

Environment Agency – EclA Guidelines Comments

1.0 OVERVIEW

- 1.1 The Environment Agency is one of several organisations with responsibility for environmental issues in England and Wales, and has a major interest in the sustainable management of the freshwater and marine environments. We have an important regulatory role and operational responsibilities for sustaining and enhancing biodiversity, and the Environment Act 1995 places both general and specific duties on us with regard to conservation. In particular, we perform important roles in respect of pollution control, fisheries, the promotion of water-based recreation, management of flood defences, monitoring of inland and coastal waters and estuaries, and we are the lead partner for a number of priority UKBAP habitats. The Agency is also a Competent Authority for several EU Directives, including Habitats Directive and Water Framework Directive (WFD) in England and Wales.
- 1.2 These guidelines are very relevant to us in our capacity as (i) a developer (eg. in undertaking flood risk work), (ii) a regulator for development proposals requiring our permissions and (iii) a statutory consultee in the Town and Country Planning process.
- 1.3 We also employ consultant ecologists in relation to our Capital Schemes and associated Environmental Impact Assessments. We therefore appreciate the major benefits that good practice guidelines will bring.
- 1.4 Many of our own in-house ecologists are members of IEEM who will be keen to see these guidelines finalised so they can use and promote them in the future. However, we have a number of specific concerns in relation to the present scope and wording of the guidelines, particularly in relation to their emphasis on the planning system and in relation to the aquatic environment. This means that we are not yet in a position to endorse these guidelines.

2.0 GENERAL COMMENTS

- 2.1 We welcome this document and support its aims of providing clear guidance to ecological practitioners on Ecological Impact Assessment (EclA). Chapter 3 on Determining Value and Chapter 4 on Impact Assessment are particularly helpful, as they provide background on significant issues. Because a lot of information is being presented in the guidelines, diagrammatic presentation, for example using flowcharts or tables, would be helpful in places.
- 2.2 A number of improvements and changes to the document are needed to overcome our concerns. In particular, we believe that:
- wetland, riparian and aquatic issues are not adequately addressed;
 - physical processes are not adequately covered;
 - the text does not reflect the recently published PPS9 on Biodiversity and Geological Conservation;
 - the environmental requirements of the Environment Agency's consenting system are different from the EIA Regulations and are therefore not adequately covered;
 - there is confusion regarding the status of EIA as an independent assessment of ecological value and impact and its output as part of an Environmental Statement. The document needs to state clearly that it is an EclA/EIA methodology or an Environment Statement guidance, because the two are very different in purpose.

3. DETAILED COMMENTS

3.1 Paragraph 1.2 – emphasis of the guidelines

- 3.1.1 This guidance is based on requirements for the UK Environmental Impact Assessment (EIA) Regulations within the UK Planning system. The environmental requirements of the Environment Agency's consenting system are different from the UK EIA Regulations and are therefore not adequately addressed adequately by this document.

- 3.1.2 The guidance is based on the planning system, but to take account of our Land Drainage consents the guidelines should include the Environment Agency's requirements. If this is not possible, the guidance must emphasise that the Environment Agency's requirements need to be included in any EIA before it is used as part of an Environmental Statement or submitted to a planning authority.
- 3.1.3 An EclA might be produced and used to support an application for an environmental permission, such as those under the Water Resources Act. This reinforces the need for paragraph 1.2 to cover other permissions such as those dealt with by the Environment Agency. This would demonstrate the full value of carrying out a comprehensive EclA.
- 3.1.4 It would also be beneficial to clarify the best practice elements of the proposed approach, and those that are mandatory under the EIA Directive and Regulations.

3.2 Paragraph 1.5 (Paragraph 1.11) the purpose and context of the guidelines

- 3.2.1 Paragraph 1.5 states that these guidelines will "provide practical advice for ecologists ... for any type of terrestrial proposal in the UK". This wording implies that the EclA guidance will relate purely to the terrestrial environment and will not take into account the aquatic environment including riparian and wetland habitats.
- 3.2.2 The same principles apply to land, air and water. A more integrated approach would be of greater benefit, as many planning applications apply to a variety of media – not just land. This applies in particular to Flood Risk Management capital schemes, for which EclAs are routinely carried out to support planning applications. The current wording of this document needs to be changed to reflect the wider context.
- 3.2.3 We support the need for separate guidance for the marine environment. Our national Marine Policy Manager, Dr Jim Andrews, will be able to assist in this regard.
- 3.2.4 It would be useful to indicate the anticipated timetable for publication of this document and those relating to the Habitats Directive and the Strategic Environmental Assessment (SEA) Directive. The Environment Agency, in collaboration with English Nature and the Countryside Council for Wales, has already produced extensive relevant guidance on the Habitats Directive. Nick Hopwood, Conservation & Ecology Policy & Process Manager, will be happy to provide advice in this regard. You should also have regard to the SEA and biodiversity guidelines recently produced by the Environment Agency, English Nature and RSPB.

3.3 Box 2 – the EclA Process

Box 2 refers to consideration of the ecological aspects of the proposal design stage but there is no corresponding reference to this stage in the text. It would be useful if this were clarified and highlighted in the guidance. For ease of reference, it would be helpful if the relevant chapters of the guidance were cross-referenced to each of the sub-headings identified within the EclA Process box.

3.4 Box 3: Stages in Scoping

The use of a flowchart would make the presentation of the information more effective.

3.5 Paragraph 2.14

We support the need to consider positive enhancements at the start of the assessment process.

3.6 Box 4: Example illustrating factors to consider when defining the zone of influence of a quarry

It would be useful to also highlight consideration of additional factors such as water quality aspects during construction works, eg. sediment runoff, which could have negative ecological implications for species in the aquatic environment if not properly managed.

3.7 Box 6: Activities likely to generate impacts

This box should include the following additional items:

- the nature of the design itself is a stage that can often be over-looked – it is important to consider design before the construction phase
- excavation or construction works on river banks or coastal strips
- dredging

- construction works related to water-based structures (eg bridge pylons, weirs)
- runoff
- invasive non-native species.

3.8 Paragraph 2.32

Phase 1 Survey methodology is one of the most frequently used techniques in Ecological Impact Assessment and should be referred to.

3.9 Paragraph 2.33

Are there any limits/provisions on the time of year during which a Phase 1 survey can/cannot be considered “valid”?

3.10 Box 9: Sources of contextual information

It would be useful to include references to relevant information produced by the Countryside Council for Wales and to cite the National Biodiversity Network as a source of information on specific species and geographical distribution.

3.11 Paragraph 2.35

The words “and documented” should be inserted after the words “should be agreed” in this paragraph to ensure that staff changes do not compromise consideration of ecological factors in long-running projects.

3.12 Paragraph 2.40

An Appendix listing recommended survey methods for different types of protected species, would be helpful. Information on the appropriate timing of surveys, for example when surveys are suitable for different species, would also be helpful.

3.13 Section 3 - Determining value

A summary table at the end of this chapter, highlighting the main factors to consider when determining value, would be helpful.

3.14 Paragraph 3.4

The word “or” should be removed after the word “considered” in this paragraph.

3.15 Paragraphs 3.11 – 3.12

In addition to Areas of Outstanding Natural Beauty and National Parks, the role and value of National Nature Reserves and Local Nature Reserves should be considered in this section.

3.16 Paragraphs 3.41 – 3.43 Injurious and legally controlled weeds

These sections could be strengthened by highlighting the importance of considering the ecological presence and impacts of invasive non-native species in general rather than just ‘weeds’. Defra’s European Wildlife Division and English Nature will be able to advise further on this topic. The Environment Agency has produced a booklet giving guidance for the control of invasive weeds in or near fresh water and a Code of Practice for the management, destruction and disposal of Japanese knotweed.

3.17 Paragraphs 3.48 and 3.54 relating to Social Value

The examples given in paragraph 3.54 replicate exactly the last 2 bullet points given in paragraph 3.48, so could simply be cross-referenced.

3.18 Paragraph 3.55 Economic Value

Additional examples could include eco-tourism aspects of some wetland sites and populations of salmonid as well as cyprinid fish.

3.19 Paragraph 4.20

This paragraph should include reference to the equivalent guidance notes produced by the Countryside Council for Wales.

3.20 Impact Assessment: Table 1

The worked example is very helpful - a second worked example could be provided, that would give further assistance to practitioners.

3.21 Paragraph 5.4

The guidance should refer to the recently published Planning Policy Statement 9 on Biodiversity and Geological Conservation (PPS9) and its associated guidance. The EclA guidance text throughout needs to be checked to ensure that it complies fully with this PPS.

3.22 Paragraph 5.8

Clarification is needed as to whether this lack of a legal requirement is also the case for s106 agreements.

3.23 Paragraph 5.10

An "EAP" is mentioned without prior explanation or definition. We assume it refers to an Environmental Action Plan, but a brief explanation would be helpful. A glossary of acronyms at the back of the document would also assist.

3.24 Paragraph 6.5

Reference to the 'Habitats Directive' in the second sentence should read 'Conservation (Natural Habitats & c.) Regulations'.

3.25 Paragraph 6.7

The scope of this paragraph should be broadened to cover other environmental consents from regulatory bodies such as the Environment Agency. (This also relates to our comments above on paragraphs 1.2 and 1.5 of the draft guidance.)

3.26 Table 2 Ecological, legal and policy implications

This is a very useful table of examples, but should also refer to the wider legislative and regulatory framework, not just development control.

3.27 Appendix 1: Relationship between TAG and IEEM Guidelines

While it is useful to have the Department for Transport's Transport Assessment Guidelines methodology presented, clearer directions should be given as to whether it is appropriate to use it in conjunction with/in support of the IEEM Guidelines, eg. are the two methods mutually exclusive, or are there aspects of the TAG which should be considered when assessing impacts?

3.28 TAG Table 5

- 3.28.1 This is a more extensive and comprehensive list of designations than the earlier IEEM list and information in Section 3, and it would be useful if it could be highlighted and cross-referenced in that earlier text. We believe that National Nature Reserves should be added to the 'National designations' section of this table.
- 3.28.2 The Convention on Biological Diversity (CBD) has worked with the International Association for Impact Assessment (IAIA) on the preparation of guidelines on how to consider biodiversity in impact assessment. The governing body of the CBD adopted a first set of guidelines in 2002. However, these provided limited information on the EIA stages beyond screening and scoping and contained almost no information on SEA. To address these gaps, participating countries were asked to provide information on the experience they have had with the application of the guidelines and on biodiversity issues in impact assessment in general. The CBD have now produced draft guidelines, which, following peer review, will be considered by the forthcoming COP-8 of the CBD next year (available at: <http://www.biodiv.org/programmes/cross-cutting/impact/guidelines.shtml>). The consultation is open until 30 September 2005. It may be useful to consider the IEEM guidelines in relation to these drafts.

4.0 FURTHER INFORMATION

- 4.1 Further information or background to this response can be obtained from Pam Nolan, National Ecology Policy and Process Manager, Richard Fairclough House, Knutsford Road, Warrington, Cheshire WA4 1HG. Tel: 01925 542376

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