

Date: 11 November 2014
Our ref: 136545
Your ref: EN070001



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BY EMAIL ONLY

Dear Sarah

Yorkshire & Humber CCS Cross-country Pipeline: Preliminary Meeting and Timetable for Examination

Thank you for your letter regarding the above dated 24 October 2014. Unfortunately a representative from Natural England is unable to attend the preliminary meeting. We do however have a procedural matter which the Planning Inspectorate and National Grid are fully aware of, but we wish to ensure is accommodated appropriately within the timetable for the examination.

We agreed in discussion with the Planning Inspectorate and National Grid that a 'roadmap' detailing dates when further information about the offshore scheme would become available would be provided to inform National Grid's Appropriate Assessment. There continued to be uncertainty about the detail, and it was not possible to rule out likely significant effects on European sites. This is described further in our letter of 17th June 2014 (attached for information).

We received the completed roadmap from National Grid on 24th October (this was copied to Iwan Davies at the Inspectorate). I have attached it for completeness. Natural England note that much of the information is expected to become available in the period January to March 2015.

We note from Annex D of your letter that a Report on Implications for European Sites is expected to be published at Deadline 4 on 11th March (if second written questions are not published), or at Deadline 6 on 2nd April (if second written questions are required). We would therefore advise you to confirm with National Grid whether the provision of information on the offshore scheme will allow for an Appropriate Assessment to be carried out within the proposed examination timetable. It should be noted that Natural England will require time to review any information submitted, in accordance with our statutory duties. It would be appropriate for National Grid to provide a summary of the information required, rather than a full Draft Environmental Statement on another proposal.

Please do not hesitate to contact me if you would like to discuss the above.

Yours sincerely

James Walsh
Yorkshire & Northern Lincolnshire Team

Date: 17 June 2014
Our ref: Case 5076



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Dear Iwan

Yorkshire & Humber Carbon Capture & Storage Project: Habitats Regulations Assessment

Thank you for arranging the telephone meeting on Friday 12 June to discuss the above. This letter is to confirm Natural England's advice with regard to the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) as discussed on the teleconference.

We have been in discussion with National Grid and their consultants since we raised the issues around the No Likely Significant Effects Report (NLSEER) in our response of 5th February 2014. This issue appears to have arisen due to some confusion over the details provided regarding the offshore aspects of this project, which are to be consented under a separate regime. While consenting aspects of the same project under different regimes is not unprecedented, indeed the National Policy Statement EN1 provides for such a situation (section 4.9 refers to grid connections), it is uncommon enough to generate confusion. We have agreed previously with both PINS and National Grid that in Habitats Regulations terminology that both the pipeline application onshore and offshore are part of the same project, despite them being consented under different regimes.

As we have previously stated in our letter of 3 June 2014, we are satisfied that the onshore elements of the proposal are not likely to have significant effects on European sites.

However, as stated in our email of 11 June, following the provision of additional information, we confirmed on the call on Friday that as there remains some uncertainty as to the detail of the offshore pipeline construction and potential impacts on designated sites, we do not consider that sufficient information has been submitted to determine that likely significant effects of the offshore element of the scheme can be ruled out, either alone or in-combination with other plans and projects. We therefore advise that the proposal should proceed to the second stage of the Habitats Regulations Assessment process and that a Habitats Regulations Assessment report is produced in order to inform an Appropriate Assessment.

The 'likely significant' effect test

Guidance on how to interpret the 'likely significant effect' test can be found in both case law and European Commission guidance.

It was established in Waddenzee (Case C- 127/02) that the trigger of the appropriate assessment mechanism in Article 6(3) of the Habitats Directive is a mere probability of a significant effect on a site – a probability or a risk is enough (see paragraphs 41, 44). Therefore, a risk of an effect is sufficient. It was also established that such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned (paragraph 45). The decision should be made on a precautionary basis. Therefore, there must be an appropriate

assessment unless, on the basis of objective information, it can be excluded that the plan or project will have a significant effect on the site, either individually or in combination with other plans or projects (paragraph 45).

Further guidance on this test can be found in the Advocate General's Opinion in the recent 'Sweetman' case (Case C-258/11), see paragraphs 46 to 49, and in the CJEU decision, see paras 28 to 30. This confirms the principles established in Waddenzee.

Therefore the possibility of an effect on a site will trigger an appropriate assessment. As the Advocate General states in her opinion in the 'Sweetman' case:

'The requirement that an effect in question be 'significant' exists in order to lay down a de minimis threshold. Plans and projects that have no appreciable effect on the site are thereby excluded. If all plans and projects capable of having any effect whatsoever on the site were caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill'. (paragraph 48)

'The threshold at the first stage of Article (3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken of the implications of the plan or project for the conservation objectives for the site. The purpose of that assessment is that the plan or project in question should be considered thoroughly, on the basis of what the Court has termed 'the best scientific knowledge in the field'...(paragraph 49)

Also see paragraphs 4.4.1 to 4.4.3 of the European Commission's Managing Natura 2000 Sites guidance.

In accordance with the CJEU approach in the 'Sweetman' case, questions as to the potential impact on site integrity are considered in light of the detailed appropriate assessment. It is at this point that the risk of lasting harm to the ecological characteristics of sites can be considered, once all available/obtainable and relevant information is collated.

Natural England has not advised that potential impacts are certain, but that there is currently not enough certainty to rule out potential impacts. Indeed on the call of the 12th June we referred to the relatively low risk of the offshore element of the project and that we thought it 'unlikely that adverse effects' would result.

What is required

Under the Planning Act 2008, if it is determined that an NSIP is likely to have a significant effect on a European site and / or a European marine site, the applicant must provide a report with the application showing the site(s) that may be affected together with sufficient information to enable the competent authority to make an Appropriate Assessment (AA). Evidence will need to be provided to give confidence to the Planning Inspectorate (PINs) that, in the absence of further information, effective mitigation measures (which could include a range of options) can be called upon during construction, operation and maintenance which are appropriate to the nature of the development.

Additionally where there is no evidence for the technology being implemented, it will need to be demonstrated that the safeguards and monitoring is sufficient to satisfy PINs that there will be no adverse effect on the integrity of any European site, either alone or in combination with other plans or projects. It should be noted that to compile such a report, much of the information in the Statement of Combined Effects, in particular the information in Section 5.4, can be used to inform it along with the additional information provided more recently.

The in-combination assessment can relate to different aspects of one project, or the combined effects of individual projects. Interlinked projects are often essentially segments or elements of one overall project and division into individual segments can occur for a number of reasons, commonly because of the need for multiple authorisations in order to fully implement the overall project as in this case

Regulation 61 of the Habitats Regulations sets out the requirements for the step by step process of assessing the impacts of plans and projects, and refers to the need for appropriate assessment of those projects that are likely to have a significant effect, either alone or in-combination with other plans or projects. So it will also be important if significant effects are ruled out on their own that a consideration is made to in-combination assessment with other offshore plans or projects.

Section 4.4.3 of the Managing Natura 2000 guidance advises that *“It is important to note that the underlying intention of this combination provision is to take account of cumulative impacts, and these will often only occur over time. In that context, one can consider plans or projects which are **completed, approved but uncompleted, or not yet proposed.**”*

Next Steps

- We have provided this letter to the Planning Inspectorate and National Grid to clarify our advice given in the teleconference on Friday as requested
- We discussed on the call that whilst not ideal, it is quite normal practice for an HRA to be provided with the submission for the DCO that all parties may not have agreed at the beginning of the process. It is recognised that further information will be provided in reasonable timescales, by National Grid, on the offshore elements of the scheme that may well enable issues to be resolved. Indeed, National Grid indicated that consenting the offshore element of the project will begin to coincide more closely with the onshore application as it progresses through the PINs examination timetable. There is, therefore, a clear ‘roadmap’ here to see the resolution of the offshore issues.
- In order to facilitate this further, Natural England also agreed to consider the additional information provided by National Grid on 9th June 2014 and will provide further advice via a face to face meeting with the Applicant.

We would be happy to comment further should the need arise but if in the meantime you have any queries, please contact James Walsh on 0300 060 1832.

Yours sincerely

Deborah Hall
Sustainable Development

Theme	Further information required	Date further information to be made available	Stage in examination
Coastal processes / sediment transport	Ideal burial depth of pipeline (subsea geology permitting) with particular focus on the nearshore and intertidal zones. Confirmation of intertidal pipeline installation methods and duration of works.	January-March 2015 (Offshore construction methodology and sequence) September-December 2014 (Beach crossing construction methodology)	During Examination
Coastal processes / sediment transport	<p>A preliminary estimate or worst case scenario of the need for rock armouring should be provided, as a remedial measure for pipeline scour and subsequent exposure. An assessment of the suitability of limiting rock armouring to seabed level only, needs to be provided (see next section).</p> <p>A comprehensive desk-based review to show what components of the offshore scheme may cause changes to sediment transport, physical coastal processes and potential impacts to designated sites. In particular attention should be paid to the potential effects of any use of rock armouring. The review should scope the potential need for coastal processes modelling if required.</p>	<p>January-March 2015 (Offshore construction methodology and sequence)</p> <p>January-March 2015 (Offshore pipeline crossing drawings)</p> <p>March 2015 Draft ES for the Offshore Scheme.</p>	During Examination
Coastal processes / sediment transport	Rock armouring – material to be used and method of deployment.	<p>September-December 2014 (Beach crossing construction methodology)</p> <p>January-March 2015 (Offshore pipeline crossing drawings)</p> <p>January-March 2015 (Offshore construction methodology and sequence)</p>	During Examination
Disturbance to marine	Noise levels and any other potential effects upon marine mammals during installation, operation	September 2014-March 2015 (Offshore storage	During Examination

mammals	<p>and decommissioning of NUI need to be considered.</p> <p>In light of the above, and as mentioned in the SoCE, the need for a marine mammal observer and suspension of works needs to be considered along with other suitable mitigation.</p>	<p>jacket, topsides and process design)</p> <p>January-March 2015 (Offshore construction methodology and sequence)</p> <p>March 2015 Draft ES for the Offshore Scheme.</p>	
Flamborough and Filey Coast pSPA birds	<p>Further evidence needed to show how the project in its entirety would not have any significant effects on the pSPA features.</p> <p>June/July (when the pipeline installation period is anticipated) is a sensitive time for flightless young guillemot and razorbill. Additionally, birds go beyond the 2km pSPA boundary to feed, so there is potential for interaction with birds outside the pSPA.</p>	<p>Now – this information is included as an appendix to the revised NSER which is to be submitted to PINS next week.</p> <p>August 2014-January 2015 (Offshore transport basis of design).</p> <p>January-March 2015 (Offshore construction methodology and sequence).</p> <p>March 2015 Draft ES for the Offshore Scheme.</p>	During Examination
European Marine Sites	<p>Further details regarding the construction, operational use and decommissioning of the offshore scheme (including the storage site) is needed so that impacts, alone and in-combination, can be assessed.</p>	<p>September 2014-March 2015 (Offshore storage jacket, topsides and process design)</p> <p>December 2014-March 2015 (Offshore construction methodology and sequence)</p> <p>March 2015 Draft ES for the Offshore Scheme.</p>	During Examination
Cumulative and combined effects	<p>Further details are needed on whether the offshore scheme could have cumulative and combined effects in conjunction with other plans and projects including currently available details of the offshore storage facility.</p>	<p>September 2014-March 2015 (Offshore storage jacket, topsides and process design)</p> <p>September-November 2014 (Helicopter approach study)</p> <p>March 2015 Draft ES for the Offshore Scheme</p>	During Examination

		(will include assessment of effects on Natura 2000 sites).	
Monitoring	<p>Further details regarding monitoring and safeguards to ensure impacts are as predicted, for elements such as the pipeline and rock-armouring, are required.</p> <p>Additionally, as this is a new technology details of what monitoring and control measures for the scheme are in place, to ensure no adverse effects, are needed.</p>	<p>As this would be standard pipeline inspection monitoring, generic information available now.</p> <p>Store integrity monitoring, initial report for EEPR due end October. DECC version around January 2015.</p> <p>March 2015 Draft ES for the Offshore Scheme.</p>	During Examination