



In practical terms the mitigation, compensation, IROPI and monitoring for all three regulatory processes should be dealt with as one for any project.

Information on to Article 4.7 (exemption from deterioration of status) available in the Common Implementation Strategy for the Water Framework Directive (2000/60/EC) Guidance Document No. 20

When considering mitigation measures the following should be referred to for consideration:

- The WFD mitigation measures manual <http://evidence.environment-agency.gov.uk/FCERM/en/SC060065.aspx>

APPENDIX 1B REGULATORY FRAMEWORK RATIONALE

Step 1

At this first step all relevant data for the project should be collated and recorded. Where relevant this should be input into Table 1. This would for example include the nature, size, duration (both construction and operation) and location of the activity.

Step 2

There are presently three main directives driving the regulatory system:

- The EIA Directive
- The Habitats and Birds Directives
- The Water Framework Directive

Each of the directives needs to be assessed for relevance at this stage of the regulatory framework in order to establish whether one, two or all three directives are relevant to a specific project.

Step 2 asks the following:

1. EIA: Is the project an Annex I or Annex II project under the EIA directive?

If the answer is no to this question then the EIA process is complete and the process proceeds to Step 6. The fact that no EIA was required can be recorded in Table 1 and also Table 5 as part of the consenting decision. If the answer is yes then the EIA process proceeds to Step 3.

2. HRA: Is the project within or adjacent to a European Nature Conservation Designation?

If the answer is no to this question then the assessment under the Habitats and Birds Directives is complete and the process proceeds to Step 6. No requirements under the Habitats or Birds Directives can be recorded in Table 1 and Table 5 for the consenting decision. If the answer is yes then the Habitats Regulations Assessment proceeds to Step 3.

3. WFD: Is the project a dredging and/or disposal operation?

This framework works on the presumption that a WFD assessment would always be needed for every project. For the sake of inclusion at this time the WFD assessment guidance 'Clearing the Waters' has been incorporated into this framework. The rationale for this being that the information and assessment carried out as a result of this guidance will complement the TraC MImAS tool with regard to dredging and/or disposal projects, especially with regard to in-depth examination of the potential for sediment contamination. At present the TraC MImAS tool does not examine those aspects in this way and therefore to leave this out would leave a large gap in the WFD assessment.

The first question asked for the WFD assessment is therefore whether the project is a dredging and/or disposal project. If the answer is no then the process proceeds to Step 3 and recorded in Table 1. If the answer is yes then this can be recorded in Table 1 and the process continues through to Stage 1 of the Clearing the Waters assessment. If following

Stage 1 no further assessment is required then this can be recorded in Table 2 and the process continues on to Step 3. If further assessment is required then the process continues onto Stages 2 to 4 of the Clearing the Waters assessment. The results of Stages 2 to 4 can be recorded in Table 3. If no non-temporary deterioration to the water body (s) is found then the process continues on to Step 3. If there is a predicted non-temporary deterioration then the process needs to continue to Mitigation and/or IROPI and the results recorded in Table 4. Following completion of the Clearing the Waters assessment the process can continue onto Step 3.

Step 3

During Step 3 all three processes continue as follows:

1. For EIA the process enters the scoping stage where relevant data sources and then potential impacts are investigated and then described with the production of a Scoping Report by the applicant. A scoping opinion will then be sought from the regulator. The scoping opinion can be recorded in Table 2 and referenced in Table 5. The process then continues to Step 4.
2. For the Habitats and Birds Directives the regulator will have to advise the applicant whether there is the potential for the project to have a 'Likely Significant Effect'. If no LSE is likely then the Habitats and Birds Directive assessment process stops at this point and the result recorded in Tables 2 and 5. If there is a potential for LSE then the process then continues onto Step 4.
3. For the WFD assessment a TraC MImAS assessment now takes place and relevant data can be input into Table 2. This will include nature conservation designations at a national level as these will not have been included within the European nature conservation designation assessment (Step 2). The TraC MImAS assessment would also go a step further if the habitat that could be affected is saltmarsh or seagrass. Once the assessment takes place the process continues to Step 4.

Step 4

During Step 4 all three processes continue as follows:

1. For EIA the process enters the Environmental Statement stage. The applicant will submit the ES to the regulator for assessment. The results of this assessment to be recorded in Table 2 and referenced in Table 5. The process then continues to Step 5.
2. For Habitats and Birds Directives an Appropriate Assessment will now be carried out based on the information provided to the regulator by the applicant. If no adverse effect on integrity is determined then the results can be input into Table 3 and referenced in Table 5. If an adverse effect on integrity is determined then the process continues onto Step 5. This stage in the assessment process should take into account any proposed mitigation measures.
3. For WFD assessment the output of the TraC MImAS tool should be recorded in Table 3. If no non-temporary deterioration to a water body is predicted then the process is complete and

the outcome also recorded in Table 5 as part of the consenting decision. Where the TraC MImAS tool outcome conflicts with any outcome from the Clearing the Waters outcome at this stage it is suggested that the default would be the worst case scenario. If a non-temporary deterioration in a water body is anticipated then the process continues to Step 5.

Step 5

During Step 5 all three processes continue as follows:

1. For EIA any mitigation and/or monitoring suggested and agreed should be recorded in Table 4 and referenced in Table 5. The process then continues to Step 6.
2. For the Habitats and Birds Directive any outcome from the examination of alternatives and/or any IROPI decision and compensation suggested and agreed to be recorded in Table 4 and referenced in Table 5. The process then continues to Step 6.
3. For WFD assessment and mitigation and/or IROPI should be recorded in Table 4 and referenced in Table 5. The process then continues to Step 6.

In practical terms by this stage the Regulators would be collating all of the mitigation, compensation, IROPI and/or monitoring elements of the project and dealing with them as one. In this way a co-ordinated approach to the project can be achieved. When considering mitigation measures the following should be referred to for consideration:

- The Water Framework Directive mitigation measures manual
<http://evidence.environment-agency.gov.uk/FCERM/en/SC060065.aspx>

Step 6

This step brings together all the data gathering and assessments carried out in Steps 1 to 5 and Table 5 should provide a transparent audit trail of the way the decisions have been made and where in the process. The final consenting decision will be based on all three outcomes from the EIA, Habitats and Birds Directives and the WFD. For a consent to be granted all three outcomes must be satisfactory.

Potential for further work

This framework provides a draft high level guidance through the directives requiring consideration during the regulatory decision making process. This guidance could be further refined either for each Step or by each directive pathway. The refined guidance could provide the same level of information as for example that contained within the Environment Agency's Clearing the Waters.

APPENDIX 1C REGULATORY FRAMEWORK TABLES

Table 1 Project information

Information Required	Information gathered
General	
WBID	
Water body name	
Catchment	
Classification	
Current overall status / potential	
Status objective	
Project description	
Type (use TraC MImAS options for description)	
Location (description and co-ordinates)	
Size (km ²)	
Duration during construction	
Duration during operation	
Construction methodologies (eg piling, demolition etc)	
Dredging and disposal (if applicable) or non-dredging activity	
Area of dredge (km ²)	
Dredging volume	
Maintenance or capital dredging	
Dredging tonnage	
Material type	
Dredging methodology	
Timing of works	
Existing sample analysis data?	
Disposal site identified?	
Alternative use?	
Method of disposal/placement	
Nature Conservation	
European sites	
National sites	
Local sites and other	
Water bodies with regard to WFD	
For each water body : ID and name	
Size (length or area)	
Status	
Biological, chemical and/or hydromorphological info	
Directives	
EIA directive: EIA Annex I or II?	
Habitats and Birds Directive: Within or adjacent to European site (provide distances where relevant)	
WFD assessment: Clearing the Waters assessment necessary?	

Table 2 Scoping the issues

Information required	Output
EIA Scoping response: Collation of responses from consultees	Provide scoping response to applicant in order to guide content of Environmental Statement
Habitats and Birds Directives: Likely Significant Effect	Either no LSE or request applicant to provide relevant info so that regulator can carry out Appropriate Assessment
WFD Assessment: Clearing the Waters Stage 1 outcome	Either the project is screened out at this stage or request applicant to continue to Stages 2 to 4
WFD Assessment output from TraC MImAS assessment tool	Detail output from the assessment
Capacity Used Hydrodynamics	% of capacity used
Capacity Used Intertidal	% of capacity used
Capacity Used Subtidal	% of capacity used
Capacity Used Habitats	% of capacity used

Table 3 Assessment

Information required	Output
EIA assessment: Assessment and outcomes of the Environmental Statement	Provide audit trail of major impacts
Habitats and Birds Directive: Outcome of the Appropriate Assessment	Carry out AA and provide audit trail of outcome including mitigation measures
WFD assessment: Clearing the Waters Stages 2 to 4	Assess outcome of Stages 2 to 4 and either record either a non-temporary deterioration to water body or no non-temporary deterioration to the water body
WFD assessment : TraC MImAS tool	Analyse output from tool and record either a non-temporary deterioration to water body or no non-temporary deterioration to the water body. Suggest at present use precautionary principle and if the outcome of the Clearing the Waters assessment conflicts with the outcome of the TraC MImAS tool then use worst case scenario.

Table 4 Mitigation, monitoring, compensation and IROPI

Information required	Output
Define area of assessment: local or water body scale assessment	Remit of assessment
EIA: Record all mitigation and monitoring required for the project	Set out all mitigation and monitoring
Habitats and Birds Directive: Record all monitoring and/or compensation requirements for the project	Set out consideration of alternatives, IROPI and compensation
WFD assessment: Record all mitigation, monitoring and/or IROPI rationale	Set out all mitigation and/or IROPI

Table 5 Consenting decision and rationale

Information required	Output
EIA: Summary of impacts, mitigation and monitoring requirements	Set out a summary of impacts, mitigation and monitoring
EIA: Establish licensing conditions	Set out licensing conditions
Habitats and Birds Directive: Summary of AA outcome, mitigation, monitoring and compensation requirements	Set out summary of AA outcome, mitigation, monitoring, IROPI decision and compensation requirements if applicable
Habitats and Birds Directive: Establish licensing conditions	Set out licensing conditions
WFD: Summary of TraC MImAS assessment	Set out summary of TraC MImAS assessment
WFD: Summary of Clearing the Waters assessment (if applicable)	Set out summary of Clearing the Waters assessment
WFD: Establish licensing conditions	Set out licensing conditions
Further detailed assessment	Request for additional information and detailed assessment by the consenting agency
Overall consent decision	Set out overall licensing decision
Licence	Licence details