Planning for New Energy Infrastructure

Draft National Policy Statements for energy infrastructure

Published by Department of Business, Energy and Industrial Strategy, September 2021

November 2021

Introduction to the RSPB

The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe's largest wildlife conservation organisation, with a membership of more than 1.1 million. The RSPB manages 222 nature reserves in the UK covering an area of over 158,751 hectares, providing a home to over 18,500 species. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international and national law, policy and guidance that assists in the attainment of this objective. It campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy. In so doing, it offers its considerable ecological, policy, legal and practical expertise and experience to help shape the development of those laws and policies that will help to achieve its charitable objectives.

The RSPB has been involved in the Planning Act 2008 regime since its original conception, and at the time of the preparation of the current Energy National Policy Statements (NPS) commissioned research into whether the Appraisals of Sustainability complied with the Strategic Environmental Assessment Directive. We also have significant experience of engaging with Nationally Significant Infrastructure Projects (NSIPs). Out of 39 NSIPs we have been involved with, more than two-thirds have been in the energy sector, including 23 offshore wind farms but also solar and nuclear power proposals.

Key points

The UK is, along with the rest of the world, in the midst of both a climate and an ecological emergency. These are interlinked, so it is vital that tackling one is not at the expense of the other. The Government was a world leader when it set a legally binding net zero target in the Climate Act 2008 and has again seized the initiative by committing to a "net zero" equivalent for nature in the Environment Act 2021 with its species abundance target. New global targets for nature are also likely to be set in 2022. Our comments on the draft Energy NPS reflect the legal and policy imperative to deliver on these goals.

<u>Policy options which are positive for both net zero AND nature need to be given greater weight</u>

- We welcome the Appraisal of Sustainability's (AoS) recognition of the potential from construction and operation activities to have significant negative effects on biodiversity in

the short, medium and long term, and the possibility of cumulative negative effects on biodiversity and other environmental features (Q23).

- However, the assessment of reasonable alternatives in the AoS is crude; a scenario-based approach which does not give pre-eminence to security of supply would have been more informative (Q23).
- The AoS fails to explore thoroughly all alternatives with lower environmental impacts, such as directing development to the least ecologically-sensitive locations (Q23).

Marine spatial planning requires a complete and urgent transformation

- It is impossible to properly assess cumulative, in-combination and transboundary effects on biodiversity without an overarching spatial plan, particularly in the marine environment (Q2, Q9, Q23).
- Marine spatial planning in the UK requires a complete and urgent transformation in order to address these effects, but it is possible to take more rapid steps in the short-term, for example by establishing plans for sectors or development (Q2, Q9, Q24).

Biodiversity gain for NSIPs is welcome but must be ambitious and will not itself fix the failure of strategic planning

- Biodiversity gain should be at least 20% for NSIPs under the Environment Act 2021 (Q2).
- It must be additional to any mitigation or compensation needs or any wider environmental benefits (Q2).
- There is a pressing need to develop an appropriate marine net gain system (Q2, Q9).

Give more direction on appropriate mitigation and compensation measures to ensure robust applications

- We welcome acknowledgment that the conclusions of the Habitats Regulations Assessment (HRA) are only applicable at the NPS level, but it is essential to correctly identify and describe the key impacts and generic mitigation/compensation measures here because it could still be seen as providing a guide for project-level assessments (Q24).
- The HRA could do more to steer the approach to compensation measures in those sectors (such as offshore wind and other marine renewables) which are in general dealing with cumulative, in-combination impacts from multiple projects. We make specific comments on possible compensation measures (Q24).

Other points

- NPS should refer to relevant guidance rather than attempt to rewrite it within the NPS (Q1).
- Biomass sustainability criteria are inadequate and must be tightened to include combustion emissions from the plant and to prevent loss of biodiversity in overseas forests (Q8).
- We agree with the new guidance on tidal stream energy but stress the importance of a precautionary approach and the need for phasing and effective monitoring (Q12).

Our detailed response which follows focuses on EN-1, EN-3, the Appraisal of Sustainability and the Habitats Regulations Assessment, and has also been submitted via the online consultation.

For further details please contact Simon Marsh, Head of Nature Protection, RSPB (simon.marsh@rspb.org.uk).

Consultation questions

Draft EN-1 | Overarching Energy NPS

1. Does the draft Overarching Energy National Policy Statement (EN-1) provide suitable information to those engaged in the process for development consent (e.g. the Secretary of State, the Planning Inspectorate, applicants) for nationally significant energy infrastructure:

a. on the government's energy and climate policy (Part 2)?

b. on the need and urgency for certain types of energy infrastructure (Part 3)?

c. to inform decision making?

No.

Policy conflict

There is a lack of clarity on how to consider guidance (such as Defra guidance on the Conservation of Habitats and Species Regulations 2017) in the decision-making process. The NPS should refer to relevant guidance rather than attempt to rewrite it within the NPS.

There continues to be a concerning conflict with policy and guidance. For example, the NPPF and Defra statutory guidance on legislative requirements are also covered in the NPS. Whilst these other government documents are capable of being material considerations as part of the decision-making process, if there is a difference between them and the NPS then the NPS 'trumps' them as the primary document. In addition, particular confusion is caused where the NPS includes guidance on legislative requirements which conflicts with other guidance, although of course the NPS cannot 'trump' legal requirements.

There also appears to be a suggestion (see for example the National Infrastructure Planning Handbook 2018 in its commentary on s.105 of the Planning Act 2008) that an NPS will provide 'guidance' on how, for example, environmental impacts should be treated for the purpose of decision making (the passage in the Handbook, Chapter 83, essentially says that the requirements which govern applications for EIA development will apply in decisions made under s.105 which is specifically for decisions where no NPS is relevant). Clarity is required on this. S.104 requires decisions where there is a relevant NPS to be determined in accordance with NPS, whereas s.105 requires decisions where there is not a relevant NPS to have regard to certain matters. Our understanding of the Handbook text is that when you have an NPS, you would expect to find guidance in there as to how matters such as environmental impacts are to be treated in the decision-making process with clear policy requirements, whereas such requirements are not included in a non-NPS scenario. So again, clarity is needed for non-NPS scenarios where existing policy must be considered but also for NPS scenarios how that existing other policy sits with what the NPS does cover.

Greater clarity is needed and the NPS should instead refer to relevant guidance rather than such guidance being rewritten within the NPS. In addition, there is detailed EU guidance which it is appropriate to continue to rely on especially as it takes account of important clarifying CJEU caselaw which is extremely relevant to considerations of legislative requirements (having regard to s.6 of the EU Withdrawal Act 2018) and having as yet not been replicated domestically.

It has been our experience that developers tend to rely only on the NPS whilst objectors, such as the RSPB, recommend instead the Defra and EU Commission guidance since it is far more detailed and at

times more relevant. The Government should set out the position regarding such policy/guidance and how it is to be considered/applied within EN-1 (or other ENs as appropriate) so that participants are properly informed as to how such policy/guidance may fall to be considered as part of the examination /decision-making process.

d. to inform examinations?

2. Do you agree with the amendments made to EN-1 Part 4 on assessment principles, including new guidance on the marine environment, and biodiversity and net gain?

No.

4.1 General Policies and Considerations

We wish to stress the Habitats Regulations requirements which apply as well as case law regarding the importance of preserving the integrity of European Protected Sites as well as the management of the newly named National Sites network.

Residual adverse effects (para 4.1.4): where there are residual adverse effects after the implementation of any mitigation measures, this must be clearly highlighted in the applicant's Environmental Statement and given appropriate weight in the decision-making process especially when there are cumulative and in-combination effects.

Conflict between documents (para 4.1.5): the energy NPS must also take account of the new national planning framework in Wales 'Future Wales', as it sets out the national policy position for energy projects. We note the statement that the NPPF has been taken into account, but it is critical that this includes NPPF paragraph 180 which states that development likely to have an adverse effect on a SSSI should not normally be permitted. See also our comments on policy conflict under Q1.

Early engagement with key stakeholders (para 4.1.9): we welcome this statement. This should help to ensure an application provides sufficient detail to fully and robustly assess all possible impacts of the application on neighbouring designated conservation sites and their habitats and species as well as biodiversity in the surrounding area more generally.

4.2 Environmental Principles

Cumulative impacts (para 4.2.1): cumulative AND in-combination impacts covered by legislative requirements must include the impacts of all proposed and consented developments which may have an impact on the receptor environment, not just developments within the same sector or at a similar stage of the process. EIA and Habitats Regulations both require consideration of multiple impacts on the same protected sites, species or wider biodiversity as well as the crucial cumulative and in-combination requirements on potential impacts from other projects. To ensure clarity we refer to both legislative words here.

This has been a failing with proposals for marine renewables where the consideration of cumulative impacts has been limited to specific technologies. Potential cumulative/in-combination impacts have been a difficult issue when dealing with for example a series of projects in an area, if, for example, each is only considered to result in a 'small' amount of habitat loss. It is vital that the importance of cumulative/in-combination effects is highlighted and properly assessed rather than removing this

from the NPS, with reference to existing statutory guidance on these legislative requirements (see our comment under Q1).

Social and economic effects (para 4.2.2): the inclusion of biodiversity net gain in this list is misplaced unless it is meant to refer to environmental effects as well as social and economic. See our comments on 4.5 below on environmental and biodiversity net gain.

Worst-case environment effects (para 4.2.6): we welcome the requirement for the ES to set out the likely worst-case environmental effects where details are to be finalised and to assess on that basis to ensure the impacts have been properly assessed. This is important to ensure that the information submitted is sufficient to fully and robustly assess all possible impacts of the application on neighbouring designated conservation sites and their habitats and species as well as biodiversity in the surrounding area more generally.

Likely significant effects (current EN-1 para 4.2.4): we are however concerned about the removal of the previous requirement for the decision-maker to satisfy themselves that the likely significant effects have been adequately assessed and to request further information to ensure compliance with the EIA Directive.

Derogation and compensation (para 4.2.10): we welcome the inclusion of more detail on information required to assess potential derogation under the Habitats Regulations and the requirement to have discussed compensation with the SNCB. See our comments under Q24 on compensation.

4.4 Marine Considerations

We welcome the inclusion of section 4.4. However, while we agree with the relevance of marine planning, marine plans in both England and Wales are not delivering the requirements set out in EN-1. Furthermore, the omission of other marine considerations, such as the UK's commitment to achieve Good Environmental Status (GES), is symptomatic of the isolated approach to the management of our seas which jeopardises both nature and net zero.

The UK Marine Strategy provides the framework for delivering marine policy at the UK level and sets out how we will achieve the vision of clean, healthy, safe, productive and biologically diverse oceans and seas – extremely pertinent to the Energy NPS. While marine planning has been introduced in England, these systems have yet to deliver on these commitments and the lack of spatial plans to guide the sustainable use of our seas and in line with the UK Marine Strategy commitments and requirements significantly threatens the UK's ability to achieve and maintain GES and healthy ecosystems.

As this consultation ran concurrently with the review of the UK Marine Strategy (UKMS) Part Three Programme of Measures, there is potential for cross government collaboration to ensure complementary policies and frameworks. In relation to the Marine Strategy, the RSPB are supportive of all proposals detailed for birds and food webs but we are deeply concerned that the measures outlined lack the ambition needed to deliver transformative change. Consequently, they are therefore insufficient to achieve and maintain GES for birds or food webs without additional measures being required. This is the case even in the absence of ongoing and increasing impacts on marine and coastal ecosystems from development including our offshore energy transition and associated infrastructure including landfall.

We highlight the importance of blue carbon captured by healthy coastal and marine ecosystems. The ability of these nature-based solutions – vital in the midst of the dual nature and climate

emergencies – to function is threaten by poorly planned development including energy cabling in subtidal and intertidal habitats. The importance of natural carbon sequestration on land and sea should be considered in net zero fit planning systems.

The scale and rate of offshore renewables deployment required to reach net zero alone necessitates significantly improved marine planning to ensure government-led strategic and holistic management, while addressing in-combination and cumulative effects. The unsuitability of current systems to deliver the UK's ambition is evident in both the transmission network – established when the industry was a nascent sector and currently undergoing review – and the challenges facing developers in relation to the consideration and assessment of ecological impacts, which should be addressed in the preliminary stages through a frontloaded approach.

Marine spatial planning in the UK requires a complete and urgent transformation - a need recognised by both NGOs and renewables industry - however, it is possible to take more rapid steps in the short-term, for example by establishing plans for sectors or development (e.g. the Sectoral Marine Plan for Offshore Wind Energy in Scotland), as a step on the road to updated national plans.

4.5 Environmental and biodiversity net gain

This section needs updating to reflect the new provisions of s. 99 and Schedule 15 of the Environment Act 2021 regarding biodiversity gain in relation to development consent for nationally significant infrastructure projects. Regulations to implement this provision should be brought forward as soon as possible following consultation on an appropriate metric. Current evidence suggests that many NSIPs have resulted in major losses of habitat and biodiversity ('Habitat loss from major infrastructure projects: the case for action', Wildlife and Countryside Link, 2021). Given the scale, duration and significance of NSIPs and their impact on the natural environment, we propose that the biodiversity gain should be at least 20% for projects covered under Schedule 15 of the Environment Act. This currently excludes NSIPs in the marine environment, which will require the development of a bespoke system to address the specific challenges and requirements associated.

We welcome the distinction in paragraph 4.5.1 between biodiversity and environmental net gain. However, this must not signal that the wider delivery of environmental benefits (including for climate change) could effectively be traded-off against biodiversity. To avoid this there needs to be a clear statement of policy within the NPS that biodiversity is the primary objective. The requirement to deliver biodiversity net gain must be additional to any wider environmental and natural capital benefits, and be measured and considered discretely (with detailed arrangements for this to follow). This statement should also sit alongside a clear target (20%, as above) being set out within a biodiversity gain statement at the earliest opportunity with arrangements for any required transitional period made clear.

As stated in paragraph 4.5.2, it is crucial to follow the mitigation hierarchy and not change or replace existing environmental obligations. Biodiversity gain must not be conflated with mitigation or compensation. Irreplaceable habitats should be avoided and long-term post-implementation monitoring is crucial to ensure genuine gains are being delivered.

Biodiversity net gain in the marine environment is particularly challenging and as yet untested. The approach taken in the Environment Act presents many shortcomings to its effective implementation, particularly in intertidal benthic habitats. The current approach is essentially 'bottom up' and lacks

clear strategic direction, which is particularly incompatible with the interconnectedness of coastal ecosystems. The delivery of biodiversity net gain through a metric makes the system extremely complex and almost impossible for developers to deliver in practice. Furthermore, intertidal loss must not be addressed by delivering terrestrial net gain.

Instead, biodiversity net gain projects for intertidal habitats need to be delivered at ambitious scale and secured in perpetuity to ensure true net gains for benthic biodiversity. Governments must define overarching goals for these projects and tailor the system around the particularities and needs of these ecosystems. This would allow developers to commit to deliver net gain for benthic habitats in line with the government priorities through measurable interventions suited to these ecosystems and benefiting the biodiversity relying on them.

Any marine net gain system should be developed through a cautious, considered and robust approach in accordance with our recommendations above. Such a system should complement Government commitments through strategic and proven interventions without replacing existing requirements. It should also take into account the specific challenges posed by the marine environment, notably that recovery in offshore marine ecosystems requires the removal of pressures (e.g. human activities development) and that opportunities for active restoration beyond the intertidal zone are limited and largely experimental in nature. It will need clear Government leadership so industry funding can be used effectively on proven strategic interventions. Only then will it be possible for developers to proactively and effectively contribute to improving the state of our seas. In relation to this, we note the need for clear distinction between net gain and compensation. Conflation or merging of marine net gain and compensation must be avoided with any system for the former remaining additional to mitigation and compensation rather than becoming a substitute as noted by the Strategic Net Gain Task and Finish Group.

3. Do you agree with the amendments made to EN-1 Part 5 on the generic impacts of new energy infrastructure?

Yes.

5.4 Biodiversity and Geological Conservation

Biodiversity net gain (para 5.4.4): reference should be made to the new provisions for biodiversity gain in the Environment Act (see our comments on Section 4.5 under Q2).

We welcome the text on the following issues:

- the mitigation hierarchy and residual harm (para 5.4.6);
- protection for compensatory sites (para 5.4.8) - a map clearly identifying all such sites would be helpful (to cover both existing sites as well as being capable of being updated with future sites identified. Currently it is unclear how the government is going to ensure all compensation sites and their requirements are recorded, to ensure that such sites are protected when a future project is being assessed/considered)
- restoration, creation and enhancement of wider biodiversity (para 5.4.17) - NSIP applications should focus on landscape scale net gains and providing a functional ecological mosaic/ecotone and improving the actual ecological functionality of the surrounding area;
- timing of construction to avoid or limit disturbance to birds during the breeding season, enhancing of existing habitats rather than replacement and creating new habitats of value within the site landscaping proposals (para 5.4.18);

- Biodiversity Management Strategies (para 5.4.19) - this could include provision for biodiversity awareness training to employees and contractors so as to avoid unnecessary adverse impacts on biodiversity during the construction and operation stages;
- designing direct cooling systems to avoid or minimise adverse impacts on the receiving waters, including their ecology (para 5.4.19).

Draft EN-3 | Renewable Energy Infrastructure

8. Do you agree that the amendments to EN-3 (in combination with EN-1) provide clear planning policy to support the government's position on renewable energy infrastructure?

No

Biomass (2.5-2.19)

Greenhouse gas savings (para 2.6.3): the sustainability criteria set out in the RO and CfD regimes include a minimum greenhouse gas saving. However, this threshold omits the CO2 emissions from the biomass plant itself, instead only including transport, processing, cultivation and land use change emissions. We strongly recommend that combustion emissions released from the plant be included under this requirement and be taken into account by the decision-maker. While UNFCCC guidelines state that emissions from harvested biomass should be accounted in the land use, land use change and forestry sector (LULUCF) of the harvesting country for the purpose of Nationally Determined Contributions, this does not preclude domestic energy policy or sustainability criteria from reflecting the total lifecycle emissions from biomass infrastructure when designing eligibility standards. In fact, the IPCC states "the approach of not including these [bioenergy] emissions in the Energy Sector total should not be interpreted as a conclusion about the sustainability or carbon neutrality of bioenergy" (IPCC FAQs, 2021 https://www.ipcc-nggip.iges.or.jp/faq/FAQ.pdf).

Sustainability standards (para 2.6.4): We agree that the Secretary of State should not grant consent to a proposed biomass station unless strict sustainability standards are met, regardless of whether RO or CfD support is being claimed. However, current sustainability criteria under RO and CfD regimes is inadequate. Biomass burned for electricity in the UK relies overwhelmingly on imports of wood from overseas forests. This biomass is known to be high carbon, yet it is accredited as meeting the UK sustainability criteria. Additionally, only 70% of biomass burned in a power station in one month has to meet the sustainability criteria. This should be increased to 100%. Finally, although the UK sustainability criteria may require that biomass be harvested legally (according to the laws of the source country), such a designation does little if anything to protect biodiversity or ensure that biomass harvest and burning does not exacerbate climate change. The Secretary of State therefore cannot rely wholly on the RO or CfD sustainability criteria.

Action on CCR/CCS (para 2.10.12): the requirements for stations to simply provide update reports with no action required on CCR status are insufficient as a mechanism to meet legally binding obligations under the Climate Act 2008. Stricter regulation and incentives must ensure that stations without CCS are decommissioned on a timescale in accordance with Climate Change Committee recommendations, i.e. beyond 2030.

9. Do you agree with the amendments made to EN-3 guidance on offshore wind?

No.

The RSPB welcomes amendments to reflect the challenges facing offshore wind deployment in this decade and acknowledgement of the need for planning changes to facilitate the sustainable and timely expansion of this technology, not least to provide a robust framework for decision making. However, EN-3 – and more broadly EN-1 – do not go far enough in recognising the significant need for reform of the assessment, planning and management of activities in our marine environment and the need for government intervention in strategic, spatial planning and compensation. In light of the recommendations of the Climate Change Committee (CCC) regarding the scale of offshore wind required to be operational in 2050 and – as acknowledged in the Sixth Carbon Budget by 2035 to allow the phasing out of coal, the challenges facing offshore wind expansion now, will – absent of change – increase in frequency and complexity. The lack of reference to CCC recommendations, for example in 2.20.1, is disappointing particularly as these figures were also omitted from the Net Zero Strategy 2021.

In particular, the approach to Offshore Energy Strategic Environmental Assessments (SEAs) is far from resolved (para 2.22.1). Our seas and energy transition – and other marine users – urgently need a truly spatial process which determines locations to avoid damage. In addition, given the continued failure of the UK to achieve Good Ecological Status (GES), the significant uncertainty around ecologically effective compensation and absence of sufficient mitigation we do not believe it is possible to determine "*that there were no overriding environmental considerations to prevent the achievement of the plans/programmes for offshore wind if measures were implemented to prevent reduce and offset significant adverse effects*".

There are significant limitations to marine spatial planning in England and Wales which hinder offshore renewables and the achievement of GES (see our comments on 4.4 of EN-1). Our national marine plans do not 'help applications understand generic potential impacts' (2.22.5) and furthermore, these are not adequately addressed by assessments undertaken by the Crown Estate. We acknowledge the ambition of the Crown Estate to take a new approach, but we remain concerned that not enough is being done within governments to reconcile the challenges facing offshore wind expansion, which are perpetuated and exacerbated by poor planning. For more details, please see our response on 'Habitat Regulations Assessments'.

Transmission networks (para 2.22.15): the RSPB supports a more co-ordinated approach to offshore transmission networks and the role of connections via multi-purpose interconnectors. The importance of blue carbon and nature should be thoroughly considered alongside opportunities for cost saving and efficiencies, as these frameworks are developed.

Impacts (para 2.22.23): we strongly support recognition of the need for proactive measures to reduce the impact of deployment and the need to consider impacts individually and in combination with other plans or projects. We note the potential of government incentives, investment and planning frameworks to drive innovation and renew efforts to mitigate ecological impacts. See our comments on compensation under Q24.

Collaboration and evidence base (paras 2.22.27 and 2.23.15): the RSPB strongly supports encouragement for applicants to collaborate with other developers and sea users on shared mitigation, compensation and monitoring where appropriate. We support acknowledgement of the urgent need to establish a robust evidence base to inform offshore wind deployment and the

recovery of the marine environment. In relation to the requirement for the application to undertake environmental monitoring, we recommend the following:

- Enhanced and standardised monitoring consenting requirements to target data gaps pertinent to the 2030 pipeline (e.g. species, sites and habitats impacted by development in this decade).
- Collaborative monitoring of multiple applicants to be encouraged (e.g. Fourth of Tay ornithological example).

We support explicit mention of the need to avoid compensation measures (2.22.24) – an area currently lacking momentum and attention. We welcome the statement "at the earliest possible stage alternative ways of working and use of technology should be employed to avoid environmental impacts" and note the need for industry action in particular to drive innovation and technological advances here. There is also potential for mitigation measures to be advanced and trialled through the Offshore Wind Evidence and Change Programme. In relation to compensation, we are aware of various workstreams including Defra's Offshore Wind Enabling Actions Programme and the Offshore Wind Industry Council's Pathways to Growth. We are concerned however, that despite the value of NGO environmental and planning expertise and the increasing risk of consenting delays, the latter has yet to broaden out discussion beyond industry and government bodies. We also note the need to determine ecologically meaningful compensation and acknowledge the opportunity for the UK to demonstrate world leadership in this space, for example by intervening to finally address the degraded state of our seas in conjunction with the expansion of sustainable renewables.

Repowering and decommissioning (paras 2.23.13 and 2.23.16): we welcome consideration of repowering and urge BEIS to consider the implications and potential for repowering and decommissioning as part of the wider effort to ensure a well-planned offshore energy transition.

Environmental net gain (para 2.23.18): we strongly recommend that compensation and net gain are not conflated. Any marine net gain system should be developed through a cautious, considered and robust approach in accordance with our recommendations above. Such a system should complement Government commitments through strategic and proven interventions without replacing existing requirements. It should also take into account the specific challenges posed by the marine environment, notably that recovery in offshore marine ecosystems requires the removal of pressures (e.g. human activities development) and that opportunities for active restoration beyond the intertidal zone are limited and largely experimental in nature. It will need clear Government leadership so industry funding can be used effectively on proven strategic interventions. Only then will it be possible for developers to proactively and effectively contribute to improving the state of our seas. Conflation or merging of marine net gain and compensation must be avoided with any system for the former remaining additional to mitigation and compensation rather than becoming a substitute as noted by the Strategic Net Gain Task and Finish Group. See also our comments on environmental and biodiversity net gain under Q2.

Cumulative impacts (para 2.24.4): we recognise the acknowledgement that it is likely that the cumulative impact of multiple wind farms on the marine environment will increase. Cumulative impacts must be adequately assessed, avoided, mitigated and, as a last resort, compensated. The significant role of government intervention to address the historical degraded state of our seas is also part of the solution; the removal of fisheries pressures – for example – are not within the gift of developers to manage and reduce thus reducing bycatch and increasing the availability of food for our declining seabirds. As well as species and habitat specific impacts and measures, the significance

of cumulative and in-combination impacts across food webs and the potential for ecosystem wide disruption should also be considered (para 2.24.1).

Offshore wind impacts: birds (para 2.29.2): this refers to the consented Rochdale Envelope parameters of projects. The use of the phrase "ornithological 'headroom'" causes us great concern. Whilst we appreciate the importance and fully support reconsidering in-combination/cumulative assessments when consented projects are not built to the maximum capacity consented, it is wholly unacceptable (as discussed above) to view potential adverse impacts on protected species as "headroom". The word implies there is acceptable spare capacity despite the following potential impacts to birds:

- collisions with rotating blades
- disturbance from construction activities such as the movement of construction/decommissioning vessels and piling
- displacement during the operational phase, resulting in loss of foraging/ roosting area
- impacts on bird flight lines (i.e. barrier effect) and associated increased energy use by birds for commuting flights between roosting and foraging areas
- impacts upon prey species and prey habitat

We strongly recommend that an alternative phrase is used.

12. Do you agree with the new guidance added to EN-3 on tidal stream energy?

Yes.

Impacts from arrays (para 2.57.1): we welcome the acknowledgment that the recent modelling work is showing far reaching impacts from larger tidal stream arrays. We support the precautionary approach being taken. Further work should be undertaken to ensure that tidal stream developments are steered away from the most sensitive ecological locations and that a phased, precautionary approach is undertaken for all new proposals until such time as further evidence on impact is available.

Grid connection infrastructure (section 2.58): we would urge a joined up, comprehensive approach for marine and terrestrial infrastructure especially in relation to the landfall cabling for all of the differing marine renewable technologies currently being proposed. The cumulative impact of multiple differing technologies making cable landfall in multiple locations means that cumulative impact on coastal habitats and species may prevent deployment.

The RSPB strongly supports the call for effective monitoring by the applicant both prior to and during construction and during operation. This is novel technology and the effects of the development and the efficacy of monitoring will help inform better mitigation and effective adaptive management plans.

Based on adopting a precautionary approach to tidal stream outlined within EN-3, all large-scale tidal stream proposals should be brought forward in a phased manner even if considered to be located in a least sensitive location given the level of potential impact that this technology has over wide areas and mobile species.

The RSPB fully supports paragraphs 2.60.3 and 4 and welcomes the recognition that there is potential for this technology to cause significant impacts by way of disturbance and noise as well and the physical impact of the structure under, in or on the water.

We do not concur however with paragraph 2.60.6 in that biodiversity impacts will be broadly similar to offshore wind infrastructure. Submerged tidal stream devices submerged can impact on foraging, by causing displacement of foraging grounds. Submerged devices can impact on diving birds, potentially entering the water at speed into an unseen, moving structure. Due consideration needs to be given to the, albeit limited, known and anticipated impacts of the specific technology and not based on an assumption that tidal stream devices are similar in impact to offshore wind.

14. Do you have any other comments on the amendments to EN-3?

The RSPB recognises that decarbonising our energy systems is vital to reach net zero and will require a substantial and rapid deployment of NSIPs. The sheer scale and pace of this transition is already testing existing planning systems threatening both nature and net zero. We urge the Government to consider the process of transforming frameworks to allow for a coordinated, sustainable and timely energy revolution within this NPS.

The RSPB strongly recommends that the role of Carbon Capture Storage (CCS) in our energy transition is clearly defined and truly fit for net zero; CCS must mean genuine emissions reductions and not be used to justify new development that could be substituted for renewables, such as fossil fuels with CCS, or to tie the UK in to prolonging the life of existing fossil fuel pollution sources. The role of CCS must also be considered in relation to spatial planning and the need to find space for technologies proven to deliver low carbon energy at scale.

Appraisals of Sustainability EN-1 to 5

23a. Do you have any comments on the AoS findings for the draft Overarching NPS for Energy (EN-1)?

We welcome the use of the sustainability objectives, particularly objectives 1-4 and the reference in objectives 3 and 4 of the need to enhance, not just protect, biodiversity and sites designated for their international importance for nature conservation.

We welcome recognition of the potential from construction and operation activities to have significant negative effects on biodiversity in the short, medium and long term. We also welcome the recognition of the possibility of cumulative negative effects on biodiversity and other environmental features.

However, there are flaws which undermine the AoS (and the AoS for EN-2-4). Firstly, it is impossible to properly assess cumulative, in-combination and transboundary effects without an overarching spatial plan. The AoS correctly notes that “the lack of clarity relating to location of infrastructure means it is not possible to be precise as to cumulative, synergistic and indirect effects” (p16). It goes on to conclude “that the significance and nature of cumulative effects may vary with the mix of technology projects proposed and the sensitivities of the receiving communities and environment”, but this is a statement of the obvious. It is not possible for the NPS to address and manage these

issues; delegating them to project-level EIA is likely to result in poor environmental outcomes and is an inefficient process even solely from a planning perspective.

This is a fundamental problem, particularly in the marine environment where there is no effective spatial planning to fill the gap between the high-level policies of the NPS and individual NSIPs (see also our comments under Q2 and Q9).

Secondly, the assessment of reasonable alternatives is crude. We acknowledge that it is a significant improvement on the consideration of alternatives in the AoS of the original NPS. However, simply subtracting different technology types is unlikely to give very informative results. EN-1 is based on the fundamental premise that a combination of technologies is required, but rather than asking which technologies are 'in' or 'out', a scenario-based approach would have been much more informative. The key question is really what is an appropriate balance between technologies, and their spatial distribution, and what is the environmental impact of different balances and distributions.

Alternative 4 assumes that offshore renewables cannot deploy to their fullest extent due to even stricter protection of the marine environment, which will mean increased reliance on fewer low carbon electricity generating technologies. This is assessed as a large negative effect for net zero, compared to EN-1. This conclusion depends on a number of questionable assumptions; offshore wind deployment is not necessarily incompatible with stricter protection of the marine environment, nor does stricter protection necessarily imply lower energy output overall. An alternative which could have been explored is one where plan-level Habitats Regulations Assessments for offshore renewables identify the least ecologically-sensitive locations and direct development there.

All the alternatives are deemed to be negative for security of energy supply, but this has the effect of weighting the conclusions away from alternatives with lower environmental impacts. Ultimately the choices between alternatives are political choices and should not be left buried in a technical report. In our view, the climate and nature emergency is of such urgency that the purpose of the AoS should be to expose and thoroughly explore all alternatives with lower environmental impacts, without giving pre-eminence to security of supply.

We note that the potential for minor positive impacts on biodiversity in the medium to longer term due to environmental enhancements and biodiversity net gain is highly uncertain and should not be relied upon as a mitigating factor.

Finally, EN-1 will have effect alone for energy infrastructure that is established by this NPS but is outside the scope of technology specific NPS, such as hydrogen and Carbon Capture and Storage pipeline or storage infrastructure. The technology specific NPS include a range of mitigation measures which act to bolster the approaches outlined in EN-1 to reduce any adverse effects. The use of EN-1 alone means that there is no specific Appraisal of Sustainability for these newer technologies or corresponding specific mitigation measures, so BEIS needs to give further consideration to what further mitigation measures may be necessary.

23b. Do you have any comments on the AoS findings for the draft NPS for Natural Gas Generating Infrastructure (EN-2)?

See our comments on the AoS findings for EN-1. The AoS considers that both alternatives are adverse on security of supply as they are reliant on unproven technologies such as hydrogen and

energy storage at scale. The Government must rapidly bring forward its requirements for CCR in order to made alternative (b) (low carbon-ready gas plant) a more feasible proposition.

23c. Do you have any comments on the AoS findings for the draft NPS for Renewable Energy Infrastructure (EN-3)?

See our comments on the AoS findings for EN-1. The AoS consider that the alternative of only consenting biomass or waste combustion plant with CCS is highly uncertain, but could be a more sustainable alternative. The Government must to rapidly bring forward its requirements for CCR in order to make this a more feasible proposition.

We welcome the recognition of the potential for significant transboundary effects, particularly through the development of offshore wind farms, and the need to consult neighbouring EU states as well as Norway, the Isle of Man and the Channel Islands. As noted in our answer to Q23a, the lack of effective spatial planning in the marine environment makes it impossible to properly assess transboundary effects, and leaving this issue to project-level EIA is likely to result in poor environmental outcomes.

23d. Do you have any comments on the AoS findings for the draft NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)?

See our comments on the AoS findings for EN-1. The AoS considers that the alternative of only consenting gas infrastructure which can convert to low carbon alternatives in the future may compromise security of supply and affordability. It is assessed as having a large negative effect on security of supply, but a positive effect on net zero and the natural environment. EN-4 is preferred because it is more likely to give confidence to developers to come forward with planning applications which if approved will contribute to security of supply and affordability. This is a good example about how fears about security of supply, which may or may not be justified, trump considerations about environmental impacts, to the extent that a reasonable alternative which would allow a quicker transition to net zero is discounted.

23d. Do you have any comments on the AoS findings for the draft NPS for Electricity Networks Infrastructure (EN-5)?

We agree that the undergrounding of all electricity lines may have other impacts, including on sensitive habitats, and is best decided on a case-by-case basis.

Habitat Regulations Assessment EN-1 to 5

24. Do you have any comments on the HRA findings for the following draft NPSs:

a. The draft Overarching NPS for Energy (EN-1)?

b. The draft NPS for Natural Gas Generating Infrastructure (EN-2)?

c. The draft NPS for Renewable Energy Infrastructure (EN-3)?

d. The draft NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)?

e. The draft NPS for Electricity Networks Infrastructure (EN-5)?

The following comments relate to the HRA as a whole, unless otherwise stated.

We note that, due to the lack of any spatial detail in the NPSs, a precautionary approach has been necessary in respect of the HRA. The conclusion of the HRA is therefore that adverse effects on the integrity of one or more European sites (including those in other countries due to possible transboundary effects) cannot be ruled out, but that a case for no alternative solutions and imperative reasons of overriding public interest (IROPI) can be made at the strategic level. However, we welcome the clear acknowledgement that the conclusions of the HRA "*are only applicable at the NPS level and are without prejudice to any project level HRA, which may result in the refusal of consent for a particular application*." We support this approach and welcome the clarity provided in the HRA that projects coming forward under the NPSs will still be required to undergo individual assessment under the Habitats Regulations, including where necessary presentation of individual derogation cases.

Nonetheless, the strategic HRA could still be seen as providing a guide for those project-level assessments. It is therefore essential that the key impacts and generic mitigation/compensation measures outlined in the strategic HRA are correctly identified and described. We highlight below a number of important points that should be added to or amended in the HRA to ensure that robust assessments are undertaken at application level.

3.5. Step 3: Identify the potential effects on the European Site both alone and in combination with other plans and projects

Table 3-1 in Section 3.5 identifies potential effects on the European Site, alone and in combination with other plans and projects. However, the effects are presented as a summarised mix of impact pathways and likely significant effects, and as a consequence there is some confusion as to whether some key issues have been identified, including:

- physical/visual disturbance impacts (construction/decommissioning and operation)
- changes to coastal hydrogeomorphology (operation)
- smothering of habitats from dust or hydrological sedimentation (construction/decommissioning)
- displacement of species (construction/decommissioning and operation)

Appendix A expands on the various impacts, suggesting that at least some of the above issues may be included, but it is not always possible to track the broader descriptions of effects back to the summarised impacts/effects identified against each type of development in Table 3-1. Impact pathways and their likely effects should be separated out more clearly (in Table 3-1) and a more expansive/descriptive list given against each development type to improve clarity.

As a minimum, the following development-specific effects should be added to Table 3-1 and then taken forward into Table 3-2 (note that these and our further comments below on Table 3-2 should not be considered exhaustive):

For all - For both construction and operation, "Noise pollution and vibration" should be expanded to noise, light, vibrations and visual disturbance and displacement.

EN-1/2/3 – Hydrogen/Nuclear/CCS/Natural Gas/Biomass/EfW:

- Where vehicle and personnel movement is identified as a potential impact pathway this should be shown to translate into possible disturbance effects (including physical and visual impacts as well as noise)

EN-1 - Nuclear

- Specific reference should be made to both fresh water and the marine environment since, as table 3.1 confirms, most nuclear applications will be coastal due to the water required.

EN-3 – Solar PV

- Add 'vehicle and personnel movement' and therefore disturbance effects

EN-3 – Offshore Wind:

- Displacement of bird species (construction/decommissioning and operation)
- Habitat loss and fragmentation (operation): cable protection

EN-3 Tidal Stream

- Displacement of bird species (construction/decommissioning and operation)
- Habitat loss and fragmentation (operation): cable protection

3.6. Step 4: Assess the likely significance of any effects on European Sites

In addition, we have the following comments on Table 3-2 (section 3.6), in relation to the likely significance of any effects on European Sites.

- In line with our comments on Table 3-1 above, 'Displacement of bird species' should be added as a type of likely significant effect.
- The following amendments should be made to the type of qualifying feature that could be significantly affected by likely significant effects:
  - **Light pollution**: should include impacts to migratory birds.
  - **Coastal change:** should reference bird species in general given mix of vulnerable habitats.
  - **Collision of marine species with turbines:** needs to explicitly reference bird species, as it is apparent that the definition of marine species used in this table does not include birds.
  - **Disturbance of marine species:** should explicitly include bird species.

Finally, in section 3.6.1: the list of effects that could occur in combination should now include 'displacement' e.g. auks or red-throated divers from offshore wind farms.

4.4 Mitigation measures

Habitat loss fragmentation

This section makes some suggestions of scenarios where habitat creation/enhancement could be considered as mitigation. For example:

> "• *Create alternative wildlife corridors as close as possible to those lost as a result of development, where these maintain links between certain sites and supporting habitat (note that habitat enhancement / creation is only mitigation where it addresses a particular issue and maintains the integrity of a European site) (note that this is a less standard measure as it depends on the existing habitats and land use in the wider area, and may require purchasing additional land. This measure is likely to be more effective on a greater scale, where it can feed into regional habitat networks).*
>
> • *Enhance existing habitat to better support qualifying features (this is a less standard measure, as it depends on the quality of existing habitat and management responsibilities).*"

It is unclear whether these descriptions refer to habitat inside or outside a European site. However, opportunities for habitat creation/enhancement (either inside or outside a protected area) that could be considered as mitigation are rare and would normally be considered as compensation (i.e. as part of a derogation case) given the inherent uncertainty over their ecological effectiveness and being fully effective before damage occurs. These examples should be amended to clarify that such examples are rare and would need to demonstrate additionality in relation to existing site management requirements. To avoid any confusion at the project level, it would however be better to remove these examples entirely.

Bird/bat strike

We welcome the reference to siting wind turbines away from *"known migration routes/key feeding grounds where possible*". This should be extended to include "known flight routes between breeding colonies and foraging grounds".

With reference to turbine "*design modifications*" potentially including "*less standard* [mitigation] *measures with greater uncertainty as to their effectiveness*", in many cases raising the rotor height of offshore wind turbines significantly reduces bird collision risk, yet this measure is rarely considered at the design stage. We strongly recommend the inclusion of 'raising of wind turbine rotor height' as a design modification with high certainty of effectiveness as a mitigation measure for seabirds in particular.

The need to reform the spatial planning system for offshore wind

Offshore wind will play a central part in the UK's efforts to achieve net zero by 2050 and is likely to be the primary source of low carbon energy during this critical period. Yet it is widely recognised that the current and historic approach to planning this technology has resulted in cumulative impacts on SAC and SPA features and will, in the absence of reform, continue to drive nature losses and an ongoing need for compensation. As we note in comments on section 6.3 below, these impacts and the need for compensation are now locked in for the remaining Round 3 and Project Extension schemes. The current HRA and NPS Review provides the opportunity for the UK Government to address the need for fundamental change in how we plan for offshore wind in order to reach 2050 net zero targets and achieve Good Environmental Status.

Underlying this is the current model of fixing spatial locations for seabed licences before undertaking HRA. This is fundamentally flawed and the system in England and Wales requires a complete and urgent transformation. In the short-term measure, we strongly recommend a move towards a sectoral or development marine plan, such as that adopted in Scotland (Sectoral Marine Plan for Offshore Wind Energy), which is led by government and adopts a more frontloaded approach to identifying impacts and potential mitigation. This will greatly increase the likelihood of being able to avoid locating offshore wind projects in areas where they will cause damage to SACs and SPAs and break the deadlock resulting from developers being locked into sites with unresolved ecological issues – particularly challenging in the absence of alternatives. Hence, there is an urgent need to reform the spatial planning process for expansion post-Round 4. This should be a mitigation measure arising out of the NPS HRA.

We agree with The Crown Estate that the HRA is a decision-influencing, arguably, decision-making process (see Appendix B). In this context, it should be the role of the NPS HRA to acknowledge this structural issue which will lead to further adverse impacts on SACs/SPAs and identify the changes required to avoid those impacts. The NPSs should set out the framework for these reforms. This should be designed to ensure the problems now encountered in the southern North Sea are avoided in areas identified for future expansion e.g. in the Irish and Celtic Seas.

We understand The Crown Estate is considering trialling new approaches to its own spatial planning processes commencing with newly announced floating wind. Whether this is sufficient to avoid the potential conflicts of interest (given The Crown Estate's own commercial interests) remains to be seen but we welcome the change in approach. The RSPB will engage positively with any new process to help ensure it avoids the mistakes now evident in the North Sea. However, we consider such spatial planning is more properly the responsibility of government and its agencies. Indeed, only government has the power to deliver holistic marine planning which integrates necessarily ambition offshore wind targets and nature commitments while maximising opportunities for the co-location of marine activities more broadly – vital if we are to find the necessary space to expand low carbon renewables.

5.5 Alternative Solutions

See our comments under Q23 on the alternatives used for the Appraisal of Sustainability.

6.2 Case for IROPI

Paragraph 6.2.3 states the following:

"*Setting out planning policy, (including a strong expression of the need for new energy infrastructure) in the Energy NPS will result in a more streamlined planning system with enhanced certainty for developers. Continuing delays in the planning process would add to uncertainty for energy companies and could result in them choosing to invest in other generation technologies or in other countries*."

In respect of offshore wind, this is insufficient to reduce delay. The currently encountered delays in the planning system are the result of historic and ongoing poor spatial planning by the Government and The Crown Estate. This has resulted in the southern North Sea becoming congested and giving rise to (widely predicted) in-combination impacts on SACs and SPAs and for which the Government, The Crown Estate and industry has done insufficient research to compile the evidence for the available compensation measures that would provide a reasonable guarantee of success. As a result, we are now encountering significant post-examination delays. This supports the need for

fundamental reform of the offshore wind spatial planning system in order to ensure such impacts are avoided as far as possible in selecting areas for future offshore wind expansion. This in turn should result in the more streamlined planning system and enhanced certainty sought by Government.

6.3: Compensation

The RSPB acknowledges that without defined impacts at the NPS level "it is not possible to determine what compensatory measures will be required and to what extent they need to be applied." However, in line with our comments on the need for the HRA outputs to guide reform of spatial planning systems below the level of the NPSs (with particular reference to offshore wind and other marine renewables), the HRA could do more to steer the approach to compensation measures in those sectors which are, in general, dealing with cumulative, in-combination impacts from multiple projects which will require compensation.

It is increasingly recognised by The Crown Estate, industry and central Government (BEIS, Defra) that there is a need to develop more strategic approaches to the planning and delivery of compensation measures in respect of offshore wind. The same logic is likely to apply to other marine renewables. We note that in its consultation comments (Appendix B) The Crown Estate suggests that the NPS revision and NPS plan-level HRA offer an opportunity for government to tackle this and other strategic challenges to deliver better environmental outcomes while maintaining the speed of deployment required to meet net zero targets. The RSPB agrees.

As we have noted above, reform of the spatial planning system for offshore wind is a key first step in order to avoid or minimise impacts on European sites. However, even assuming any such reforms manage to avoid damage from future strategic planning rounds, over the next 10 years or so we will have to deal with the legacy of locked-in, in-combination impacts arising from:

- The remaining Round 3 schemes still to be determined;
- Project Extensions; and potentially
- Round 4.

Therefore, it is appropriate for the NPS review to provide a clearer steer on how it expects such work to be taken forward, rather than (again) deferring it down to the project level where ongoing post-examination delays point to the need for different approaches and greater leadership from the Government.

Other comments on Section 6.3

In addition to this overarching comment on how the HRA should be used to guide the NPS in establishing a clearer framework for the approach to compensation measures, we have the following specific comments on the text contained in section 6.3.

The HRA sets out a list of possible compensation measures that might be relevant to project-level HRAs. We make the following comments:

Suggested compensation measure	RSPB comment
Substantial enhancement of degraded habitat that will support qualifying features affected	If this is located inside an SPA, SAC or Ramsar site then it properly described as a site management measure to restore a degraded

Suggested compensation measure	RSPB comment
	feature and cannot be considered as compensation.
Enhancing connectivity of habitat that supports qualifying features affected.	This could also fall under the "site management" category and therefore care is needed. Site conservation objectives for several SPAs including restoring connectivity between nesting and foraging areas.
Species recovery and reinforcement, including reinforcement of prey species	As with the above two measures, care would be needed in distinguishing between what is necessary to restore a qualifying feature (site management) and what is additional and therefore could be considered as a possible compensation measure.
Incentives for certain economic activities that sustain key ecological functions (such as coppicing).	Greater clarity is needed on what is intended by this measure. It is unclear. Again, if the example of coppicing is required to sustain key ecological functions then it is likely to be properly considered a site management measure.
Reduction of (other) threats	As per our comments above – care will be needed to distinguish between what is a site management measure and what is genuinely additional and so could be considered as a possible compensation measure.

Finally, we note reference is made to Defra's draft Marine Protection Area Compensation Guidance note which has recently undergone consultation and is subject to revision. We note here that in its response to that consultation the RSPB was highly critical of certain key aspects of the draft guidance, including its approach to the compensation hierarchy. However, we also note that we supported the need for greater Government-led effort on strategic compensation as described above.

Other Comments

26. The NPS direct the reader to relevant additional policy and regulations that should be reflected in the submission and consideration of applications for development consent. Such guidance could be periodically updated or changed. Is there a way we can improve how the NPS signpost existing and future guidance?

Yes. See our response to Q1.

27. Do you have any comments on any aspect of the draft energy NPSs or their associated documents not covered by the previous questions?

Yes. It is important that the energy NPSs and NSIP reviews enhance (or at the very least maintain) the standards and quality of the NSIP application, examination and decision-making process. While we welcome enhancements to facilitate more efficiency engagement and scrutiny of NSIP applications efforts to speed up the process must not be to the detriment of standards and quality of the application, examination and decision-making process.