

Review of the Dogger Bank Creyke Beck Information for Appropriate Assessment Report (April 2013) ('the HRA Report')

Introduction

Please see below the Inspectorate's comments on the draft HRA Report for Dogger Bank Creyke Beck Offshore Windfarm. Please note that the comments provided are without prejudice to any decisions taken by the Secretary of State (SoS) during acceptance or the Examining Authority (ExA) during examination, if the proposed development is accepted for examination. These comments are not intended to be a detailed review of the HRA Report and its findings, but are rather a high level review intended to provide helpful comments/observations as appropriate.

Relationship between the Environmental Statement (ES) and HRA

The HRA Report, when describing the proposed development assessed within the HRA, refers to the description of the project contained within Chapter 5 of the draft ES. The in combination assessment within the HRA Report also refers to the Cumulative Impact Assessment (CIA) chapter within the ES when identifying the plans and projects for the in combination assessment. The Inspectorate notes this will ensure consistency in the description of the project assessed within the ES and the HRA, but would find it helpful to inform the Competent Authority (CA), for there to be a brief description of the project in the HRA Report as well.

With regard to the identification of plans and projects to be included within the cumulative and in combination assessments, the Inspectorate welcomes the reference within the CIA chapter of the ES to the categories of plans and projects identified within the Inspectorate's Advice Note 9 (Rochdale Envelope) to inform the CIA / in combination assessments (see paragraph 2.3.6 of Chapter 33). Whilst the CIA chapter of the ES provides within Section 3.2 details about the consultation undertaken by the applicant to identify plans and projects to screen into the CIA / in combination assessments, which included the Statutory Nature Conservation Bodies (SNCBs), it is unclear within this chapter whether the list of plans and projects identified at 5.4.1, which have been screened into the CIA / in combination assessment, have been agreed with the consultees. This agreement should be documented in the ES and HRA Report.

General comments about the HRA

Study Area, Baseline and Methodology

The HRA Report does not clearly state whether the study area, baseline and methodology used to inform the HRA have been agreed with the SNCBs. If the proposed development is accepted for examination, it would assist the ExA if the HRA Report could include a statement as to whether or not these have been agreed with the SNCBs. If these have not been agreed with the SNCBs, an explanation should be provided within the HRA Report together with an explanation of the reason for the disagreements. Where this confirmation is not provided either in the HRA Report or a SoCG, the ExA is likely to request this clarification in their first round of examination questions.

Assessment of implications for European sites

As Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) requires the CA, in this case the relevant SoS, to ascertain whether the proposed development is likely to have a

significant effect on a European site (either alone or in combination with other plans or projects), the applicant is required to provide information to assist the CA in reaching this conclusion and if necessary, the information to enable the CA to undertake an AA for each European site considered within the HRA.

The applicant's HRA appears to have considered SPA and Ramsar designations for the same site collectively rather than as two separate sites, as presented in the summary of the AA in the Tables within Appendix C of the AA Report (Summary of the AA findings for screened SPAs and Ramsar sites). The Inspectorate expects that where a site has both an SPA and Ramsar designation, these should be considered separately as the features of each site may differ. However, to avoid duplication, it may be appropriate to refer the reader to a comment made within the HRA Report regarding the corresponding designation for that site, where the same justification/evidence has been provided.

Conservation Objectives

Section 6.2 of the HRA Screening Report (Appendix A to the AA Report) recognises that conservation objectives are used as the basis from which management measures and monitoring programmes may be developed for the designated sites and are utilised to inform the AA of European sites, to ensure that the potential project effects are undertaken with reference to available site objectives (paragraph 6.2.2). However, whilst Tables 5.4, 5.5 and 5.6 identify the European sites examined in the HRA pre-screening process, including the features for each European Site, the conservation objectives for each site have not been identified. Instead, the Inspectorate notes that section 6.2 of the HRA Screening Report states that *"In order to deal with the large number of sites being assessed for LSE, a generic set of conservation objectives that typically apply to the types of features (Annex I habitats, Annex II species populations and SPA designated bird populations) have been used as a reference against which to determine whether LSE may arise. This approach also enables candidate SACs and potential SPAs, for which conservation objectives will not have been developed, to be screened"* (paragraph 6.2.3 of the HRA Screening Report). This statement is repeated within the AA Report at paragraph 6.7.3.

As the requirement under Regulation 61 of the Habitats Regulations is to *"make an appropriate assessment of the implications for that site in view of that site's conservation objectives"*, it is unclear how the applicant's approach to the assessment of the implications of the project against the generic set of conservation objectives satisfies this requirement. This should be explained in the HRA Report.

The AA Report states that *"the Screening Report identified that the project was not directly connected with or necessary to the management of a number of European sites within UK waters and other European waters"* (paragraph 1.3.5). However, this does not appear to be expressly stated in the HRA Screening Report for the European sites screened with a conclusion of likely significant effect (LSE) (please refer to Section 8.3 in the HRA Screening Report). The HRA Screening Report or AA Report should include a statement that for each of the European sites where a LSE has been identified, that the project assessed in the HRA is not directly connected with or necessary to the management of that site, in accordance with Regulation 61 of the Habitats Regulations.

Applying the advice in the Inspectorate's Advice Note 10

Providing the screening and integrity matrices

The Inspectorate's Advice Note 10 includes screening and integrity matrices (see Appendix 1 and 2 respectively) that have been developed by the Inspectorate to assist the CA in fulfilling the requirements of the Habitats Directive and the Habitats Regulations in the context of the Planning Act 2008 (as amended) (the 2008 Act) process. As the applicant has concluded within Table 8.1 in the HRA Screening Report (Appendix A to the AA Report) LSE for a number of European sites, located both within the UK and other EEA States, the Inspectorate expects to see both the screening and integrity matrices included within the applicant's Screening Report (HRA Appendix A, with regard to the screening matrices) and the AA Report (with regard to the Integrity matrices).

Appendix C of the HRA Report includes in Table format a summary of the AA findings for screened SPAs and Ramsar sites. The information presented in these Tables appears to include the information that would be required within the Integrity matrices for the AA, as provided in Appendix 2 of the Inspectorate's Advice Note 10, even though the presentation of the information is displayed in a different format. However, please note that the Inspectorate has not undertaken a detailed review of the Tables included within Appendix C. As commented on previously, where a site has both an SPA and Ramsar designation, these should be treated as two separate sites, and therefore two separate matrices/Tables, to take into consideration that the features of each site may differ. However, to avoid duplication, it may be appropriate to refer the reader to a comment made within another matrix/Table, where the same justification/evidence has been provided.

The applicant should ensure that each statement made within these Tables in support of the conclusion on effects on site integrity is justified and supported by reference to a specific paragraph or Table number in the HRA Report or ES. If the justification provided within the Tables is not supported by a clear reference to the corresponding information within the ES or HRA Report, the ExA is likely to request such information in the Table format provided in Appendix 2 of Advice Note 10, within their first round of examination questions. Please see further comments below on the information which these matrices should include and the format in which they should be presented.

Whilst Appendix C of the HRA Report includes in Table format a summary of the AA findings for screened SPAs and Ramsar sites, a similar Table has not been provided for a summary of the SCI/SAC European Sites for which potential LSE could arise as a result of the effects of the development, as identified in Table 8.1 and paragraph 8.3.20 of the HRA Screening Report (Appendix A). The Inspectorate expects the information for the AA on SCI/SAC European sites to be presented in a similar format to the Tables presented in Appendix C for the SPA and Ramsar sites. The Inspectorate also expects a screening matrix to be provided, summarising the conclusions in the HRA Screening Report. The applicant is referred to the screening matrix in Appendix 1 of the Inspectorate's Advice Note 10. If these relevant matrices are not submitted with the DCO application and it is accepted for examination, the ExA is likely to request these matrices in their first round of examination questions.

The matrices in summary should include the following information:

- The Impacts Table should be used to identify which project activities are linked to particular ecological impacts. The applicant may wish to consider the format for the Impacts Table provided within the Reports on the

- Implications for European Sites for offshore wind farm projects, which have already been produced and submitted to the SoS;
- To ensure that sufficient information is provided within the matrices to support any stated conclusions, where reference is made to the Screening or AA Reports, the Planning Inspectorate expects to see a brief paragraph summarising the evidence with references to where the evidence can be found for *example 'Feature 1 may be subject to significant effects from Effect 1 during construction because.....'* (Chapter x, paragraph y of the Environmental Statement). It will also be appropriate to refer to any correspondence with the SNCBs, or appropriate consultees, which also support the statement; and
 - A word version of the matrices should also be provided with the DCO application documents, as this will enable the ExA, if the application is accepted for examination, to subsequently revise these matrices using the evidence gathered through examination of the proposed development. A word version would also need to be provided of the Tables included within Appendix C of the AA Report, if the applicant proposes to submit these instead of the prescribed integrity matrix for the European sites considered within the AA.

The Applicant's conclusion of the AA

The HRA Screening Report (Appendix A) has concluded for each European site considered in the HRA whether there is the potential for LSE on the site as a result of the proposed development. However, the applicant's AA has failed to reach a conclusion for several SPA sites as to whether the project will adversely affect the integrity of these European sites. As identified in Table A1 in Appendix C of the AA Report (a summary of the AA findings for screened SPAs and Ramsar sites), the AA has failed to reach a conclusion on whether the in combination effect of the project with other plans and projects would result in an adverse effect on the integrity of European sites with the following features: Common Guillemot (generally due to displacement effects); Razorbill (generally due to displacement effects); Black-legged Kittiwake (generally due to collision risk); and Northern Gannet (due to collision risk). The justification provided in Table A1 in Appendix C for being unable to conclude the outcome of the AA is *"on the basis of available data it is not possible at this stage to reach a conclusion regarding the in-combination impact on the integrity of the SPA designated population"*.

As the applicant's AA Report is unable to conclude that the project will not adversely affect the integrity of some European site, the Inspectorate expects the applicant's assessment to move to Stage 3, and if necessary, Stage 4 of the HRA process. Whilst it is the CA's duty to undertake the AA, if the applicant has not undertaken consideration of alternatives, and if necessary, an Assessment of Imperative Reasons of Overriding Public Interest (IROPI) and has not included an assessment of compensatory measures within the HRA Report, there is a risk that if the CA concludes that there are no alternatives to the proposal, the applicant may be unable to identify and deliver compensatory measures through the requirements of the DCO. This may result in the CA concluding that the applicant has not satisfied the criteria for the consideration of IROPI. The approach should be discussed and agreed, where possible, with the SNCBs prior to the applicant submitting the DCO application for acceptance. Please see the Inspectorate's comments below on consultation with the SNCBs.

Consultation with the SNCBs

The Inspectorate welcomes the inclusion of the comments received from JNCC and Natural England with respect to the HRA Screening Report within the AA Report (presented in Appendix B) and the summary of the key comments received from JNCC and Natural England in Table 3.6, along with identification or response to the comment and how they have been addressed in this document or elsewhere in the ES. However, it is unclear in the HRA Report whether the conclusions of the AA have been discussed and agreed with these consultees. This should be clarified in the text and presented in a similar format to the consultation responses provided in response to the HRA Screening Report and also provide reasons for where agreement cannot be achieved.

The Inspectorate recommends that applicants seek to agree Statements of Common Ground (SoCG) with relevant organisations, in particular the SNCBs, and submit these with the DCO application. The SoCGs should clearly identify the extent to which relevant matters are agreed and areas where disputes remain and should be used to inform the HRA Report.

Delivering and Securing Identified Mitigation

The HRA Report identifies mitigation measures which are relied upon within the AA, for example, the mitigation measures identified in relation to the grey seal population (paragraph 5.2.97-5.2.99). Where the applicant is seeking to rely on mitigation measures the ExA, on behalf of the SoS, will seek to understand the level of confidence in these proposed mitigation measures and how the applicant intends to secure these mitigation measures. Consideration should therefore be given to demonstrating how the proposed mitigation may be secured through the DCO. The ExA would also expect confirmation in the HRA Report that the proposed mitigation has been discussed and agreed with the relevant SNCBs. Evidence of this should be provided within the HRA Report.

The HRA Report should cross refer to the relevant sections within the ES where the mitigation in the HRA Report has been identified. The ES should describe how the proposed mitigation would be secured through the draft DCO. This information may be summarised and presented in a Table, identifying for each feature of a European site considered within the HRA, where mitigation measures are proposed and are identified in the ES, how such measures would be secured through the draft DCO, for example, identifying the relevant requirement. This Table should be appended to the ES.

Considerations during acceptance

The decision as to whether to accept an application is one for the SoS to make following submission. Any application submitted to the SoS is considered for acceptance under the tests set out in Section 55 of the 2008 Act. Anyone applying for development consent must provide, in accordance with the Regulations¹, the CA with such information as they may reasonably require to enable them to determine whether an AA is required and if so, to undertake the AA.

Applicants should be aware that if insufficient information is submitted then it may not be accepted. Therefore, the Inspectorate strongly advises, as explained in the Inspectorate's Advice Note 10, that applicants use the pre-application

¹ Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations)

consultation process to discuss any areas of disagreement with the SNCBs and to seek to resolve these disagreements prior to submission of the DCO application and to seek assurances from the SNCBs and other bodies that all the potential impacts of the project have been addressed appropriately and in sufficient detail within the applicant's HRA Report.

The SoS expects the comments of the SNCBs to support any statements made in the HRA Report and to be clearly recorded within the HRA Report. Copies of the correspondence between the applicant and the SNCBs, and any other relevant consultees, should be provided within the application documents, ideally attached to the HRA or included within the Consultation Report. Where copies of such correspondence are not provided, the Inspectorate, on behalf of the SoS, may request such copies during acceptance, which the applicant is required to provide².

The Planning Inspectorate
11 June 2013

² Regulation 5(5) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations)