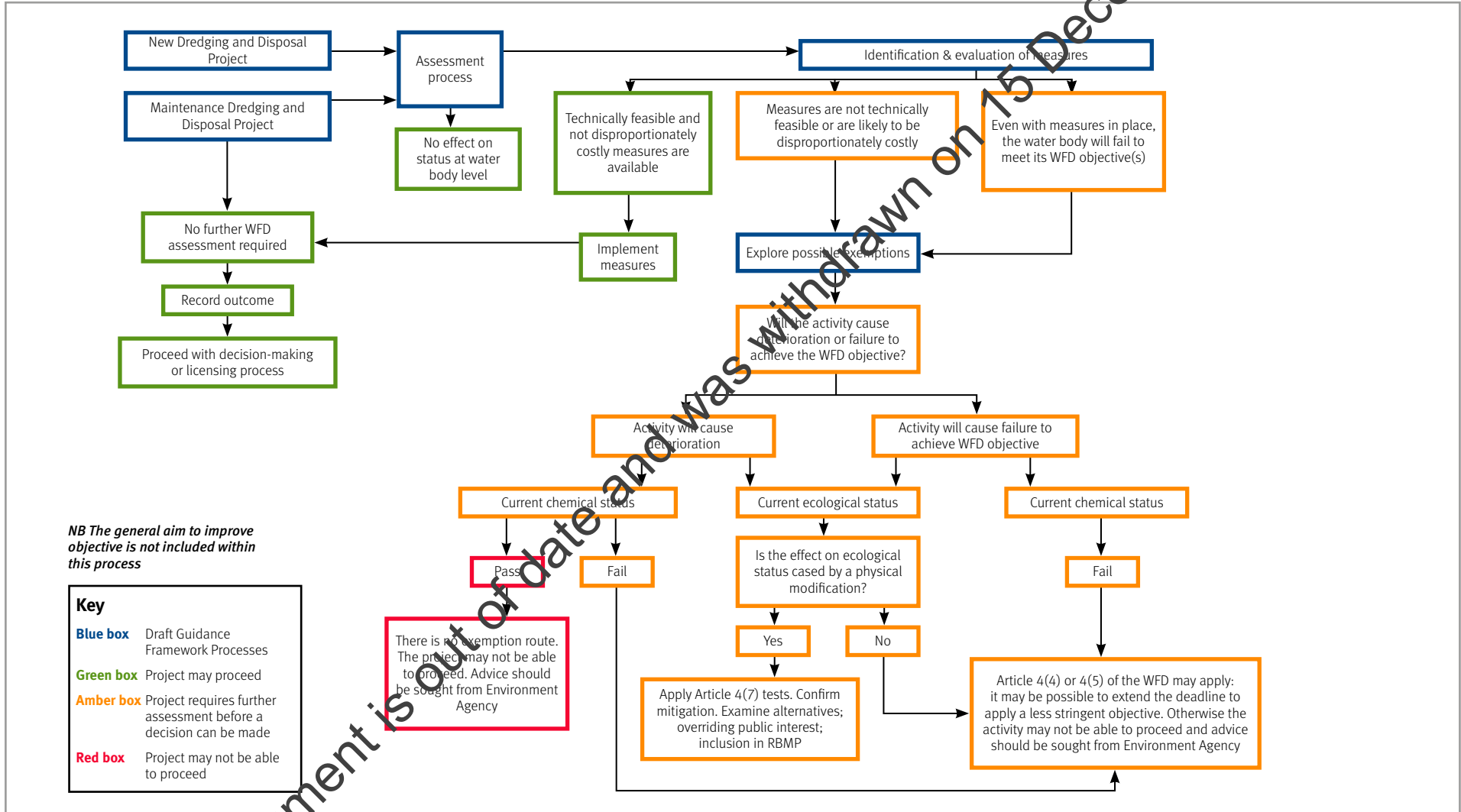
Additional requirements for the use of WFD exemptions

In applying any of the above exemptions, you will also have to show:

- that the activity will not permanently exclude or compromise the achievement of WFD objectives in other water bodies; and
- that the activity is consistent with (and guarantees at least the same level of protection as) other EC environmental legislation.

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Figure 5: WFD compliance: process for assessing dredging and disposal activities potentially causing deterioration or failure to meet WFD objective(s)



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