

## **Review of the Dogger Bank Teesside HRA Screening Report (August 2013) ('the HRA Screening Report')**

### **Introduction**

Please see below the Planning Inspectorate's (the Inspectorate) comments on Forewind's draft HRA Screening Report. 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 Screening Report and its findings, but are rather a high level review intended to provide helpful comments/observations as appropriate.

### **Approach to HRA Screening for Likely Significant Effect (LSE)**

The HRA Screening Report sets out the steps taken to determine the designated SPAs, SACs, SCIs, and Ramsar sites that could be affected by the proposed Dogger Bank Teesside A & B wind farm development within the Round 3 Dogger Bank Zone and whether development, either at the Dogger Bank Zone level or within the Dogger Bank Teesside A & B, could constitute LSE with respect to designated sites screened into the HRA process. However, it is unclear from the HRA Screening Report what other projects would be considered within the Dogger Bank Zone assessment, for example, is it just Dogger Bank Creyke Beck? Or is it wider than this? This should be clarified in the submitted HRA Screening Report.

The HRA Screening Report identifies that the screening for LSE has been separated into two stages:

- Stage 1 – to identify the key effects both at the Dogger Bank Zone and individual Teesside A & B project level, on each European site and/or the relevant features (e.g. spatial and temporal extent of effects). Where effects are screened out (see Section 5 and Section 6 in the HRA Screening Report) these are not carried through into the in combination assessment, and
- Stage 2 – to identify the individual plans and projects that may result in the same or similar effects on the site and/or relevant features. The plans and projects that are considered in this stage are located within a study area encompassing the North Sea region. Whilst the in combination assessment has not yet been undertaken, Table 7-1 presents the activities and effects currently expected to arise based on the types of projects and plans listed in paragraph 7.2.3 of the HRA Screening Report, which could result in a LSE on relevant European sites and features.

### **Stage 1 - Initial pre-LSE screening stage**

This stage is described in the HRA Screening Report as essentially a site-identification / selection process, which, whilst it forms part of the overall LSE determination stage of HRA, has been separated out as Stage 1 of the screening process (paragraph 5.1.1 of the HRA Screening Report).

The initial pre-LSE screening stage consists of three discrete sub-stages:

- Overview of likely effects of wind farm development - the description of effects associated with wind farm development is provided for the construction, operation and decommissioning phases for both onshore and offshore components of the proposed development (Section 5 of the HRA Screening Report),

- Initial identification of European sites and features – as identified in Tables 5-1 (SACs and SCIs referenced on Figure 5-2) and 5-2 (SPAs and Ramsar sites referenced on Figure 5-3), and
- Preliminary assessment of sites and features taken through to full screening – the SAC, SCI, SPA and Ramsar designated sites taken through into Stage 2 of the screening process are listed in Tables 6.1 and 6.2 of the HRA Screening Report.

The initial pre-LSE screening stage has resulted in the identification of the following:

- A list of European sites screened out at this stage (paragraph 8.2.1 of the HRA Screening Report) –based on No LSE at both the Dogger Bank Zone and individual Teesside A & B project level) (i.e. no pathway), and
- A list of sites screened ‘in’ for further assessment where a provisional LSE has been identified at the Dogger Bank Zone and individual Teesside A & B project level (paragraph 8.3.18 of the HRA Screening Report).

## **Stage 2 - Consideration of in combination effects**

The HRA Screening Report explains that as outputs from the cumulative impact assessment work specific to Dogger Bank Teesside A & B are not available to inform the HRA screening process at this stage, it has not yet been possible to determine the in combination component of LSE screening stage in the HRA process (paragraph 7.2.4). However, the HRA Screening Report has identified in Section 7, Forewind’s intended approach to the in combination assessment.

The study area that has been considered for the in combination assessment is stated to be the greater North Sea and beyond (paragraph 7.2.1). However, as this description is not specific, it would be helpful if the HRA Report submitted with the Dogger Bank Teesside A & B DOC application, when describing the study area considered for the in combination assessment, could refer to a plan illustrating the spatial extent of the study area.

The criterion used to identify the ‘other plans and projects’ considered in the in combination assessment is identified in paragraph 7.1.2 of the HRA Screening Report. However, it is unclear whether this criterion is based on any guidance or has been developed by Forewind. It is also unclear whether the approach has been agreed with the SNCBs. All these points should be clarified in the submitted HRA Report. Whilst there is no legal definition of what constitutes a plan or project for the purposes of the Habitats Regulations, the Planning Inspectorate has set out in Advice Note 10 (HRA) a suggested list of categories which should be considered in the in combination assessment (see page 8 of Advice Note 10), which Forewind may wish to refer to.

The types of development which will be considered within the in combination assessment include (paragraph 7.2.3):

- sites for aggregate dredging and disposal,
- renewables (including offshore wind farms),
- proposals for development / closure of oil and gas fields,
- installation of cables and pipelines, shipping and navigation, and
- military, aviation and radar.

An initial list of projects which have been screened into the in combination assessment is identified in Table 7-2, based on the criteria identified in paragraph 7.1.2. The projects listed in Table 7-2 indicate which ecological receptor (and relevant grouped features) will be assessed in combination with the projects identified. The HRA Screening Report states that this list of projects will be

reviewed on commencement of the in combination assessment to ascertain whether any additional projects should be included, or where additional projects are identified through consultation (paragraph 7.3.1). It would be helpful if the submitted HRA Report could include both a list of projects which have been screened into and out of the in combination assessment, and confirmation that these lists have been discussed and agreed with the relevant consultees, including the Statutory Nature Conservation Bodies (SNCBs).

The terminology within the in combination assessment chapter switches between cumulative and in combination, for example, in paragraphs 7.1.3 and 7.1.4. Care should be taken to ensure consistency in the HRA Report using the terminology 'in combination' effects in accordance with the wording in the Habitats Regulations, unless cross-referring to the cumulative assessment within the ES. The Inspectorate anticipates that the projects considered in the cumulative and in combination assessments may be the same. Where this is not the case, justification should be provided.

### **Reliance on Dogger Bank Creyke Beck environmental information**

The HRA Screening Report explains that as all of the baseline environmental information and assessment of impacts has not been undertaken yet for the Teesside A & B project, the initial pre-LSE screening stage has been informed by the draft assessment work undertaken for the Dogger Bank Creyke Beck development, which includes: the draft ES and draft HRA (paragraph 6.1.2). The reason for this is stated to be that much of this work is directly relevant to the assessment of Dogger Bank Teesside A & B and is reflected in the screening information and decisions presented in the draft Teesside HRA Screening Report (paragraph 1.6.4).

The Inspectorate notes the use of information in the draft Dogger Bank Creyke Beck draft ES and AA at this stage, but expects Forewind to use the final versions of any reports where these are available, together with any new or updated information arising from the examination of this and other projects considered in the in combination assessment, where final versions or additional information is available, prior to the submission of the Teesside A & B project. It would also be useful to explain how any changes to earlier documents that had been relied upon have been taken into account in the final versions of the ES and HRA Report submitted with the DCO application for Dogger Bank Teesside. Where this has not been provided and the Dogger Bank Teesside project is accepted for examination, the ExA is likely to request this clarification from both the SNCBs and the applicant in its first round of examination questions.

### **Reference to Guidance used to inform the HRA**

The HRA Screening Report refers to IPC Guidance (2011) at paragraph 2.2.2 and IPC Guidance (2012) at paragraph 1.1.3, however, as neither of these guidance documents are listed in the Reference section of the HRA Screening Report (section 9), it is unclear what these guidance documents are. Forewind should note that following the abolition of the IPC, any guidance produced by the IPC is no longer extant.

Where reference is made to a report, study or guidance relied upon in the submitted Teesside A and B HRA Report, where this document is not publically available it should be provided appended to the HRA Report, to enable the ExA and interested parties to review such documents as part of the examination.

## **Relationship between the Environmental Statement (ES) and HRA**

Section 3 of the HRA Screening Report helpfully sets out a description of the proposed development, including both onshore and offshore infrastructure. However, Forewind should ensure consistency of this description with the ES and with the draft DCO submitted with the Teesside A and B DCO application.

## **Consultation with the SNCBs**

Forewind's covering email noted that the HRA Screening Report has now been issued to consultees for comment, including the SNCBs. The Inspectorate welcomes this approach to enable early engagement and discussion between Forewind and the SNCBs. Clarification should be provided as to when consultation commenced. The aim of such consultation at this stage should be to agree where possible the conclusions of the initial screening assessment, or if not, to understand the reasons for any lack of agreement. However, the Inspectorate notes that whilst European sites located within Scotland have been identified within the HRA Screening Report (see for example Table 5-2 and Figure 5-3), the list of consultees included in Forewind's covering email did not include Scottish Natural Heritage (SNH). As some of the European sites potentially affected are in Scotland or within Scottish waters then it would seem appropriate to consult with SNH, especially as SNH are more likely to have more knowledge of such sites entirely within Scotland and would be better able to assist the applicant.

The outcome of this consultation should be recorded within the finalised HRA Screening Report, ideally in a Table format, including both where agreement has and has not been reached and the reasons why agreement cannot be achieved. Where appropriate, copies of correspondence with the consultees should be appended to support any statements, for example, that a SNCB has agreed that a certain European site can be excluded from further assessment.

The Inspectorate recommends that applicants seek to agree Statements of Common Ground (SoCG) with relevant organisations, in particular the SNCBs, during the pre-application process and if possible, to 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 final HRA Report. If the Dogger Bank Teesside A & B DCO application is accepted for examination, this information would assist the ExA in narrowing down the issues to be considered during examination.

## **Transboundary consultation**

The HRA Screening Report has identified a number of European sites located within other EEA States, in particular, Belgium, Denmark, France, Germany, Netherlands, Norway and Sweden, as shown on Figures 5.2 (SAC sites) and 5.3 (SPA and Ramsar sites). As Table 8-1: Summary of total number of European sites for which a potential LSE could arise, identifies a number of European sites within each of the above seven EEA States listed, Forewind will need to provide as part of the DCO application, information about the potential LSE on the European sites within these EEA States. The Inspectorate notes that it has previously issued notification to these seven EEA States, under Regulation 24 of the EIA Regulations 2009 (as amended), informing them about the proposed development.

## **Study Area, Baseline and Methodology**

The HRA Screening 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 submitted 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, this should be clearly stated in the HRA Report, together with an explanation of the reasons for the disagreement. Where this confirmation is not provided either in the HRA Report or a SoCG, the ExA is likely to request this clarification in its first round of examination questions. It would also be helpful for Forewind to set out in their submitted HRA Report, how they have responded to any comments from SNCBs on the study area, baseline and methodology used.

## **Satisfying the requirements of Regulation 61(1)**

As Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) requires the Competent Authority (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), an 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 Appropriate Assessment (AA) for each European site considered within the HRA.

The HRA Screening Report appears to have considered SPA and Ramsar designations for the same site separately, as presented in Tables 6-1 (Screening of Likely Significant Effect for the UK SACs, SPAs and Ramsar sites) and 6-2 (Screening of Likely Significant Effect for Transboundary sites). The Inspectorate agrees with this approach to ensure that where a site has both an SPA and Ramsar designation, these are considered separately as the features of each site may differ.

## **Conservation Objectives**

Paragraph 6.2.1 of the HRA Screening Report states that *“Judgements of likely significant effect need to be based upon assessment of potential effects on the features for which the European site was designated and taking into account their conservation objectives”*. However, Regulation 61(1) of the Habitats Regulations states that consideration of a site’s conservation objectives is only relevant when undertaking an AA of the implications for that site. Therefore, it is unclear why a site’s conservation objectives are being considered when determining at the screening stage in the HRA process whether the proposed development is likely to have a significant effect on a European site. This approach should be clarified in the submitted HRA Screening Report.

If an AA is required for this project, then the assessment of the implications for the affected European sites must be undertaken in view of that site’s conservation objectives, as required in Regulation 61(1) of the Habitats Regulations and stated in the Inspectorate’s Advice Note 10. However, 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). The Inspectorate is concerned that

Forewind's approach to the assessment of the implications of the project against the generic set of conservation objectives does not satisfy the requirement of Regulation 61(1) and requests that further information is provided in the submitted HRA Report explaining this approach. It would also be helpful to state expressly whether this approach has been discussed and agreed with the SNCBs. Where this is not provided, the ExA is likely to request clarification from both the applicant and the SNCBs on this issue, in its first round of examination questions.

#### Management of the European site

Regulation 61(1) of the Habitats Regulations requires an AA where a proposed project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and is not directly connected with, or necessary to, the management of that site. If Forewind determines that a shadow AA is required (to provide the information that the relevant SoS, as the CA, would require to undertake an AA), then this shadow AA should include a clear statement in relation to each site included within the AA, that the project assessed in the AA is not directly connected with, or necessary to, the management of that site, in accordance with Regulation 61 of the Habitats Regulations.

#### **The Inspectorate's Advice Note 10**

The HRA Screening Report includes a reference to the Inspectorate's Advice Note 10 (HRA) Version 3 at paragraph 2.2.3. However, Forewind should note that the current version of Advice Note 10 is version 5 (August 2013) which is updated to include revisions made in response to emerging best practice on projects. This revised version of Advice Note 10 supersedes all previous versions.

The Inspectorate's Advice Note 10 also 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. Whilst Table 6-1 sets out the conclusions of the screening for each of the UK European sites considered within the assessment and provides a reference to where the justification for the conclusion can be found, this information has not been presented in the format as provided in Appendix 1 of the Inspectorate's Advice Note 10.

If the Dogger Bank Teesside application was accepted for examination, it would assist the ExA for the screening matrices to be presented in the format set out in Appendix 1 of the Inspectorate's Advice Note 10 and include the following information:

- The Impacts Table should be used to identify which project activities are linked to particular ecological impacts. Forewind 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 any AA Reports, the 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.

### **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 Regulations<sup>1</sup>, 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.

Forewind 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 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 submitted HRA Report. This will include the need to ensure that the submitted HRA Report includes information that is as up-to-date as possible, particularly in relation to in combination effects arising from other plans and projects, where information on other projects relied upon to inform the Teesside A & B HRA may subsequently change, for example, through examination of a submitted DCO project.

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 submitted HRA Report 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 provide<sup>2</sup>.

**The Planning Inspectorate  
11 October 2013**

---

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

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