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Department for Environment Food & Rural Affairs

Habitats Regulations Assessment of the National Policy Statement for Water Resources

Methodology Report



November 2017

Amec Foster Wheeler Environment
& Infrastructure UK Limited



Report for

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Document revisions

No.	Details	Date
1	Draft HRA Methodology Report	18.8.17
2	Final Draft HRA Methodology Report	10.09.17
3	Final HRA Methodology Report	10.10.17
4	Final HRA Methodology Report (Published)	08.11.17



Executive Summary

Overview

The Department for the Environment, Food and Rural Affairs (Defra) has begun work on developing a National Policy Statement (NPS) for Water Resources. The NPS will apply to new water resources infrastructure, including dams, reservoirs and water transfers, in England. It will guide the Secretary of State, the Planning Inspectorate and developers in the consideration of any applications for development consent in relation to water resource-related nationally significant infrastructure projects.

The NPS itself is to be subject to the provisions of article 6(3) of the "Habitats Directive" (92/43/EEC) and the requirements of regulations 102 and 103 of the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations')^{1,2}. These provisions require an assessment of whether there are any 'likely significant effects' (LSE) on any European site³ as a result of the implementation of the NPS (either on its own or 'in combination' with other plans or projects) and, if so, whether these effects will result in any adverse effects on that site's integrity.

In accordance with the requirements of the Habitats Regulations, a Habitats Regulations Assessment (HRA) is to be undertaken to consider the effects of the NPS on European sites and to identify and assess alternatives to remove or compensate for those effects.

Purpose of this Report

The purpose of this Methodology Report is to set out the proposed approach to undertaking the HRA of the NPS for Water Resources, consistent with current European Commission guidance⁴ and covering:

- ▶ Screening;
- ▶ Appropriate Assessment;
- ▶ Assessment of alternatives; and
- ▶ Assessment of Imperative Reasons of Overriding Public Interest (IROPI) and identification of compensatory measures.

Defra will be consulting statutory and other selected consultees on this HRA Methodology Report (alongside a separate Appraisal of Sustainability Scoping Report). Using the approach set out in this report, as amended on the basis of consultation responses where appropriate, the potential effects of the draft NPS will then be appraised against the requirements of regulation 102 of the Habitats Regulations.

While the primary audience of this Methodology Report is statutory and other selected consultees, this report is also being made available to the public between 13th November and 22nd December 2017. Details of how to respond to the consultation are provided overleaf. All responses to the questions will be considered. The production of the HRA Report will support a full public consultation on the draft NPS in 2018.

¹ SI 2010 No. 490; available at <http://bit.ly/1DaYWjr>.

² Regulations 102 and 103 apply the provisions of articles 6(3) and 6(4) of the Habitats Directive 92/43/EEC to land-use plans in England and Wales; these are applied to land-use plans by regulations 85A – 85E of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (SI 1994 No. 2716) in Scotland; and by regulation 64B of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (SI 1995 No. 380) in Northern Ireland.

³ Strictly, 'European sites' are: any Special Area of Conservation (SAC) from the point at which the European Commission and the UK Government agree the site as a 'Site of Community Importance' (SCI); any classified Special Protection Area (SPA); any candidate SAC (cSAC); and (exceptionally) any other site or area that the Commission believes should be considered as a SAC but which has not been identified by the Government. However, the term is commonly used when referring to potential SPAs (pSPAs), to which the provisions of article 4(4) of Directive 2009/147/EC (the 'new wild birds directive') apply; and to listed Ramsar Sites, to which the provisions of the Habitats Regulations are typically applied as a matter of Government policy (e.g. National Planning Policy Framework (NPPF) para. 118; EN-1 para. 5.3.9). "European site" is therefore used in this report in its broadest sense, as an umbrella term for all of the above designated sites. The protection provided by the Habitats Regulations is sometimes (but not always) explicitly extended to include possible SACs (pSACs) by Government policy (e.g. the NPPF specifically includes pSACs in para. 118; EN-1 does not).

⁴ *Methodological guidance on the provisions of article 6(3) and (4) of the Habitats Directive 92/43/EEC* (EC 2002).



This Consultation: How to Give Us Your Views

We would welcome your views on any aspect of this HRA Methodology Report. However, we would particularly welcome responses to the following questions:

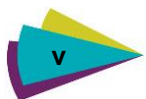
Consultation Questions

- | | |
|----|---|
| 1. | Do you think that the proposed approach to assessing the NPS against the Habitats Regulations is appropriate? For example, you may consider if the approach described is proportionate and whether it would provide a suitable level of information about potential habitats impacts. If not, how do you think the intended approach should be amended, and why? |
| 2. | Do you think that the HRA Methodology Report sets out sufficient information to establish the context for the Screening Report and later Appropriate Assessment? If not, which areas do you think have been missed and where is the information available from? |

Please provide your comments via the Citizen Space survey at <https://consult.defra.gov.uk/water/nps-water-supply-planning-act-2008>. If you have any questions about the consultation please contact the Defra team at:

Email: WaterSupplyNPS@defra.gsi.gov.uk

Post: Water Infrastructure Team
Department for Environment, Food and Rural Affairs,
Nobel House,
17 Smith Square,
London,
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Figure 2.1 Summary of HRA Process and Stages

1. Introduction

1.1 Overview

- 1.1.1 Public water supplies and future water availability will be affected by population and economic growth, changes in consumer behaviour and the impacts of climate change. The Government has set out how it will enhance its policy framework to ensure the long term resilience of the public water supply in 'Creating a great place for living: Enabling resilience in the water sector'⁵. It highlights that in order to meet this challenge, the water industry may need to develop new water supply infrastructure that could be considered to be 'nationally significant' and that the Government is minded to prepare a National Policy Statement (NPS) to support the delivery of this infrastructure. Subsequently, in her Written Statement⁶ of 14th March 2017, the Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities confirmed that the Government will prepare an NPS for nationally significance water resources infrastructure. This work is being led by the Department for Environment, Food and Rural Affairs (Defra).
- 1.1.2 The NPS for Water Resources will guide the Secretary of State (SoS), Planning Inspectorate and developers in the consideration of any applications for development consent in relation to water resource-related nationally significant infrastructure projects (NSIPs) in England. Its development will be informed by the 'Climate Change Risk Assessment 2017'⁷, the 'Water resources long term planning framework (2015-2065)'⁸, other evidence^{9,10} and water resources management plans (WRMPs) prepared by water companies.
- 1.1.3 Once the NPS has been designated, the Secretary of State will be required to determine any applications for development consent in accordance with it, unless certain other criteria (set out in the Planning Act 2008) apply. The NPS will support the delivery of future large supply projects identified in water company WRMPs, helping the water companies to plan, fund and develop any new large infrastructure that will improve the resilience of future water supplies. The NPS is intended to be non-site specific, focussing on the high level assessment principles against which development consent order applications will be considered, rather than identifying specific sites.
- 1.1.4 Both water management and planning are devolved issues. Therefore, the Welsh Government, Northern Ireland Executive and Scottish Government each have responsibility for these issues in or as regards their respective countries. The NPS will apply to England only.
- 1.1.5 The NPS is subject to the provisions of article 6(3) of the 'Habitats Directive' (92/43/EEC) and the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations'). These provisions require an assessment of whether there will be any 'likely significant effects' on any European site as a result of the plan/project's implementation (either on its own or 'in combination' with other plans or projects) and, if so, whether these effects will result in any adverse effects on the site's integrity. This process is generally known as Habitats Regulations Assessment (HRA).

⁵ Defra (2016) *Creating a great place for living: Enabling resilience in the water sector*. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504681/resilience-water-sector.pdf [Accessed August 2017].

⁶ UK Parliament (2017) *Affordable, Resilient Water Supplies: Consultation on the Government's Strategic Priorities for Ofwat: Written statement - HCWS530*. Available from: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-03-14/HCWS530/>

⁷ Committee on Climate Change (2017) *UK Climate Change Risk Assessment 2017*. Available from <https://www.theccc.org.uk/tackling-climate-change/preparing-for-climate-change/uk-climate-change-risk-assessment-2017/> [Accessed August 2017].

⁸ Water UK (2016) *Water resources long term planning framework*. Available from https://dl.dropboxusercontent.com/u/299993612/Publications/Reports/Water%20resources/WaterUK%20WRLTPF_Final%20Report_FI_NAL%20PUBLISHED.pdf [Accessed August 2017].

⁹ Defra (2016) *Guiding Principles for Water Resources Planning*.

¹⁰ Environment Agency and Natural Resources Wales (2016) *Final Water Resources Planning Guideline*. Available from <https://naturalresources.wales/media/678739/ea-nrw-and-defra-wg-ofwat-technical-water-resources-planning-guidelines.pdf> [Accessed July 2017].

1.2 Purpose of this Methodology Report

- 1.2.1 Defra has commissioned Amec Foster Wheeler Environment and Infrastructure UK Ltd (Amec Foster Wheeler) to undertake the HRA of the NPS for Water Resources. This Methodology Report provides a brief overview of the HRA process and sets out the proposed methodology for the assessment of the NPS. It is intended to support initial discussions with statutory consultees and provide information to other potentially interested stakeholders.

1.3 Water Resources Planning – An Overview

- 1.3.1 The Water Industry Act 1991, as amended by the Water Act 2003 and Water Act 2014, requires all water companies to prepare, maintain and publish statutory WRMPs. The plans set out how water companies intend to maintain the balance between water supply and demand and ensure security of supply over at least the next 25 years in a way that is economically, socially and environmentally sustainable.
- 1.3.2 Part III of the Water Industry Act 1991 states the following role for water companies in water supply:
- “37.—(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—*
- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and*
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes, as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.*
- 37A.—(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.”*
- 1.3.3 The Government has set out its priorities for water companies in developing their WRMPs via the ‘guiding principles’¹¹. The Water Resources Planning Guideline¹² produced by the Environment Agency and Natural Resources Wales, meanwhile, provides a framework for the development and presentation of water company plans. The process of developing a WRMP requires an estimation of baseline supply forecast to be prepared, along with an estimation of baseline demand forecast. The uncertainties and target headroom required are then estimated. The calculation of the baseline supply demand balance for each year of the plan’s period are then used to determine if there are any years or critical periods where there is likely to be a supply-demand balance deficit. Once this information has been established, options which could be used to manage the supply demand balance deficit are considered with the final planning solution for managing supply and demand presented in the WRMP. Following public consultation on the draft WRMP, amendment, review and direction by the Secretary of State for Food, Environment and Rural Affairs, the water company will publish the final WRMP.
- 1.3.4 The process of option development that underpins WRMP preparation includes a review of as many potential solutions as possible (the ‘unconstrained list’ of options) to identify ‘feasible’ (constrained) options. These ‘feasible’ options are then reviewed to identify ‘preferred options’ to resolve any supply deficits. The types of options considered in preparing WRMPs can be broadly categorised as follows:

¹¹ Further information available at <https://www.gov.uk/government/publications/water-resources-planning-managing-supply-and-demand/water-resources-planning-how-water-companies-ensure-a-secure-supply-of-water-for-homes-and-businesses>. A full copy of the guiding principles can be requested from water-company-plan@environment-agency.gov.uk

¹² Environment Agency and Natural Resources Wales (2016) *Final Water Resources Planning Guideline*. Available from <https://naturalresources.wales/media/678739/ea-nrw-and-defra-wg-ofwat-technical-water-resources-planning-guidelines.pdf> [Accessed July 2017].

- ▶ supply side measures – increasing the water available for use in the local supply area through an increase in deployable output;
- ▶ water transfer – importing water from an area of surplus into an area of deficit;
- ▶ demand management - measures to reduce demand through a combination of leakage reduction and water efficiency measures.

- 1.3.5 Once the WRMP is adopted, the preferred options are then implemented as schemes. Schemes that include the development of new water supply infrastructure usually require planning consent under the Town and Country Planning Act 1990. This planning framework has helped water companies understand future needs and maintain the balance of supply and demand within their boundaries.
- 1.3.6 The Environment Agency's 2011 'Case for Change'¹³ considered the implications of climate change for water supplies regionally and nationally and concluded that while demand management will have an important role, significant new water resources will be needed to meet the needs of people, businesses and the environment. The Government requested that the water industry develop a national water resources long term planning framework to establish water needs and the strategic options that could meet these needs. The Water UK's 2016 'Water resources long term planning framework (2015-2065)' noted the importance of demand management in conjunction with a combination of localised initiatives and strategic schemes to provide future resilience. Reflecting the recommendations of this report, the Government has confirmed¹⁴ that a 'twin track' approach to improving the resilience of water supplies is required, with investment in new supplies complementing measures to reduce the demand for water.

National Policy Statement for Water Resources

- 1.3.7 In order to meet the water resilience and increasing demand challenges, the water industry may need to develop new water supply infrastructure that could be considered to be 'nationally significant'. For 'nationally significant infrastructure projects' (such as a major new reservoir), a separate planning regime was established under the Planning Act 2008. In this, development consent is decided nationally based on policy criteria set out in the designated NPS. This has significantly accelerated the process of providing development consent for such projects in other sectors such as energy and transport.
- 1.3.8 In this context, the Government is developing an NPS for nationally significant water resources infrastructure with the aim of contributing to resilient water supplies and providing planning policy guidance against which development consent order applications for any nationally significant water resources infrastructure project will be examined. Alongside the development of an NPS, the UK Government is also reviewing the Planning Act 2008 definitions of the types of water supply infrastructure that are classed as 'nationally significant'. This is in order to ensure that the right type and scale of projects are included to address the water resilience challenge.

1.4 Habitats Regulations Assessment

- 1.4.1 Regulation 106 of the Habitats Regulations¹⁵ applies the provisions of regulations 102 and 103 of the Habitats Regulations to National Policy Statements¹⁶.

¹³ Environment Agency (2011) *The case for change – current and future water availability*. Report No: GEHO1111BVEP-E-E

¹⁴ See Defra (2007) *The government's strategic priorities and objectives for Ofwat*. Available from https://consult.defra.gov.uk/water/consultation-on-a-new-sps/supporting_documents/Draft%20SPS%20for%20consultation%20%20FINAL.pdf [Accessed August 2017].

¹⁵ SI 2010 No. 490; available at <http://bit.ly/1DaYWJr>.

¹⁶ Regulations 102 and 103 apply the provisions of articles 6(3) and 6(4) of the Habitats Directive 92/43/EEC to land-use plans in England and Wales; these are applied to land-use plans by regulations 85A – 85E of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (SI 1994 No. 2716) in Scotland; and by regulation 64B of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (SI 1995 No. 380) in Northern Ireland.

- 1.4.2 Regulation 102 states that if a land-use plan “(a) *is likely to have a significant effect on a European site*¹⁷ or a *European offshore marine site*¹⁸ (either alone or in combination with other plans or projects); and (b) *is not directly connected with or necessary to the management of the site*” then the plan-making authority must “...*make an appropriate assessment of the implications for the site in view of that site’s conservation objectives*” before the plan is given effect.
- 1.4.3 The plan-making authority may agree to the plan only if it has determined that it will not adversely affect the integrity of the European site; or, where this is not the case, that the project meets the provisions of regulation 103 (that there is no satisfactory alternative; and that the plan must be authorised for imperative reasons of overriding public interest (IROPI)). The process by which regulations 102 and 103 of the Habitats Regulations are met is generally known as HRA¹⁹.
- 1.4.4 In accordance with the Habitats Regulations, there is a need for Defra to consider whether the NPS for Water Resources is likely to have a significant effect on any specified European sites. If this screening were to show that such effects were likely, Defra should make an appropriate assessment of the implications for these sites. The need for these actions arises because the NPS is not directly connected with, or necessary for the management of, any European sites, which would otherwise exempt the NPS from these requirements.
- 1.4.5 Defra notes that all development consent order applications which may be made pursuant to the NPS, once designated, will be subject to the requirements of the planning system under the Planning Act 2008.

1.5 Consultation

- 1.5.1 This Methodology Report is being issued for consultation to the UK statutory consultees for the Habitats Regulations, and to other relevant bodies identified in **Box 1.1** for comment. This consultation is limited to agreeing the method for the HRA of the NPS that is due to be undertaken.
- 1.5.2 Whilst this is a technical consultation primarily aimed at the statutory nature conservation consultees, identified under the Habitats Regulations, Defra is making this document publicly available and will consider any responses to the consultation questions.

Box 1.1 Specific Consultees

UK Habitats Regulations Statutory Consultation Bodies	Additional Consultees
Natural England	Environment Agency
Scottish Natural Heritage	Scottish Environment Protection Agency
Natural Resources Wales	Scottish Government
Department of the Environment’s ‘Environment and Heritage Service’, Northern Ireland	Welsh Government
	Ofwat
	Drinking Water Inspectorate
	Water companies
	Marine Management Organisation
	National Parks Authority
	Joint Nature Conservation Committee

¹⁷ Strictly, ‘European sites’ are: any Special Area of Conservation (SAC) from the point at which the European Commission and the UK Government agree the site as a ‘Site of Community Importance’ (SCI); any classified Special Protection Area (SPA); any candidate SAC (cSAC); and (exceptionally) any other site or area that the Commission believes should be considered as a SAC but which has not been identified by the Government. However, the term is commonly used when referring to potential SPAs (pSPAs), to which the provisions of article 4(4) of Directive 2009/147/EC (the ‘new wild birds directive’) apply; and to listed Ramsar Sites, to which the provisions of the Habitats Regulations are typically applied a matter of Government policy (e.g. National Planning Policy Framework (NPPF) para. 118; EN-1 para. 5.3.9). “European site” is therefore used in this report in its broadest sense, as an umbrella term for all of the above designated sites. The protection provided by the Habitats Regulations is sometimes (but not always) explicitly extended to include possible SACs (pSACs) by Government policy (e.g. the NPPF specifically includes pSACs in para. 118; EN-1 does not).

¹⁸ ‘European offshore marine sites’ are defined by regulation 15 of *The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007* (as amended).

¹⁹ The term ‘Appropriate Assessment’ has been historically used to describe the process of assessment; however, the process is now more typically termed ‘Habitats Regulations Assessment’ (HRA), with the term ‘Appropriate Assessment’ limited to a specific stage within the process.

- 1.5.3 The draft NPS and accompanying HRA Report, alongside the Appraisal of Sustainability (AoS) Report (see **Section 1.5**), will be made available in 2018 in a full public and parliamentary consultation.

1.6 Appraisal of Sustainability

- 1.6.1 Concurrent with the HRA, and in fulfilment of section 5(3) of the Planning Act 2008, an AoS of the NPS for Water Resources is also being completed. The AoS will ensure that the likely environmental and socio-economic effects of the NPS are identified, described and evaluated. The AoS will also need to satisfy the requirements of the European Union Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (commonly referred to as the Strategic Environmental Assessment (SEA) Directive) and relevant implementing regulations²⁰ (the SEA Regulations).
- 1.6.2 An AoS Scoping Report that sets out the proposed approach to the appraisal of the draft NPS has been prepared and is being published for consultation alongside this HRA Methodology Report. The AoS Scoping Report is available to view via the following link:
<https://consult.defra.gov.uk/water/nps-water-supply-planning-act-2008>.
- 1.6.3 The findings of the AoS will be presented in an AoS Report that will be published alongside the draft NPS and HRA Report for consultation in 2018. The findings of the HRA will be used to inform the AoS and in particular with respect to the consideration of the effects of the draft NPS on biodiversity.

1.7 Structure of this Methodology Report

- 1.7.1 This report is structured as follows:
- ▶ **Executive Summary** - Provides a summary of the report;
 - ▶ **Section 1: Introduction** - Includes a summary of the draft NPS, an overview of HRA, report contents and an outline of how to respond to the consultation;
 - ▶ **Section 2: Habitats Regulations Assessment of the National Policy Statement for Water Resources** - Provides a brief summary of the HRA process, and discusses some of the key challenges when undertaking a HRA of a high-level policy document such as the NPS;
 - ▶ **Section 3: Proposed Approach** - Provides detail on the intended approach to the HRA of the NPS;
 - ▶ **Section 4: Next Steps** - Details the next steps in the HRA process.

1.8 Commenting on this Methodology Report

- 1.8.1 This report is being issued for consultation between 13th November and 22nd December 2017. Details of how to respond to the consultation are provided overleaf.

²⁰ The Environmental Assessment of Plans and Programmes Regulations 2004 S.I. 2004 No. 1633.

1.9 This Consultation: How to Give Us Your Views

- 1.9.1 We would welcome your views on any aspect of this HRA Methodology Report. However, we would particularly welcome responses to the following questions:

Consultation Questions

- | | |
|----|---|
| 1. | Do you think that the proposed approach to assessing the NPS against the Habitats Regulations is appropriate? For example, you may consider if the approach described is proportionate and whether it would provide a suitable level of information about potential habitats impacts. If not, how do you think the intended approach should be amended, and why? |
| 2. | Do you think that the HRA Methodology Report sets out sufficient information to establish the context for the Screening Report and later Appropriate Assessment? If not, which areas do you think have been missed and where is the information available from? |

- 1.9.2 Please provide your comments via the Citizen Space survey at <https://consult.defra.gov.uk/water/nps-water-supply-planning-act-2008>. If you have any questions about the consultation please contact the Defra team at:

Email: WaterSupplyNPS@defra.gsi.gov.uk

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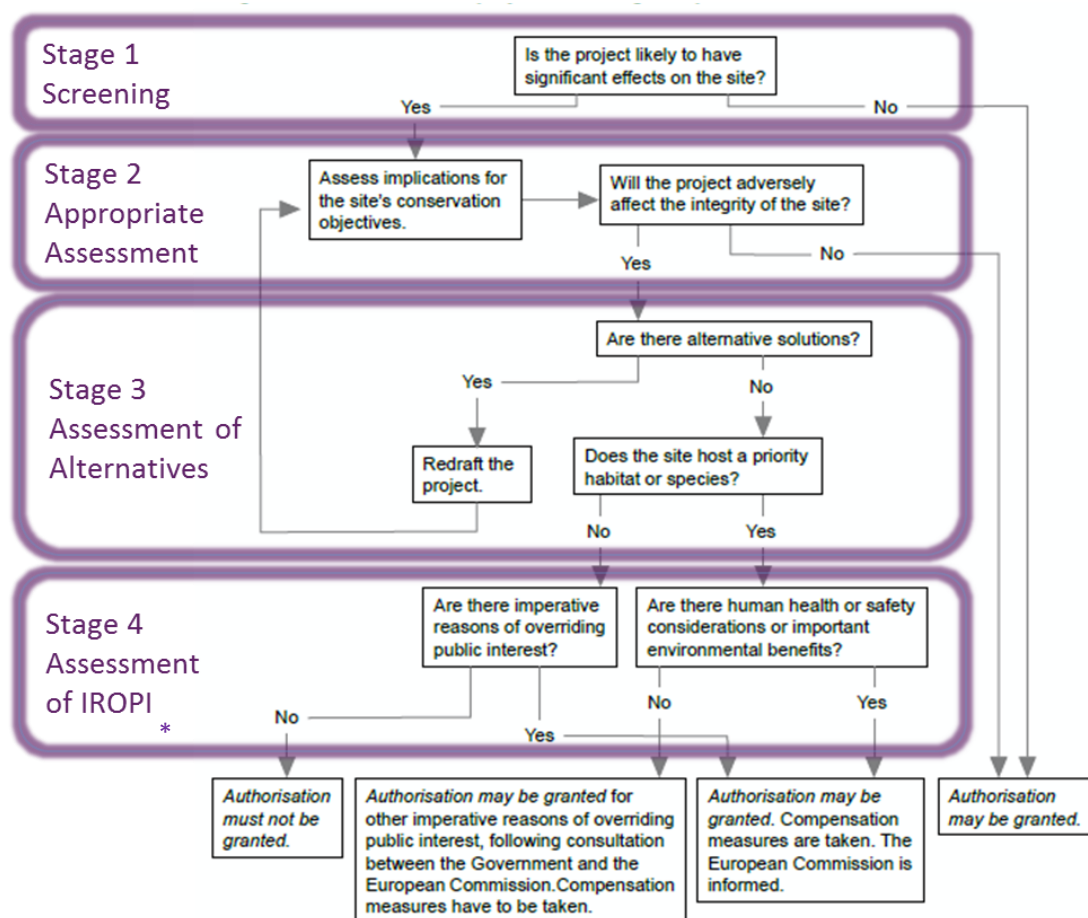
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2. Habitats Regulations Assessment of the National Policy Statement for Water Resources

2.1 Overview

2.1.1 Current European Commission guidance²¹ suggests a four-stage process to carry out a HRA, although not all stages are necessarily required. These stages, and the assessment process, are summarised in **Figure 2.1** below.

Figure 2.1 Summary of HRA Process and Stages



*IROPI – Imperative Reasons of Overriding Public Importance

2.1.2 Regulation 102 of the Habitats Regulations essentially provides a test that the final plan must pass; there is no statutory requirement for HRA to be undertaken on draft plans or similar developmental stages. However, it is accepted best-practice for the HRAs of strategic plans or policy documents to be run as an iterative process alongside their development. This helps ensure that policies that plan positively for the environment are developed from the outset of the plan-making process, rather than the HRA being a purely retrospective assessment exercise applied towards the end of a plan's development.

²¹ *Methodological guidance on the provisions of article 6(3) and (4) of the Habitats Directive 92/43/EEC* (EC 2002). Available at: <http://bit.ly/1LXRR8Z>

2.2 Guidance on HRA

- 2.2.1 There is little specific guidance on the application of HRA to National Policy Statements, particularly as similar high-level policy documents are often excluded from the HRA process²². However, the HRA of the NPS for Water Resources will be based on case-practice established through the HRAs of similar National Policy Statements (for example, NPSs EN-1 – EN-5) and the following general guidance:
- ▶ Department for Environment, Food and Rural Affairs [Defra] (2012) The Habitats and Wild Birds Directives in England and its seas: Core guidance for developers, regulators & land/marine managers. Defra, London;
 - ▶ DTA Publications (2016) The Habitats Regulations Handbook [online]. Available at: <http://www.dtapublications.co.uk/handbook/> [Accessed July 2017];
 - ▶ European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of article 6(3) and (4) of the Habitats Directive 92/43/EEC;
 - ▶ European Commission (2000) Managing Natura 2000 sites: The provisions of article 6 of the Habitats Directive 92/43/EEC. European Commission, Brussels; and
 - ▶ European Commission (2007/2012) Guidance document on article 6(4) of the Habitats Directive 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion Of The Commission. European Commission, Brussels.

2.3 Key Issues for the HRA of the NPS

Purpose and Scope of the NPS

- 2.3.1 The NPS for Water Resources will set out the need for nationally significant water resources infrastructure, and the Government's policies to deliver them. It will be used as the primary basis for the examination by the Planning Inspectorate as the Examining Authority, and decisions by the Secretary of State, on development consent order applications for water resources infrastructure that fall within the definition of a NSIP, as defined in the Planning Act 2008.

Infrastructure to be covered by the NPS

- 2.3.2 The infrastructure to be covered by the NPS will reflect the definitions for nationally significant infrastructure that are related to water as set out in Sections of 27 and 28 of the Planning Act 2008. These currently include:
- ▶ the development of dams or reservoirs where they are constructed in England by one or more water undertakers and have a capacity in excess of 10 million cubic metres of water;
 - ▶ the alteration of dams or reservoirs where they are located in England, altered by one or more water undertakers and result in an increase in capacity in excess of 10 million cubic metres of water;

²² European Commission guidance on the application of article 6(3) (*Managing Natura 2000 sites: the provisions of Article 6 of the Habitats Directive 92/43/EEC* (EC, 2000) states that "...a distinction needs to be made with 'plans' which are in the nature of policy statements, i.e. policy documents which show the general political will or intention of a ministry or lower authority. An example might be a general plan for sustainable development across a Member State's territory or a region. It does not seem appropriate to treat these as 'plans' for the purpose of Article 6(3), particularly if any initiatives deriving from such policy statements must pass through the intermediary of a land use or sectoral plan. However, where the link between the content of such an initiative and likely significant effects on a Natura 2000 site is very clear and direct, Article 6(3) should be applied."

- ▶ the transfer of water resources, where the development is carried out in England by one or more water undertakers, in excess of 100 million cubic metres of water per year, does not relate to the transfer of drinking water and will enable the transfer of water resources:
 - ▶ between river basins in England,
 - ▶ between water undertakers' areas in England, or
 - ▶ between a river basin in England and a water undertaker's area in England.

- 2.3.3 Infrastructure of this scale has the potential to adversely affect European designated sites during both the construction and operational phases of development. Construction-related effects may be direct (due to, for example, the loss of habitats and species associated with land take) or indirect (for example, disturbance and emissions to air caused by vehicle movements and the operation of plant and machinery). Operational effects, meanwhile, may be associated with changes to the hydrological regime of affected water bodies (it is quite common for European sites to be vulnerable to changes in hydrology, be it either changes in groundwater or surface water) or the spread of invasive non-native species.
- 2.3.4 As set out in **Section 1.2**, alongside the development of the NPS, the Government is reviewing the Planning Act 2008 definitions of the types of water supply infrastructure that are classed as 'nationally significant' in order to ensure that the right type and scale of projects are included to address the water scarcity challenge. It intends to consult on options to amend these thresholds in winter 2017.

Geographical Coverage of the NPS

- 2.3.5 The Water Resources NPS will provide the framework for decision making on development consent order applications for the construction of new water resources infrastructure in England²³. In Scotland, Wales and Northern Ireland, planning consents for all nationally significant water resources infrastructure projects are devolved to the Scottish Parliament, Welsh Government and Northern Ireland Executive respectively. The examining authority will not examine applications in these territories and the NPS will not apply there.

2.4 What can be Assessed, and How?

- 2.4.1 As highlighted in **Section 2.3** above, the construction and operation of water resources infrastructure can affect European sites in a number of ways; however, it must be noted that the NPS for Water Resources will be a high-level policy document, without a spatial component. The principle mechanisms by which European sites could be affected will therefore be indirect, through the policies that control the future development of water resources infrastructure. The HRA, which will be an ongoing assessment undertaken alongside the development of the NPS, will therefore assess the likely effects and outcomes of the NPS with a particular focus on:
- ▶ the overarching objectives of the NPS;
 - ▶ the development principles; and
 - ▶ the generic impacts and siting considerations, including generic mitigation measures.
- 2.4.2 As potential sites will not be identified in the NPS, any European site in England (and several in adjacent countries) could be affected by the activities to which the NPS will relate. However, attempting to identify and assess specific effects on specific sites is not appropriate where no potential development site has been identified. It is more appropriate for the assessment to focus instead on identifying the protective measures that can be included in the development of the NPS in order to safeguard European sites generally.

²³ This includes the Severn Trent, Dwr Cymru/Welsh Water and Dee Valley Water areas where a NSIP is in England.

3. Proposed Approach

3.1 Data Collection and Scope

European Sites

- 3.1.1 The spatial scope of any HRA should be based on the likely outcomes of the plan and its 'zone of influence'; and the interest features of the European sites that may be affected and their potential vulnerabilities²⁴. The NPS for Water Resources will apply to England²⁵, but several European sites in adjacent countries (most notably sites in Wales or Scotland given their common borders with England) may be vulnerable to its outcomes due to the risk of cross-border impacts.
- 3.1.2 In the UK, there are currently:
- ▶ 651 SACs / SCIs;
 - ▶ 271 SPAs; and
 - ▶ 149 Ramsar sites²⁶.
- 3.1.3 Since nationally significant water resources infrastructure could, in theory, be located anywhere in England, it is proposed that information on all of the above European sites, plus European offshore marine sites, will initially be collected to minimise the risk of sites or features being overlooked. Information on the European sites (citations, boundaries, etc.), their interest features, and their sensitivity to potential effects associated with the NPS will be obtained from the Joint Nature Conservation Committee (JNCC); Natural England (NE); Natural Resources Wales (NRW); and Scottish Natural Heritage (SNH). It may be possible to later exclude some sites from assessment (see 'screening' below) on the basis of their location and the absence of potential impact pathways.

'In Combination' Plans and Programmes

- 3.1.4 Regulation 102 of the Habitats Regulations requires that potential effects on European sites must also be considered "*in combination with other plans or projects*". The 'in combination' assessment must also consider within-plan effects (i.e. between different aspects of the policy) to ensure that there are no internal conflicts that may affect European sites. Consideration of 'in combination' effects is not a separate assessment, but is integral to the screening and appropriate assessment stages and the development of avoidance/ mitigation measures. There is limited guidance available on the scope of the 'in combination' element, particularly regarding which plans should be considered. However, the assessment should not necessarily be limited to plans at the same level in the planning hierarchy and there is consequently a wide range of plans that could have potential 'in combination' effects with the NPS for Water Resources due to its national scale.
- 3.1.5 The plans identified by the AoS will form the basis for the assessment of 'in combination' effects; these plans will be reviewed to identify any potential effects that need to be considered (as necessary) within the screening or appropriate assessment stages. Plans or proposals likely to be considered for 'in combination' are identified in the topic chapters of Appendix B to the AoS Scoping Report.

²⁴ The vulnerability of an interest feature will depend on its 'sensitivity' and 'exposure' to a potential effect.

²⁵ This includes the Severn Trent, Dwr Cymru/Welsh Water and Dee Valley Water areas where a NSIP is in England.

²⁶ Joint Nature Conservation Committee (2017) *UK Protected Sites*. Available at: <http://jncc.defra.gov.uk/page-4> [Accessed August 2017].

3.2 Screening

- 3.2.1 The 'screening' test is a low bar; a plan should be considered 'likely' to have an effect if the competent authority is unable (on the basis of objective information) to exclude the possibility that it could have significant effects on any European site, either alone or in combination with other plans or projects. An effect will be 'significant' if it could undermine a site's conservation objectives.
- 3.2.2 A formal screening has not yet been undertaken for the proposed NPS for Water Resources. Informally, however, it is accepted that the possibility of 'significant' effects cannot be easily ruled out at this stage in the policy development. As a result, it is unlikely to be possible to conclusively demonstrate that significant effects will not occur, and the NPS is clearly "*not directly connected with or necessary to the management of*" any European site. Based on this likelihood, but subject to confirmation on the scope and contents of the NPS, Defra has provisionally indicated that the NPS will be subject to an 'appropriate assessment'. The screening stage, therefore, will focus on the collection of the baseline information likely to be necessary to complete an appropriate assessment of the NPS.
- 3.2.3 The informal screening conclusion applies, at this stage, to the anticipated NPS as a whole; depending on its contents and structure it may be possible to 'screen out' individual elements of the NPS to ensure that any appropriate assessment is suitably focused. It may also be possible to 'screen out' particular European sites from further consideration.

3.3 Appropriate Assessment (AA)

- 3.3.1 The emerging NPS for Water Resources will be examined to determine the best approach for the appropriate assessment stage; in particular, whether there is merit in attempting to 'screen out' particular European sites (if, for example, the likely outcomes are clear enough that sites can be reliably excluded) and whether it is appropriate to undertake a detailed analysis of individual European sites, and the sensitivities of their interest features to the likely outcomes of the NPS. The AA will utilise the guidance set out in **Section 2.2** to identify those features (and hence local areas/sites) potentially vulnerable to the development of new water resources infrastructure.
- 3.3.2 Alongside this, the AA stage will focus on assessing the emerging NPS, identifying the likely effects and outcomes of the policy with a particular focus on the overarching objectives of the NPS; and the development principles and controls that the NPS will rely on. The NPS will be examined for direct effects that may occur, and for aspects that may intentionally or inadvertently constrain the delivery of water resources infrastructure, such that adverse effects on the integrity of European sites are likely to be unavoidable (e.g. by introducing development principles that effectively direct development to particular areas or particular sites). Due to the risk of effects on European sites wholly or partly in other countries, it will be necessary to consult the appropriate nature conservation body and have regard to any representations made by that body (for example, NRW or SNH).
- 3.3.3 The goal of the AA stage will be to identify any adverse effects on the integrity of European sites that may occur due to the NPS and to determine any appropriate measures for inclusion in the NPS which can ensure that adverse effects on integrity do not occur as a result of its implementation, or any NSIP development undertaken in a manner consistent with it.

3.4 Assessment of Alternatives

- 3.4.1 If the NPS for Water Resources cannot be drafted to exclude the possibility of adverse effects, or uncertainty remains, it will be necessary to explore and document different approaches to ensure the delivery of sustainable water infrastructure. In practice, most of the alternative approaches for the NPS will be identified and tested during its development using the iterative HRA process.
- 3.4.2 The Government has concluded that a 'twin track' approach to meeting future water resource needs is required, that uses both demand management and regionally and nationally significant

new water resources infrastructure. The NPS will establish the need for new nationally significant infrastructure in line with the Government's stated objectives and will detail the evidence base for this conclusion. Ofwat and water companies have also identified a need for strategic water resources infrastructure in conjunction with optimising demand management and improved local schemes. As it is the UK Government's view that there is a need for the infrastructure, the question of whether large infrastructure is necessary is not considered to be a relevant or feasible alternative. In consequence, it is anticipated that the focus will be on the alternatives to delivering water resources infrastructure through a non-site specific NPS, which could include:

- ▶ Amending the proposed scope of the NPS by (for example):
 - ▶ revising and/or extending the types of water resource infrastructure included in the Planning Act 2008;
 - ▶ revising and/or supplementing the volume thresholds for the types of water resources infrastructure included in the Planning Act 2008;
 - ▶ setting out generic water resources NSIP criteria in the Planning Act which are not specific to any type of infrastructure but which consider the volume thresholds a scheme would need to meet to be nationally significant.
- ▶ Proposing an NPS that is non-site specific but applies criteria for cases where new water resources infrastructure would not be suitable (for example, criteria based on excluding areas of specific environmental concern such as nationally/internationally designated nature conservation sites or national landscape designations). Consideration could also be given under this alternative to the use of buffer zones for distances to different sensitive receptors.
- ▶ Proposing a location-specific NPS that identifies candidate sites for nationally significant water resources infrastructure. There are examples of other NPSs taking a site specific approach: for example, the nuclear generation NPS (EN-6) identifies potentially suitable sites for the deployment of new nuclear power stations whilst the draft Airports NPS identifies Heathrow as the preferred location for new runway capacity and infrastructure in the south east of England.
- ▶ Proposing a location-specific NPS that sets thresholds for nationally significant water resources infrastructure based on the scale of the supply demand deficit forecast by a water company and for which demand management and local supply options would be insufficient.

3.4.3 In all of the above instances, the approach would need to relate to the projects identified in the WRMPs for companies operating wholly or mainly in England.

3.4.4 The assessment of alternatives will determine whether there are any more appropriate approaches for the NPS that could ensure that adverse effects on European sites will not occur. Note that, when considering alternatives that are all likely to result in adverse effects, case-law²⁷ suggests that the 'least damaging' alternative does not inevitably need to be selected, rather that "*the choice requires a balance to be struck between the adverse effect on the integrity of [the site] and the relevant reasons of overriding public interest.*"

3.5 Assessment of IROPI and Identification of Compensatory Measures

3.5.1 If no alternatives to the NPS for Water Resources are suitable, it will be necessary to identify the Imperative Reasons of Overriding Public Interest (IROPI) in order to designate the NPS in a particular form. Any reliance on IROPI will be appropriately documented in the HRA, based on information provided by the Government.

3.5.2 Article 6(4) of the Habitats Directive and regulation 105 of the Habitats Regulations require that any compensatory mechanisms necessary to "*ensure that the overall coherence*" of the Natura 2000 network be secured. Specific compensatory mechanisms may be difficult to identify at the NPS

²⁷ Commission of the European Communities v Portuguese Republic (Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(4) — Castro Verde special protection area — Lack of alternative solutions) (Case C-239/04)

level since it is unlikely to be spatially specific (specific adverse effects will not be identifiable such that bespoke compensation could be determined). In this case, the NPS will need to set out the framework for ensuring that any compensatory measures that are required by new water resources infrastructure meet the requirements of European Commission guidance²⁸ (i.e. that any compensation measures must be available, achievable and judged likely to be effective; and must be in place before the adverse effect occurs).

3.6 Outputs and Key Stages

- 3.6.1 As noted, regulation 102 of the Habitats Regulations essentially provides a test that the final NPS for Water Resources must pass; there is no statutory requirement for HRA to be undertaken on draft versions or developmental stages of a plan, or for formal reporting at, for example, the screening stage. However, it is accepted best-practice for policy-based HRAs to be undertaken iteratively alongside policy development.
- 3.6.2 The results of the HRA will be documented in a HRA Report that will summarise the assessment process and provide a formal assessment of the NPS that is intended to be adopted; this will incorporate screening.
- 3.6.3 If it is not possible to conclude that the NPS will have no adverse effect on the integrity of any European sites, it will be necessary to document and assess the alternative solutions, and (if necessary) any IROPI arguments. In this case, the HRA Report would be adapted to include details of the assessment of alternatives, and the Government's IROPI.
- 3.6.4 The HRA Report (including the assessment of alternatives and any required IROPI arguments) would accompany the consultation on the draft NPS and the AoS Report. Following consultation, an analysis of any submissions received and any subsequent amendments to the NPS, the HRA Report will be reviewed to ensure that it continues to provide an objective assessment of the effects on integrity on European sites of the NPS upon designation.

²⁸ European Commission (2007) *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion of The Commission*. European Commission, Brussels. Available at: <http://bit.ly/1DOQ7XC>

4. Next Steps

4.1 Summary

- 4.1.1 This HRA Methodology Report presents the proposed approach to the HRA of the NPS for Water Resources. The report is being issued for consultation to those consultees listed in **Box 1.1** (see **Section 1.5**), and will also be made publically available for purposes of openness and transparency. Responses are being sought on the approach.

4.2 Next Steps

- 4.2.1 Defra is consulting on this Methodology Report between 13th November and 22nd December 2017. Using the approach set out in this document, as amended on the basis of consultation responses where appropriate, the potential effects of the draft NPS will then be assessed against regulation 102 of the Habitats Regulations.

