

Habitats Regulation Assessment guidance consultation

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From growing start-ups to major electricity generators, grid and infrastructure developers and energy suppliers, our members are driving change across power, heat, transport and flexibility.

We provide a collective voice for the sector working with governments, regulators, charities and other organisations to provide crucial insight that shapes policy, offers solutions and promotes best practice.

Our broad view across the whole system supports evidence-based positions which are not tied to particular technologies, and are focused on delivering strategic benefits for people, businesses and the economy.

We champion initiatives such as our Vulnerability Commitment, which pushes suppliers to go beyond regulation to support customers with additional needs, and TIDE, the industry's drive for greater inclusion and diversity. Through our Young Energy Professionals Forum, we support the development of future leaders.

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Executive Summary

Energy UK warmly welcomes the updated HRA guidance. This new guidance is a welcome move towards more proportional implementation of the Habitats Regulation, based on solid ecological evidence. However, this guidance is not without gaps in certain areas and requires greater definitions in others. A critical issue is on how various bodies will implement this guidance on the ground, including SNCBs. Key questions such as de minimis thresholds need further resolution, and a big question mark remains over the rollout of this guidance to offshore waters beyond 12 nautical miles. This area remains a priority for Energy UK going forward.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

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Question 1. Would you like your response to be confidential?

No.

Question 2. What is your name?

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Question 3. What is your email address?

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Question 4. Please tell us who you are responding as, selecting from the following: (please tick as many as relevant)

Business (energy sector).

Question 5. If responding on behalf of an organisation, please provide the name of the organisation you are responding for. If you are responding for more than one organisation, please say how many organisations you represent and their category (as set out in the previous question).

Energy UK.

Question 9. Do you foresee impacts to business from the proposed guidance being different between regions across the UK?

No. There are broader implications of different policy regimes in different countries of the UK, but not as a direct result of these proposed changes. There should be stronger alignment between the HRA guidance within the UK nations, especially countries sharing land borders within Great Britain. Energy UK supports the approach noted in the guidance on appointing a lead Statutory Nature Conservation Body (SNCB) where there are split responsibilities cross-border. Where appropriate, this body should act as a single point of contact and coordinator of responses from SNCBs.

Clarity in the guidance is needed where a cross-border Natura 2000 habitats site is impacted by a project, explaining where the mitigation or compensation measures can be delivered in full on either side of the boundary, providing that this meets the requirement to maintain the overall integrity of the habitats site.

Question 10. Please select the geographical coverage of your organisation or the area that your response relates to from the following: (Please tick as many as are relevant)

UK wide.

Section 1 – Principles to follow in the HRA process

Question 11. How helpful are these principles in setting out the overall approach and expectations for how Habitats Regulations Assessments should be undertaken?

Somewhat helpful.

Energy UK appreciates the focus on constructive working, strategic opportunities, judgements based on evidence, and basis of scientific information underpinning these principles. The principles are pragmatic and proportionate, with indications they will reduce time and resources for all parties. While these are general principles, there are areas where they could be strengthened. The issue with the current approach is that while Energy UK is supportive of these principles, they are very much open to interpretation, which could reduce their effectiveness overall, and further delays can be caused if time is spent debating specific wording. Given many members have reported that SNCBs are overly precautionary in their application of HRA, there is further room for specificity in the principles.

On principles 2 and 3, these could start as *'identify and consider opportunities'*. This would underline the need to present an array of options at the earliest point. The 4th principle should end *'make an assessment in view of the conservation objectives, based on scientific evidence and proportionality'*. Energy UK is very supportive of making judgements based on the facts of the individual situation. However, it could be mentioned in the text that interoperability of data from similar sites in habitat assessment is severely underutilised under the current model, and could pave the way for major efficiency gains in habitats assessment.

For principle 5, it should be clarified to reflect the case law which has confirmed that neither absolute certainty nor definitive quantitative analysis is required within an Appropriate Assessment. This is stated in the Court of Appeal decision of *R (ota Mynnyd Y Gwynt Ltd) v Secretary of State for Business, Energy and Industrial Strategy (2018)* which adopted positions from the Waddenzee case (C-127/02) and ruled that:

'8(6) Absolute certainty is not required. If no certainty can be established, having exhausted all scientific means and sources it will be necessary to work with probabilities and estimates, which must be identified and reasoned.'

'Relevant experts or specialists' is likely to need a stronger definition than provided, specifically setting out professions (such as ecologists) and possibly certification standards. The risk with this interpretation is that of breadth, with such experts of specialists broadening to any groups those in the process consider. *'Best objective and scientific evidence'* must bring in the concept of evidence based and proportionate decision making. Empirical evidence must be used where possible, especially as the latest science is not always being used in these cases. In a key

theme for this response, evidence must be based on what can be gathered with firm ecological evidence, not on what *may* happen based on a lack of evidence.

The seventh principle is particularly helpful, as it starts to address the issue of proportionality, but it needs to be noted that the HRA assessment could still be disproportionate if other areas of the guidance remain relatively broad and open to interpretation.

Principle 9 was welcomed by members, as uncertainty is often treated in the process as a binary issue, with uncertainty halting projects. The possible impact of uncertainty is the key issue, not the fact that uncertainty exists. This principle should go further however, and set a clear expectation that all parties, including competent authorities and SNCBs (including those acting as consultees), should fully advise on and work constructively to address identified issues at the earliest possible point. Parties should not unreasonably withhold their position on an issue, impact, or request for information to a future point. Parties should also not alter a stated position, judgement or request for information later in the consenting process unreasonably either, unless there are exceptional circumstances where new evidence demonstrates the original position or judgement is now unsound. The guidance should be amended to confirm that, in case of the above examples, any additional request for information should adhere to all of the core principles, including the need for proportionality.

Principle 11 should be changed to *'make sure the HRA is complete and has precise and proportionate conclusions'*. This is to reinforce the area points on proportionality. Principle 12 could be changed to *'decide on whether it is necessary to consult with the public on the HRA, and what justifications there are for doing so'*. This is added to bring additional clarity to all parties on the reasoning for this decision, and whether it aligns with other principles of the HRA process.

A chief risk with the guidance as presented is that it applies only to competent authorities and applicants, not also to SNCBs and other consultees in the HRA process, which severely undercuts its effectiveness. While the draft guidance does state it applies to SNCBs, competent bodies are only bodies that authorise, license, consent or carry out projects directly (such as SNCBs when determining SSSI consents), rather than SNCBs which are providing advice to another organisation. This therefore means this guidance would not apply to SNCBs when acting in advisory capacity, a frequent part of the HRA process. The draft guidance should be amended to explicitly apply to all parties in the HRA process, including both SNCBs and wider consultees. Guidance may need to be issued under Section 15 of the Natural Environment and Rural Communities Act 2006 as well as under the Habitats Regulations, but only minor amendments would be required within the text itself to apply the principles equally to SNCBs when acting as a consultee as well as to other consultees. Equally, the core principles listed on page 8 should be expanded to confirm that competent authorities will expect SNCBs (including when acting as a consultee) and other consultees to comply with these principles.

Strategic approaches with competent authorities identifying common issues across multiple projects are supported by Energy UK. There is potential risk however for projects already at an advanced stage of development, or increase in-combination effects by assessing projects without a viable path to planning progression. Therefore, the additional amendment should be added: *“Consider opportunities to work strategically across a number of projects where there are common issues and where realistic project timelines allow.”*

Additional separate principles may need to be added to ensure proportionality, based on solid ecological evidence. The biggest and most consistent issue Energy UK members face in implementing the Habitats Regulations remains the ambiguous nature of some mitigations based on a broad-based approach to the precautionary principle. By strengthening the principles to include greater reference to ecological evidence as a high-level principle, this will not only provide reassurance to developers, but also that sound ecological and scientific evidence is providing the overwhelming direction for mitigation. This should help instil confidence that the mitigation measures involved will have the highest impact on habitat mitigation, ensuring that strengthening ecosystems is the highest priority in these decisions, over mitigation solutions that are design to meet the more ambitious applications of the Habitats Regulation.

Evidence gaps may introduce uncertainties, and to this end, additional guidance should be provided on how such uncertainties are addressed, including with illustrative examples. More examples of how these principles are applied may be required in order to reassure Competent Authorities. It would be particularly helpful that HRAs regarding cyclical activities associated with environmental permits and water abstraction licences could be reused when there has been no change in the permitted activity or limits or conservation objectives and status.

Question 12. Do these principles strike the right balance between supporting users in complying with legal requirements and encouraging an efficient approach to decision-making?

Somewhat.

However, it is how these principles will be delivered in practise that is likely to make or break this particular balance. While the principles are useful to frame the approach, it appears unlikely they will make a significant improvement on the efficiency of decision making. A critical issue of this guidance relates to the ease and practicality of enforcement, and how decision-making authorities will be held accountable in applying these principles. An additional potential issue on implementation is how the revised guidance will stand apart from other requirements and advice in the planning stage of the development process. Given the guidance is not legally binding, it should be considered for a statutory footing as soon as possible.

Energy UK welcomes the assessment proportionality in principle 7, but explicit confirmation of information that is disproportionate or immaterial to the making of scientifically robust judgements would be helpful.

Equally, principle 8 should explicitly state 1) expectations of timely engagement, 2) information sharing, and 3) issue resolution (where possible). As above, this should include statutory footing, giving legal reassurances to all parties involved. As with Question 11, firstly it is vital that this guidance is issued under Section 15 of the Natural Environment and Rural Communities Act 2006 to enable it to apply to Natural England when acting as a consultee. As above, this also needs to apply to all SNCBs. An enabling clause for this should be inserting into forthcoming legislation, a good vehicle for which is likely to be the Energy Independence Bill. This should ensure all SNCBs and competent authorities would need to regard this guidance, including bodies responsible for cross-border coordination between England and other countries within Great Britain. While this could be introduced via secondary legislation under Section 112 of the Environment Act 2021, primary legislation would provide firmer footing and scrutiny.

Introducing an additional requirement to publicly consult on HRAs is unnecessary, given the scrutiny this process already faces through the existing planning process (such as through EIA screening). Therefore, this should not be added, given there is not an additional legal requirement to put the HRA to a public consultation.

Energy UK welcomes the clarity that only information relevant to the designated features of the protected site should be requested, as well as the principle to work strategically. Competition authorities are proposed to seek expert advice when carrying out an HRA, and clarity of whom is liable for the payment of that advice would be useful. Competent authorities are not required to assess any implication of a project that it would not be more appropriate for another competent authority to assess, but greater clarity on this point with illustrative examples would be useful.

Section 2 – Making use of an existing HRA

Question 13. How helpful is the detail in this section on when an existing HRA can and cannot be used?

Somewhat.

There are differing views within the Energy UK membership on this area. Positives included that this is useful additional guidance which may help to avoid unnecessary work by the competent authority and the applicant, as well as the important role that previous HRAs can play in informing new ones. However, there are worries that the guidance here is overly precautionary, as it identifies situations where previous HRAs cannot be used to complete a new HRA, rather than proactively identifying situations where previous HRAs can be re-applied. Issues on how long ago the HRA was

originally carried out, shelf life of the data used in the HRA, and a quality check of data before re-use to avoid reintegration of problematic data were all potential issues raised by membership. This illustrates that, while it is clear where an existing HRA can and cannot be reused, it is less clear when a competent authorities can be certain whether it is appropriate to do so.

Additionally, the guidance does not identify the links between plan-level and project-level HRAs, which could scope out smaller issues, and focus project-level HRAs, focusing on likely significant effects. Plan-level assessments may include relevant data, assessment conclusions and mitigation strategies which project-level assessments can use and align with. The guidance should be strengthened to place project-level HRAs alongside plan-level assessments.

Cyclical activities such as environmental permits and water abstraction licenses and where they could be reused was flagged as a specific area of interest, and Energy UK would seek further clarity here.

Question 14. Will this section give support to users in avoiding unnecessary repetition of work related to HRAs?

Somewhat.

Early decisions in the process need to be taken on HRA reuse, including what parts of the previous HRA, or in its entirety. This should be made clear in the guidance. As with Question 13, Energy UK has concerns that areas of guidance are overly precautionary and not sufficiently focused on proactively identifying where previous areas of work can streamline the process. There is still a risk of competent authorities failing to take a proportionate approach, and the potential threat of legal action to review the process will embed this further. Therefore, as above, the guidance needs to take a more proactive approach to the positive impacts of using previous HRA data. Members had varying views on the impact potential of previous HRA data, some expressing that they viewed it having a limited impact, as it would be applied to only a few cases, others highlighting that the lack of use of existing data was an unnecessary limitation under the current system.

Section 3 – Checking for likely significant effects on a habitats site

Question 15. How helpful is the detail in this section on determining whether a plan or project could have a significant effect on a protected site?

Somewhat.

Energy UK members had largely split views on this section. Some were supportive of the further guidance on whether HRA-specific measures should be taken into account in the screening process or not. The guidance here should be updated to allow mitigation measures to be considered at Stage 1, as per the Fingleton review. In

the final paragraph of the *Considering the design of the plan or project* guidance section, further details could be added to encourage Habitats Regulation aligned measures at the earliest possible stage. Additional guidance for the earliest possible inclusion of these could be helpful, allowing developers further time to strategize and develop the best possible measures.

Identification of key issues that create uncertainty or leading to legal challenge were raised as helpful by some members, such as the distinction between hypothetical and real risks. The clarification on where a site has a restoration site has a restoration objective, projects are not required to contribute to the restoration of the site was also noted. Further detail on when applicants and competent authorities should consult SNCBs across other UK nations would be useful. Equally, this guidance does not address issues where a project may have international implications, and further advice here would be of use. On a related note, some additional guidance on distances of impacts would be useful to avoid overly cautious interpretation (for example, the Environment Agency guidance relating to air quality impacts sets a distance of 15km to assess the impacts on designated sites).

A key issue raised by members was the guidance needs to go further on outlining a proportionate approach to small and de-minimis effects, and how this could affect Adverse Effects on Site Integrity under the terms of the Habitats Regulations. The single reference in the guidance is insufficient on its own, and will not screen out these de minimis impacts from the HRA. Therefore, this guidance must go further, defining the scope of ‘very small size’ impacts, and define what small effects constitute. The guidance also does not recognise that, whilst a de-minimis effect combined with uncertainties could potentially trigger a likely significant effect within HRA Stage 1, this de-minimis impact should then not give rise to Adverse Effects on Site Integrity within a more detailed HRA Stage 2 Appropriate Assessment, unless there is a credible risk of the impact compromising site integrity.

A criticism some members highlighted is that this section of the guidance is unhelpful, as vital aspects of the data underpinning it do not exist, are ineffective, or cannot be obtained by applicants. Conservation objectives for Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) are broad, and do not always include all the species and habitats that are protected. EU guidance on management of Natura 2000 sites states;

- *“Site-specific conservation objectives and measures should correspond to the ecological requirements of the habitats and species present on the sites. They should be comprehensive, realistic, quantifiable and measurable. Natura 2000 management plans are a way to set objectives and measures in an open and transparent manner.”*

With EU guidance on conservation objectives setting stating;

- *“Conservation objectives for Natura 2000 sites need to be as clear and straightforward as possible and allow to put in place operational conservation*

measures in practice. They need to be specified in concrete terms and wherever possible be quantifiable in numbers and/or size. In other words, the definition of site level conservation objectives must not be ambiguous, vaguely formulated, unverifiable or involve unclear responsibilities with regard to the corresponding establishment of specific conservation measures.”

Despite the above however, SPAs and SACs are not site specific, comprehensive, realistic, quantifiable or measurable, making alignment with these definitions very challenging. The issue with this, as raised elsewhere in this response, is that with vague definitions of what constitutes an impact, virtually anything can be considered an impact, leading to screening an unnecessarily high number of sites. Developers also report assessing screening for both the impact on species, and the conservation objectives for species, two separate criteria.

The conservation status for SPAs and SACs is also often not up to date or unavailable entirely, and therefore cannot be considered in line with the updated HRA guidance. Given the impacts of climate change, the condition of SPAs and SACs will deteriorate. This is not accounted for in site objectives, making it ironically yet harder to build low carbon technologies in habitats. This issue of the technologies vital to preventing further temperature increases being more likely to be blocked in future due to the impacts of climate change is a perverse outcome that requires urgent addressing. Given the guidance is aiming to deliver greater clarity, it will only be able to do this in relation to the above if this can be implemented fully at SPAs and SACs, with greater specific, proportional definitions used for SPAs and SACs. Unless that can be achieved, the vague nature of criteria in these areas will continue to cause issues with implementation, and will strictly limit the progress this updated guidance can create in this area. Given the potential scale required to do this, an approach could be to assume the Site Specific Conservation Objectives (SSCO) for the site if no existing SSCO are present. This could enable a reference point for the future, and allow applicants to adjust based on climate impacts. This would also align the UK more closely to the EU guidance, providing real case studies of how this could be implemented in the UK compared to other European nations.

Other points of interest raised by members included a flexible approach to what is defined as ‘HRA specific’ mitigation, especially in relation to construction activities. Many activities in the construction of projects may be considered good practise as existing principle, and not be included in existing HRA mitigation, but may be relevant to include. Further clarity on these points would therefore be useful, including examples on how a Construction Environmental Management Plan (CEMP) could be treated.

Question 16. How helpful is the detail in this section on how a real (as opposed to hypothetical) risk should be identified and evidenced?

Somewhat helpful.

The phrase '*credible evidence*' is a critical one in this part of the updated guidance, and should be more tightly defined to make it clear this is based on objective, science-based evidence that can be traced. At the end of paragraph three on the *Deciding whether an effect is likely* section, it should specify that the effects of the plan or project must be based on evidence gathered, either previously or at this stage. While limited to a small range of projects, the potential implications of projects that cross international borders should also be considered, if not in the HRA guidance itself, then clearly signposted elsewhere.

The significant effects presented in this section cover a wide-ranging set of criteria, which cover a lot of potential effects universally. While these should be set widely to mitigate any specific circumstances for a specific site, this must be done credibly, make the evidence base for such claims part of the determination. '*Additional impacts below a certain level may be incapable of causing changes to the conservation status or restricting the restoration of favourable condition*' also requires a stronger definition, as does a clearer definition of de minimis impacts (as above question responses).

The definition for 'cannot be ruled out' under the HRA process is helpful, but still subject to considerable interpretation, and is likely to still be interpreted by competent authorities in a precautionary way. This could be strengthened by referencing the existing frameworks for describing scientific uncertainty, such as the approach used by the IPCC (Mastrandrea, 2011). This would create a more universal baseline for defining uncertainty. Where an impact may be small and a site is in a favourable condition for example, a higher level of uncertainty may be more acceptable. Uncertainty needs to be viewed more of a spectrum than a binary set of evidence, with likely a lot of flexibility based on impacts and sites, and stating a risk is likely if it cannot be ruled out creates an overly precautionary approach to risks. Likelihood of risk is linked to the scale of the impact, with more uncertain risks harder to rule out, but this also removes a more proportional level of likelihood for risks. Therefore, using a more consistent framework for risk that assigns risks on spectrum, rather than a binary choice, would allow competent authorities to assess risk in a more realistic and appropriate way.

Further information explaining, and practical examples of, the following types of information would be beneficial;

- *Pathways*: Evidence showing a credible, scientifically supported pathway between the project and the site.
- *Ecological sensitivity*: Information demonstrating that the qualifying features are sensitive to the type, scale, or duration of the impact.
- *Baseline condition and site data*: Evidence showing the current condition of the site and whether it is already under pressure.
- *Magnitude and likelihood of project effects*: Evidence quantifying the scale, duration, and frequency of the project's potential impacts.
- *Evidence from comparable cases*: Assessments or monitoring to demonstrate that similar activities have produced measurable effects.

Section 4 – Checking for in-combination effects with other plans and projects

Question 17. How helpful is the detail in this section on how in-combination effects should be considered?

Somewhat helpful. Energy UK fully supports the guidance on when it is not necessary to check for in-combination effects, but applicants will need to provide the full range of assessment for both projects alone impacts and in combination impacts to provide the competent authorities with the relevant information. Further detail on de minimis impacts is requirement to ensure Stage 2 HRA is appropriate, and the risk of over-precaution in in-combination assessments.

Question 18. Should this section include further detail on what should be considered an in-combination effect?

Yes.

The plans and projects listed as potentially relevant when checking for in-combination effects are very wide ranging. Therefore, it will be necessary to use evidence to prove these in-combination effects, so as not the keep these criteria being used for an inappropriately wide range of potential uses.

The projects and plans needing checks includes projects subject to prior approval under permitted development rights, which are not always apparent to developers. Water abstraction licenses, when the volumes are unavailable, would have to be requested from the EA. The need to assess partial use may underestimate the impact from the license.

A critical issue given the resource constraints of some LPAs is that developers may simply not receive this information in real world scenarios, or not in a timely fashion, putting the projects in limbo or on hold, with little recompense for developers. Therefore, a section should be put in place for this part of the guidance that encourages LPAs to provide this information and in a timely manner, and any alternative options that developers can seek if this is not forthcoming. The categories of effect that would class as de minimis would also be helpful in this section of the guidance.

Further information on distinguishing projects that fall into baseline conditions and those which should be considered for combination effects is needed here. Clarifying the realised impacts, rather than those from the consented Rochdale Envelope impacts of the project should be considered as the baseline assessment for a project. Clarification of including or excluding a project for baseline or an in-combination assessment could be provided for projects that have been consented via the derogation route. This includes projects that were required to put in place

compensatory measures to mitigate impacts. These such projects would be reasonable to exclude from any baseline or combination assessment.

A concern is that the guidance does not recognise the existing position that when a project has secured compensation to address in-combination effects, these effects should be considered to have been removed for the purposes of future Appropriate Assessments and derogation cases. This needs clarification in the guidance, otherwise new theoretical effects will have to be drafted for each new Appropriate Assessment, which may inappropriately increase the level of compensation which may be required.

The list of plans and projects in the PINS Advice Note on Habitats Regulations Assessment is particularly helpful, and selected examples from this should be incorporated into the draft guidance.

Cumulative impacts from multiple developments in a similar area need further definition, including both how each developer should contribute, and how this should work in across different countries within the UK. The order projects are considered in should be addressed, as well as how early developers are expected to assess impacts that will also be impacted by developments after them. Cluster based development, such as CCUS and hydrogen, will find this of particular importance. The proposed guidance states *'When an adverse effect arises from several projects together, each developer is responsible for their own impact, including any additional impact caused by interactions between impacts, or in-combination effects'*. However, this is likely difficult in practise, especially if retroactive mitigations need to be made. This approach also assigns disproportionate impacts to projects not currently in operation, or projects that will not materialise. This should be addressed by allowing impacts from *'granted permissions that have not begun'* to be considered in parts of the assessment. This would both ensure that these impacts are not excluded from the assessment, and that only responsible planning bodies are included in the in-combination assessment.

It has been noted by members that in-combination impact which is above a screening threshold merely moves the assessment to the more detailed consideration stage. Importantly, this does not preclude using the same screening criteria to then screen out the individual project.

Section 5 – How to use screening criteria

Question 19. How helpful is this section at setting out the purpose of the screening criteria?

Somewhat helpful.

The purpose of screening criteria is clear, and the focus on competent authorities rather than SNCBs to use these are welcome. However, it is unclear whether

competent authorities will be able to effectively implement this guidance if SNCBs are not supportive.

The recognition that only real, rather than hypothetical risks, are to be considered is to be strongly welcomed. Credible risk is likely to need greater specific definition. The reference of no credible risk is helpful, but needs more detailed explanation of de minimis (as above). On threshold development for specific impacts, the conditions for when an SNCB may develop these needs further clarity and definition. As in other parts of this response, it is vital that the remit of the guidance is extended beyond competent authorities to also cover SNCBs when exercising advisory functions as consultees and to other consultees.

SNCBs are often hesitant to consider the use of thresholds, leading to divergences on screening results. The example provided in the consultation document should define the threshold by the number of houses that can be accommodated before a significant effect is likely to arise, rather than by the number of houses expected to be brought forward into planning.

If the competent authorities and SNCBs were to develop screening criteria, as suggested in the consultation document, this must be open to public consultation, reducing the likelihood of later challenge. This criterion must also be applicable universally across different areas of England and the wider UK.

Question 20. How helpful is the detail in this section on what criteria must be met for a plan or project to be screened out?

Somewhat helpful.

The emphasis on screening criteria considering real, rather than hypothetical risk, is strongly and warmly welcomed by Energy UK. Equally, the nature and scale of the information required should be agreed early in the process is welcome, as is confirmation that information required from the applicant should not be excessive or irrelevant.

The criteria put forward for is a good level of guidance, and very helpful in reducing issues of scope creep underneath the screening process. However, as put forward in previous answers, the suggested matters that the Competent Authority should consider when identifying whether a risk is real are not very clear. The current wording should be strengthened, establishing whether it is relating to establishing a screening threshold or matters for when applying to a screening threshold. '*Sufficient certainty*' is mentioned in the document, but this also needs further clarification.

The guidance needs to go further on a proportionate approach to small or de-minimis effects, and how these might result in significant effects under the Habitats Regulation.

Section 6 – Assessing the potential effect of a plan or project on the integrity of a site

Question 21. How helpful is the detail in this section on the definition of site integrity?

Somewhat unhelpful.

It is essential that these assessments need to be backed up by evidence based objective criteria. It is important that all text under the heading '*Stage 2: Appropriate assessment and the integrity test*' explicitly applies to SNCBs when exercising advisory functions as consultees. Definitions such as '*significantly disturbing the population of a species*' could mean many different things to different stakeholders without further red lines. The risk with some of the proposals is that the risk of legal quandary over the definitions may take longer than developers simply over mitigating for potential risks, leading to the similar scenarios this new guidance is trying to avoid. As other parts of the proposed guidance are more watertight, this section needs to be brought more strongly in line with these other areas.

This section should be simplified, with this draft text suggested by membership; "*Site integrity refers to the ability of a site to maintain its structure and function over time.*

Site integrity is linked to the conservation objectives for the site which aim to protect integrity and should define desired conservation condition of the species and habitats on the sites. Site specific conservation objectives (SSCOs) can include:

- *extent and distribution of habitats, or supporting habitats for species*
- *structure and function of habitats, or supporting habitats for species*
- *supporting processes on which habitats or species rely*
- *number of protected features*
- *distribution of protected features*

The objectives may relate to the maintenance of the current site-specific objectives or restoration to a reference value.

If SSCO's are not in place, then it should be assumed that the conservation objective is to maintain or restore the relevant population or habitat to those described and quantified at citation.

This conservation objective can be amended based on robust scientific evidence that demonstrates the unavoidable impact of climate change of the relevant species or habitat."

Question 22. How helpful is the detail in this section on the role of conservation objectives?

Somewhat unhelpful.

The text in the consultation document appears to assume that environmental conditions remain the same in the future, which is problematic given the evidence of

degradation set out in the response to Question 15. Given the inherent uncertainty of future climate impacts, SSCOs should be lowered where there is robust evidence of climate impacts degrading a site, and this is aligned and based on existing EU guidance for Natura 2000 sites. If reassessment of the SSCOs by SNCBs does not include climate impacts, the applicant should be allowed to present alternative SSCOs that incorporate the best available evidence on population or habitat trajectories for consideration in their assessment.

The introductory paragraph should be changed to;
‘To assess if a plan or project could affect the integrity of a habitats site in light of the site’s conservation objectives, the competent authority should consider how it could affect relevant protected features.’

This reinforces that the conservation objectives are the benchmark for effects to assessed against.

In addition, further definitions for the below would be helpful, such as:

- *Magnitude*: the scale or intensity of the effect on the feature.
- *Extent*: the spatial area over which the effect would occur.
- *Timing*: when the effect would occur relative to sensitive periods for the feature.
- *Duration*: how long the effect would last.
- *Reversibility*: whether the feature can return to its previous state once the effect ceases.
- *Likelihood*: the probability that the predicted effect will occur.

Section 7 – Checking effects against a site’s conservation objectives

Question 23. How helpful is this section on how maintain and restore objectives should be handled when assessing an impact on site integrity?

Somewhat unhelpful.

The national framework for site condition monitoring and its assessment criteria may not be applicable to the scientific requirements of the Habitats Regulations, as these need the assessment of the impacts on the SSCOs. These numerous guidelines will not always be transferable to the Habitats Regulations, so the JNCC Common Standards is only useful when it can be directly transferred. Not all the assessments for SPAs have been taken recently, creating another potential point of divergence. Energy UK recommends removing or revising this section, with the guidance clarifying the general common standards site condition monitoring are only applicable when they are directly applicable to the Habitats Regulations.

Sites should not be penalised if they are already in an unfavourable condition, and the section regarding ‘restore’ objectives should confirm that plans or projects are not to undermine its restoration, but they are not required to deliver or contribute to

restoration themselves. They should be assessed on the same basis as ‘maintain’ objectives, as the Habitats Regulations do not require increased certainty or evidence when assessing effects on sites.

Section 8 – Considering reasonable scientific doubt

Question 24. How helpful is this section in explaining what constitutes reasonable scientific doubt?

Somewhat helpful.

This may still return to the existing issue of judgement being applied overly cautiously, in order to avoid breaking the requirements of the Habitats Regulations. The objective evidence point is strongly supported. The points around reasonable doubt and scientific evidence are likely to be the key contentious points in any legal challenge. The statements on the conclusion of AEOI, the competent authority basing their decision evidence, and ‘*it is not necessary for there to be no risk*’ are all strongly supported by Energy UK. As noted in response to other requests, it is essential that the remit of this guidance is extended to apply to all parties, including SNCBs when exercising advisory functions and acting as consultees.

Energy UK welcomes the move forwards in the guidance on contentious areas of reasonable scientific doubt, but these needs revision in areas. Suggested text by members includes;

- *‘Beyond reasonable scientific doubt means that the competent authority should be “sure” that there will be no adverse effect on integrity. This is a very high evidential bar, but it does not mean that there must be absolute certainty or no risk of the effect occurring.’*
- *‘The competent authority should give due consideration to the evidence presented by the applicant on potential effects on site integrity alongside any advice received from statutory consultees.’*
- *‘The competent authority should consider both the degree of scientific uncertainty and the risk of the adverse effect occurring. For example, there may be a high degree of uncertainty in the evidence base but a low probability of the adverse effect occurring. It is not sufficient to conclude that there is an adverse effect purely on the basis of scientific uncertainty.’*
- *‘Doubt about adverse effects may arise due to lack of evidence or uncertainty about the predicted outcomes. The competent authority must take great care to base their decisions on objective evidence and ensure that the predicted outcomes are based on credible scenarios and do not incorporate overly conservative assumptions.’*
- *‘Where there is uncertainty in predicted outcomes competent authorities may include a safety margin before evaluating the risk of the potential effect on integrity.’*
- *‘Unreasonable doubts and hypothetical risks should not be used to conclude that there will be an adverse effect.’*

The above highlights these likely contentious issues. The issue of the term ‘beyond reasonable scientific doubt’ has a number of difficulties in implementation, due to negative proof and evaluation of evidence. Negative proof requires the applicants to prove a negative, proving that a plan or project doesn’t have a negative impact, completely baking into the system an initial assumption that there is a negative impact, rather than it being unknown. This immediately skews the law against development, and given the very high bar for evidence, and the complexity of ecosystems, scientific doubt requires stronger definitions than is proportionate. The evidence bar should be amended to require ‘clear and convincing evidence’, to balance this approach. Competent authorities should go into the process with a rational and explainable basis that adverse effects will not occur. This should be examined for legislative change and/or statutory guidance at an early opportunity. Secondly, competent authorities will not likely have the capacity and expertise to examine the evidence. They will rely heavily on advice given by the statutory bodies to make a decision. This means there are limitations on the evidence they can assess, and as above, this should be rectified through the suggested wording above, and legislative change and/or statutory guidance at an early opportunity.

The findings and recommendations of the ORJIP AssESs Project (2025) and the SOWEC Report: *Application of precaution in ornithology impact assessments for offshore wind project applications* (2025), is endorsed by Energy UK, and should be used as a basis within this guidance. Whilst specifically examining Scottish offshore wind development, the application of the HRA recommendations can apply cross sector.

In addition to the above, where conservative assumptions are applied to address uncertainty, the safety margin must be proportionate to the risk. Members report overly precautionary approaches at all stages of the process. Clarifying this, as above, will help ensure the ultimate goal for many members on HRA reform, which is ensuring that precaution is approached with evidence and on a robust basis.

Section 9 – Securing compensatory measures

Question 25. How helpful is the detail in this section on compensatory measures?

Somewhat helpful.

Competent authorities needing to be confident on the plan or project impacts being fully compensated for is much too vague, and risks undermining much of the other parts of the new guidance presented. This needs to account for innovative approaches to mitigation and compensation. This may mean less evidence than would have been considered previously, but projects could still be consented with appropriate conditions. There is also a risk of the definition of ‘fully compensated’ being contested.

The compensatory measures section should be amended to clarify that the compensation for offshore wind projects will benefit the UK MPA network in a proportionate manner, not to secure the coherence of the network as stated. Legislation should come forward as soon as possible to extend the new offshore wind compensation test to all cases under the UK Habitats Regulations where compensation provisions require to be engaged.

More specific detail is needed in the guidance on non-like-for-like measures, as well as specifying that compensation measures are required as additional. Site management measures can be a delivery mechanism where they are not currently being implemented. Projects that have met the IROPI test should always be permitted. The guidance must refer to strategic compensation approaches and alignment with other regulations. It should also explain that the impact can occur prior to compensatory measures being effective. It should be clarified that adaptive management should be proportionate and can be delivered via the Marine Recovery Fund or Nature Recovery Fund.

It should be specified that compensatory measures are not required to compensate for impacts beyond those arising from the plan or project, rather than implying a prohibition on delivering excess compensation. Some types of measures are at a scale beyond any single plan or project. Therefore, it would be helpful to clarify that compensation shouldn't exclude measures that deliver wider benefits beyond a plan or project. The guidance should clarify the role of the competent authority in arranging the compensatory measures.

The guidance should note that the design of compensatory measures should be robust and deliverable, using best evidence available, whilst acknowledging certainty of outcomes may not be achievable. Adaptive management provisions are there to support this. The test for compensatory measures should be whether they can achieve the desired ecological outcomes, supported by credible evidence, rather than absolute proof of guaranteed success.

Other guidance that this could refer to includes Conservation of Habitats and Species (Offshore Wind) (Amendment etc.) Regulations 2026, applicable to all UK marine areas, which should be considered alongside this document. Reference to additional guidance could be added in the '*Further guidance on HRAs*' section of the document.

Section 10 – Habitats regulations assessments: guide for applicants

Question 26. How helpful is this additional guidance at setting out how to engage with the HRA as an applicant?

Somewhat helpful.

This is a notably high-level guide. However, as a basic introduction to HRA for applicants, it serves usefully, being structured and accessible. Given the clarity provided, the additional Guide for Applicants is unnecessary. As it is also high-level, it risks creating confusion and duplication for potential applications, creating additional workload for parties involved.

Efficiency impacts of the updated HRA guidance

Question 27. What impact do you expect the refreshed guidance to have on the overall time taken to complete an HRA?

Views from Energy UK members varied in answer to this question, given some of this will be difficult to determine without real world examples. Some expected a slightly shorter overall time to complete an HRA, with others predicting no changes in the time taken to complete an HRA. Despite this, all contributing members were positive overall about the new guidance, welcoming it as a big step towards more proportionate and evidence-based process.

For members stating this would have no impact on overall time, key themes that emerged were on the need for the guidance to apply to SNCBs when exercising advisory functions as consultees or to any other consultees. This is quite a severe potential weakness in the process, given the central role SNCBs play, and rectifying this is imperative for shorter HRA timelines. Other areas cited where the complex nature of Stage 4, and lack of definition of certain wordings highlighted elsewhere in this consultation response. Suggested rectifications for this included further resourcing of competent authorities, improving the Compensation section (as outlined in the response to Question 25).

As with Question 28, the guidance should be drafted to be immediately transferrable to the offshore waters of England (12 to 200 nautical miles off the coast).

Amending the HRA guidance to include the offshore

Question 28. Do you agree with the proposal to draft the HRA guidance so that it applies to Habitats sites in the offshore waters of England, as well as the inshore waters?

Very strongly so.

It is vital that offshore energy technologies, in particular offshore wind, are not at a disadvantage from the changes in this guidance relative to other technologies. While the proposal to draft the guidance so that it applies to offshore is strongly welcome, this must be introduced for offshore technologies at the same time or similar timeframes to ensure confidence that offshore technologies will not be held at a disadvantage. It is not clear why this would have to occur at a later stage, as stated in the consultation, given that the same guidance could also be issued under the

Offshore UK Habitats Regulations when this guidance is finalised. Given the Government has already signalled its intention here, it is vital this is not delayed. If there is an interim, authorities should be referred to the onshore/terrestrial guidance as the same principles apply to offshore, even if it is not yet formalised.

Given the historically high amount of generation that is currently being constructed, and given offshore wind is on track to be the highest source of electricity generation by the end of the decade, the effect of this on offshore wind is absolutely critical. This also must apply to all offshore sites, and should include room for potential future projects that cross international maritime borders. Within the UK, this should also apply to divergences in projects across the waters of UK nations (notably across Scottish/English projects). It would also be of value for the UK Government to confirm there is no barriers to the Scottish Government issuing similar guidance on proportionality of the Habitats Regulations in Scotland, also including the UK Habitat Regulations in cases where these apply to executive devolved decision making.

Specific consideration of any bespoke effects of the intertidal range would be welcomed, given the unique circumstances of this particular hybrid habitat.

Question 29. Are there any parts of the HRA process in the offshore which you would like us to focus on in the guidance?

Yes.

It is important to recognise the guidance could be a boost for offshore wind, and is a positive development. Compensation measures being put in place as close as possible to site of impact will be one such area where offshore wind will likely diverge from parts of the HRA guidance. The definition and application of SSCO for seabird SPAs will need additional investigation, as well the evidential bar for concluding adverse effects. The guidance should be updated to reflect the different compensatory regime in offshore waters, and incorporate recent EU guidance on climate change and Natura 2000 sites.

The guidance should acknowledge the larger degree of uncertainty in predictable outcomes for offshore environments, and that given the wider degree of uncertainty, competent authorities and applicants should adopt proportional risk accordingly. Plans to appoint a Lead Regulator will need to be considered separately in the offshore HRA guidance, given the existing Coastal Concordat process, explaining how the two processes would function together. The de-minimis effects highlighted throughout this consultation response are of particular importance to the assessment of ornithological effects in the marine environment.

The guidance should have an additional section on the proportional treatment of precaution and uncertainty in assessments. Going further than the proposed guidance, this could be based on the findings of the *ORJIP AssESs Project (2025)* and the *SOWEC Report: Application of precaution in ornithology impact assessments*

for offshore wind project applications (2025) reports. Whilst originally written assessing Scottish projects, the findings have wider UK wide applicability. Further details on other details to be included in further guidance for the offshore space can be found in the responses to the previous questions.

Further comments on the draft Habitats Regulations Assessment Guidance

Question 30. The full updated draft Habitats Regulations Assessment Guidance can be found in the above fact bank. Are there any aspects of the draft guidance not already covered in the previous questions you would like to comment on?

While Energy UK has covered various topics that it views have been left out from the guidance, this section may reiterate several examples (and further detail can be found in the responses to several other responses to questions in this consultation response);

- *The precautionary principle*: Applying this with evidence and proportionality across the whole process.
- *De minimis and small impacts*: Definition and application across the HRA.
- *Sites designated for compensation*: This is a new and complex area with risks, such as actual impacts being smaller than those consented, and potential need to compensate for impact on a compensation site.
- *SNCB early engagement*: Highlighting the issues where early engagement is most valuable, such as evidence gaps, mitigation feasibility.
- *SNCB advice provision*: Outlining when SNCB advice is expected, recommended, or not necessary.
- *SNCB support*: How SNCBs should support the proportionate and pragmatic approach the guidance seeks to embed.
- *Screening*. Inherent design elements (not specific mitigation related to HRA) should be identified at an early stage, with all parties (including SNCBs acting as consultees) to consider all appropriate mitigation within Stage 1 Screening.
- *Mandating monitoring*. There are concerns that the guidance sets out high expectations for competent authorities to mandate the monitoring of effects, mitigation measures, and compensation measures. This is not required under HRA, but with the current wording, could risk making this routine, with corresponding resource drain. The guidance should amend to confirming any monitoring of the above must both have a clear purpose and be demonstrated to be required prior to it being mandated by a competent authority.