

Revised Draft Drought Plan 2022

Annex 3: Our case for IROPI

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from
**Southern
Water** 

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Abbreviations

DP19	2019 Drought Plan
DP22	2022 Drought Plan
EA	Environment Agency
HSE	Hampshire Southampton East WRZ
HoF	Hands Off Flow
HRA	Habitats Regulations Assessment
IROPI	Imperative Reasons for Overriding Public Interest
NE	Natural England
SWS	Southern Water
WRZ	Water Resource Zone

1. Introduction

Best practice guidance¹ recommends that if there are no alternative solutions and if, in exceptional circumstances, it is proposed that a Drought Plan be adopted even though adverse effects on the integrity of a European site cannot be ruled out, the Habitats Regulations Assessment (HRA) needs to address and explain the Imperative Reasons of Overriding Public Interest (IROPI) which the water company considers to be sufficient to outweigh the adverse effects on the European site(s).

IROPI must be assessed on a case-by-case basis in light of the objective of the particular plan or project and its particular impacts on the European site(s) affected as identified in the Appropriate Assessment.

Following our agreement with the Environment Agency (EA) under Section 20 of the Water Resources Act 1991 (the Section 20 Agreement) that severely reduces the amount of water we can take from the rivers Test and Itchen during low flow conditions, we need to rely on drought permits/orders in the Western area more frequently than our target levels of service until we have developed alternative solutions to make up for the loss of supply in the area as a result of the agreement.

For the Drought Plan 2022 (DP22), the key principles that underpin the IROPI case are set out below that the Secretary of State will be asked to consider before approving the plan.

Key principles:

- Maintaining essential public water supplies to customers during a severe drought (up to and including a 1-in-500 years' drought) without recourse to standpipes or rota cuts is of critical importance for public health, and social and civil functioning, and outweighs the environmental effects of the Candover Augmentation Scheme and Lower Itchen Drought Orders.
- The costs to businesses and household customers of rota cuts and standpipes outweigh the environmental effects of the Lower Itchen Sources Drought Order.

These two key principles support the elements of the IROPI 'test' as set out below:

- A requirement to maintain human health and public safety, as well as social and economic reasons:
Imperative: the measure is urgent due to the relatively short timescales with which flows in the River Itchen can decline and remain below the hands-off flows (HoFs) at the gauging stations near Southampton and Eastleigh in a severe drought. The measure is essential as, without its implementation in severe drought, once flows in the River Itchen fall below the HoF conditions, the maintenance of essential public water supplies to customers will start to fail within the Hampshire Southampton East (HSE) water resource zone (WRZ).
Overriding: the likely harm to the public and economic impact to businesses in the HSE WRZ outweighs the harm to the designated site. The likely harm to the public includes risks of bacteriological contamination of water supplies and risk of water-borne disease (i.e. risks to human health) and risks involved in carrying and storing water due to rota cuts or standpipes, as well as the risks posed to water supplies for fire-fighting and other safety requirements (i.e. risks to public safety)

¹ Tyldesley, D. & Chapman, C. 2015. The Habitats Regulations Assessment Handbook. DTA Publications. Version 4.

is overriding. The economic costs to businesses of rota cuts and standpipes are also unacceptable and overriding when weighed against the harm to the designated site.

Public interest: the harm is to the public not to a private interest. The public and businesses (at a local level, i.e. the public and businesses living, working or operating in the HSE WRZ) will benefit by not having to collect water from standpipes in the street or be subject to rota cuts, which would be likely to lead to harm to the public and businesses.

Once it has been determined that there is a good case for IROPI to be applied, the Habitats Directive requires that all necessary compensatory measures are taken to ensure the 'overall coherence' of the network of European sites as a whole is protected. The competent authority has a responsibility for ensuring that suitable compensation is identified, but the appropriate authority also has a role in ensuring that compensation is 'secured'.

Compensatory measures must be decided on a case-by-case basis and aim to offset the negative effects caused by the drought order. There must also be confidence that the compensatory measures will be sufficient to offset the harm and therefore measures for which there is no reasonable expectation of success should not be considered. The compensation must be 'secured' before consent can be given for a proposal to proceed. Where possible, compensation measures should be complete before the adverse effect on the European site occurs. However, in some cases, damage to European sites may necessarily occur before the compensatory measures are fully functioning.

As part of the Section 20 Agreement, the EA has agreed that Southern Water (SWS) has a good case that there are no alternative options to our Lower Itchen Sources Drought Order to maintain public water supply until we implement our long-term water resources schemes and the EA will not argue that it is unacceptable with regard to Article 6(4) of the Habitats Directive. The EA has also agreed that for the period of subsequent drought plans until implementation of the long-term solution, we have a good case that we have no alternative solutions to our Candover Drought Order scheme, in order to maintain public water supply and that the Candover Drought Order scheme satisfies the test in Article 6(4) of the Habitats Directive. For the avoidance of doubt, the EA still reserves the right to come to a different view if circumstances material to the question of available alternative options and IROPI under Article 6(4) of the Habitats Directive change.

For our Drought Plan 2019 (DP19), we carried out HRA assessments of our proposed drought orders in the Western area. The results are discussed below.

2. Appropriate Assessment of Western area drought orders

The Appropriate Assessment of the Candover Augmentation Scheme Drought Order concluded that potential adverse effects on the following habitat feature and species could not be ruled out as a consequence of implementing the drought order under very low river flow conditions:

- Rivers with floating vegetation often dominated by water-crowfoot (chalk stream habitat)
- Southern damselfly
- White-clawed crayfish

The Appropriate Assessment of the Lower Itchen Sources Drought Order concluded that risks of potential adverse effects on the following habitat feature and species could not be ruled out as a consequence of implementing the drought order in very low river flow conditions:

- Rivers with floating vegetation often dominated by water-crowfoot (chalk stream habitat)
- Atlantic salmon
- Southern damselfly

As part of developing our DP19, detailed discussions took place with Natural England (NE) and the EA to develop compensation packages and associated implementation timetable for each drought order which are included as part of the Section 20 Agreement and summarised in Table 1 and Table 2.

Table 1: Compensation measures for Candover Augmentation Scheme Drought Order.

Feature or Species	Compensation Measure(s)
Rivers with floating vegetation often dominated by water-crowfoot	<ol style="list-style-type: none"> a. Carry out feasibility studies to determine the specific locations for the compensation measures to be implemented and secure landowner consent b. Either <ol style="list-style-type: none"> i. Carry out chalk stream habitat restoration measures covering 6km of chalk stream habitat (or as otherwise confirmed) on the River Dun tributary of the River Test. or ii. Carry out chalk stream habitat restoration measures covering 6km of chalk stream habitat (or as otherwise confirmed) on the Wallop Brook (or equivalent location) tributary of the River Test. or iii. Carry out chalk stream habitat restoration measures covering 6km of chalk stream habitat (or as otherwise confirmed) on the Bourne Rivulet tributary of the River Test. <p>The specific measures implemented will be determined based on the requirements of the river as well as to fully ensure the coherence of the Natura 2000 network, and will be subject to further assessment.</p>
Southern damselfly	<ol style="list-style-type: none"> a. Carry out feasibility studies to determine the specific locations for the compensation measures to be implemented. b. Secure management of land and any relevant water control structures adjacent (within 1km, but ideally within 500m) to, but not currently supporting, an existing Southern damselfly population in the River Test catchment, or to appropriate areas of floodplain wetland in the Meon. c. Secure the funding for any required implementation of habitat enhancement and/or creation for the Southern damselfly. d. Secure agreements for any planning permissions or flood risk permits or other permissions (e.g. NE consent). e. Create or enhance existing habitat for Southern damselfly at the sites confirmed by earlier survey and feasibility study work, covering a total of 2.5km (or as otherwise confirmed), preferably enhancing existing habitat in the Test Valley (or by species translocation), or otherwise create new habitat in the Meon Valley (through species translocation).

Feature or Species	Compensation Measure(s)
White-clawed crayfish	<ul style="list-style-type: none"> a. Maintain a captive brood stock of white-clawed crayfish specimens collected from the Candover Stream working with Bristol Zoological Gardens and the Hampshire & Isle of Wight Wildlife Trust. b. Identify and secure sites for release of white-clawed crayfish from the captive breeding programme, following implementation of any Candover Augmentation Scheme Drought Order. c. White-clawed crayfish release, following the implementation of any Candover Augmentation Scheme Drought Order.

Table 2: Compensation measures for Lower Itchen Sources Drought Order.

Feature or Species	Compensation Measure (s)
Rivers with floating vegetation often dominated by water-crowfoot	<ul style="list-style-type: none"> a. Carry out feasibility studies to determine the specific locations for the compensation measures to be implemented and secure landowner consent b. In the event of an application for a Lower Itchen Sources Drought Order: <ul style="list-style-type: none"> Either <ul style="list-style-type: none"> i. Carry out chalk stream habitat restoration measures for parts of the River Test covering 36ha of chalk stream habitat (or as otherwise confirmed) between Wherwell and Kimbridge as identified in the Test and Itchen Restoration Strategy. or <ul style="list-style-type: none"> ii. Carry out chalk stream habitat restoration measures for parts of the River Meon covering 36ha of chalk stream habitat (or as otherwise confirmed). <p>The specific measures implemented will be determined based on the requirements of the river as well as to fully ensure the coherence of the Natura 2000 network and will be subject to further assessment.</p>
Southern damselfly	<ul style="list-style-type: none"> a. Carry out surveys to confirm the extent of the habitat that may potentially be adversely affected by the drought order and carry out feasibility studies to determine the specific locations for the compensation measures to be implemented. b. Secure management of land and any relevant water control structures adjacent (within 1km, but ideally within 500m) to, but not currently supporting, an existing Southern damselfly population in the River Test catchment, or to appropriate areas of floodplain wetland in the Meon. c. Secure 'in principle' agreements for any planning permissions or flood risk permits or other permissions (e.g. Natural England consent). d. SWS to provide funding for delivery of enhancements to existing habitat (or creation of new habitat) for Southern damselfly. Delivery is likely to require work at two - four sites to provide in aggregate at an appropriate spatial extent of river habitat creation or enhancement as confirmed by earlier survey and feasibility study work, preferably enhancing existing habitat in the Test Valley (or by species translocation), or otherwise create new habitat in the Meon Valley (through species translocation).
Atlantic salmon	<ul style="list-style-type: none"> a. Carry out sampling and analysis of DNA of Meon Atlantic salmon to confirm they are of the same genetic strain as Atlantic salmon in the River Itchen b. Either <ul style="list-style-type: none"> i. Deliver habitat enhancement and salmon passage easement work on the lower River Meon providing that genetic survey work identifies a sufficiently genetically similar pool of Atlantic salmon or ii. Modify structures and/or water management practices at Titchfield Haven in order to improve the attractiveness of the River Meon to Atlantic salmon migrating up Southampton Water or iii. Modify easement of Atlantic salmon passage by removing a weir in the lower Dorset River Stour. If the weir cannot be removed, provide additional Atlantic salmon habitat around the weir.

As the compensation measures involve habitat creation in the river or within the riparian area, it means they should be implemented before a drought starts developing. However, it is also recognised that the actual risk of either of the two drought orders being required is remote; they should only need to be implemented if a severe drought develops. It has also been agreed this is a special case of interpretation of the pertinent law

and expectations; there is no precedent. Balancing all these issues, we have committed to a ten year implementation schedule of the compensation measures package for both the drought orders, with periodic reviews of progress and future risks. The EA and NE have agreed this approach. The IROPI compensation package documents were refined for final agreement and sign-off post DP19 submission and were formally signed-off for commencement in October 2019.

The compensatory measures proposed for the chalk stream habitat and the Southern damselfly for the Lower Itchen Sources Drought Order will be additional to those implemented for these same designated features in respect of the Candover Augmentation Scheme Drought Order Compensation Package.

The decision on IROPI compensation is for the Secretary of State. Subject to that, it is agreed between NE, the EA and SWS that, in committing to delivering the timetable of works set out in the compensation packages, SWS has put in place compensation that is capable of ensuring the continuity of the ecological processes essential for maintaining the overall coherence of the Natura 2000 network, sufficient so that compensation for the Lower Itchen Sources Drought Order and Candover Augmentation Scheme Drought Order elements of the Drought Plan can be considered to be in compliance with the Habitats Directive for the purpose of the Drought Plan.

A monitoring programme for each of these two drought orders has also been agreed with NE and the EA, and also incorporated into the Section 20 Agreement. The monitoring will contribute to confirming the precise spatial scale and extent of the required compensation measures as well as confirming the suitability of relevant measures at the proposed implementation locations. Monitoring will also inform assessment of the implementation and post-implementation success of the compensation measures.