

CONSULTATION RESPONSE TO DEPARTMENT FOR ENVIRONMENT, FOOD, AND RURAL AFFAIRS (DEFRA) IN RELATION TO CONSULTATION ON CHANGES TO THE HABITATS REGULATIONS ASSESSMENT GUIDANCE

Introduction

The National Infrastructure Planning Association (NIPA) was established in 2010 with the aim of bringing together individuals and organisations involved in the planning and delivery of major infrastructure projects. Our principal focus is the planning regime for nationally significant infrastructure projects (NSIPs) introduced by the Planning Act 2008; however, our members work across all consenting regimes, and we act as a forum and community for anyone with an interest in the challenge of driving better national infrastructure planning outcomes.

In summary, we:

- advocate and promote an effective, accountable, efficient, fair and inclusive system for the planning and authorisation of national infrastructure projects and act as a single voice for those involved in national infrastructure planning and delivery;
- participate in debate on the practice and the future of national infrastructure planning and act as a consultee on proposed changes to national infrastructure planning and authorisation regimes, and other relevant consultations; and
- develop, share and champion best practice, and improve knowledge, skills, understanding and engagement by providing opportunities for learning and debate about national infrastructure planning.

This Consultation

On 7 May 2026, the Department for Environment, Food and Rural Affairs (DEFRA) published a consultation entitled HRA Guidance Consultation. The consultation seeks views on the changes to the Habitats Regulations Assessment (HRA) guidance, and was focussed on several specific questions as set out below.

NIPA welcomes this opportunity to provide views on the proposals set out by DEFRA and to help shape and inform the guidance. We asked our members for their views on the relevant points and our response was developed by NIPA member volunteers and coordinated by our Policy and Practice Working Group.

Overarching comments on the proposals

NIPA welcomes DEFRA's initiative to refresh the Habitats Regulations Assessment (HRA) guidance and supports the overarching intent to provide clearer, more structured direction to enable legally robust and efficient decision-making. The draft guidance represents a positive step forward, particularly in promoting constructive engagement, proportionate information requirements, early identification of evidence gaps, and better use of existing HRAs. However, in NIPA's view, the draft does not go far enough to deliver the step-change in practice required to support the Government's wider ambitions for accelerating major infrastructure delivery while safeguarding environmental outcomes.

Across the guidance, NIPA's central recommendation is to strengthen clarity, consistency and expectations of behaviour. Several parts of the draft remain open to interpretation due to non-directive or subjective language (e.g. "consider", "where appropriate", "materially", "robust"), risking inconsistent application and risk-averse practice. NIPA recommends sharpening drafting to reduce ambiguity and improve predictability, alongside improved alignment with other government guidance, especially NSIP guidance for applicants, to avoid duplication, contradiction and avoidable delays.

A recurring theme is the need for clearer and more explicit roles and responsibilities for Statutory Nature Conservation Bodies (SNCBs). Given SNCBs' critical role in HRAs (especially for NSIPs), the guidance should set clearer expectations for early, proactive and solutions-focused engagement throughout the process, consistent with the March 2026 Strategic Policy Statements for Natural England and the Environment Agency. NIPA also highlights that enabling timely delivery will require stronger emphasis on partnership working, and potentially a broader distribution of responsibility across stakeholders in supporting the identification and securing of compensatory measures, rather than reliance on applicants alone.

NIPA also emphasises that offshore HRAs require specific focus and clearer integration. NIPA supports extending the guidance to offshore waters (12–200 nm) with qualifications, including explicit alignment with marine planning frameworks, marine licensing regimes and relevant National Policy Statements (NPSs). Without this alignment, there is a material risk of duplication, inconsistent expectations and increased delay and cost for applicants operating across inshore/offshore regimes. NIPA recommends additional offshore-specific guidance on cumulative/in-combination assessment, proportional evidence requirements, uncertainty management, cross-regime reuse of HRAs and practical direction for complex consenting pathways.

On the substantive legal tests, NIPA welcomes the inclusion of "reasonable scientific doubt" and the recognition that absolute certainty is not required. However, NIPA considers that the guidance should do more to address current practice issues around the precautionary principle and "best available scientific evidence", where overly conservative or selective use of evidence can impede delivery without being required by case law. NIPA recommends that the guidance includes clear statements and worked examples showing how the Government expects a more proportionate approach to operate in practice - particularly in sectors such as offshore wind - so that applicants, competent authorities and SNCBs can apply the principles consistently and confidently.

Overall, NIPA expects that the refreshed guidance could lead to slightly shorter HRA timescales on average, primarily through better structuring, reuse of existing assessments, earlier issue identification and improved engagement. However, larger efficiency gains will depend on reducing ambiguity, strengthening alignment with other guidance, and clarifying SNCB expectations and offshore interfaces.

Section 1 – Principles to follow in the HRA process

Section purpose: Provides a set of principles that should be followed when engaging with the HRA process.

Principles to follow in the HRA process

Throughout the HRA process competent authorities should:

- *work with applicants constructively to find a way to allow plans and projects, if possible, while still complying with legal obligations*
- *consider opportunities to work strategically across a number of projects where there are common issues*
- *consider opportunities to use innovative approaches where these have potential to resolve issues more effectively*
- *use and understand the conservation objectives, and any relevant supplementary advice, published by the SNCBs for the habitats sites affected, and make an assessment in view of the conservation objectives*
- *make judgements based on the facts of the individual situation and the ecological condition of the site's features*
- *consider talking to relevant experts or specialists as early as possible and use the best objective and scientific information available to make informed decisions*
- *only ask applicants for information that's relevant to the site's conservation objectives and proportionate to what is being assessed and needed to carry out the HRA*
- *agree ways of working with applicants to encourage timely sharing of information*
- *consider evidence gaps early in the HRA process – gather further evidence, or if none is available, seek ways to address the implications of this uncertainty in the HRA*
- *consider as early as possible whether a derogation is likely and, if so, engage with applicants and the relevant SNCB to agree an approach to derogation*
- *make sure the HRA is complete and has precise conclusions*
- *keep a detailed written record of the HRA and give clear reasons and evidence for decisions*
- *decide whether it is necessary to consult the public on the HRA*

11. How helpful are these principles in setting out the overall approach and expectations for how Habitats Regulations Assessments should be undertaken?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 5 – Very helpful. We welcome the framing of clear roles and responsibilities for applicants and the competent authority in the guidance, and the emphasis on the competent authority actively participating in the HRA process.

Given the role of SNCBs in the HRA process for NSIPs we would like to see the guidance set out roles, responsibilities and expectations for SNCBs in addition to competent authorities, with a clear emphasis on the need for SNCBs to engage early and throughout the process, including engaging in planning application processes.

In March 2026 the UK Government published the Strategic Policy Statements (SPS) for Natural England and for the Environment Agency, setting out its expectations for each. The SPSs highlight the need for growth and different ways of working, taking a solutions focused approach, with streamlined and risk-based decision-making.

The Guidance should match the tone and the direction of the SPSs, making clear the requirement for SNCBs to undertake early, proactive and solutions-focused engagement in the HRA process. The guidance should draw from the SPSs, and at a minimum cross-refer to them. The Guidance could usefully require SNCBs to regularly update their guidance and advice in accordance with a best available evidence approach, and to reflect emerging monitoring.

We note also that the legislation places the responsibility on the competent authority to secure any necessary compensation measures. However if the intention is to take a step-change in approach to achieving major infrastructure delivery, other stakeholders should have more responsibility in terms of either identifying or supporting the securing and delivery of compensatory measures. The current term in the draft guidance – to work constructively with applicants – does not go far enough to bring about meaningful change or place the necessary obligations on SNCBs and other stakeholders. We suggest that perhaps “working in partnership” with stronger duties as reflected in the SPSs, would be more impactful.

12. Do these principles strike the right balance between supporting users in complying with legal requirements and encouraging an efficient approach to decision-making?

- Yes
- No
- Somewhat
- Don't know

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: The principles are broadly helpful in setting expectations that support legal compliance while encouraging a pragmatic and efficient approach to decision-making. In particular the emphasis on constructive engagement with Applicants, early consideration of evidence gaps, proportionate information requirements and the use of best available scientific evidence, all help to promote a streamlined and risk-based HRA process, while maintaining compliance with conservation objectives and legal duties.

However, the balance is only partially achieved for the following reasons:

- Limited recognition of the role of SNCBs;
- Insufficient emphasis on early and proactive engagement by all parties;
- Alignment with Strategic Policy Statements (SPSs); and

- Opportunities for stronger focus on proportionality and innovation.

Section 2 – Making use of an existing HRA

Section purpose: Provides guidance on reusing previous HRAs (in whole or in part).

[Section 2 guidance extract](#)

Re-using an existing HRA

Before carrying out a new HRA, the competent authority should consider whether an existing HRA already covers the plan or project, and whether a new HRA is necessary. It may be appropriate to re-use an existing HRA for:

- *approvals under the same permission – for example, approvals under planning conditions (such as reserved matters) or requirements in a DCO or Deemed Marine Licence*
- *new or varying consents for the same plan or project – for example, where a new permission is required for the same plan or project (such as an environmental permit after planning permission)*

Competent authorities can re-use an existing HRA if:

- *it is relevant to the new HRA*
- *permission of the plan or project would not authorise any new activity that could affect the site*
- *there is no change to the plan or project, how it will be carried out, or the evidence of potential harm*
- *the site, its conservation objectives or the condition of its designated features have not changed materially since the previous HRA was conducted*
- *the previous assessment and its conclusions are rigorous and robust when applied to the new plan or project*
- *the evidence remains the best available scientific knowledge*
- *there is no new case law that changes the way an HRA should be carried out or interpreted*

For example, a competent authority is considering the renewal of an abstraction licence on the same terms as the previous permission, at a large coastal SAC with multiple features. Since the previous permission was given there has been a significant damage to a feature which cannot be affected by terrestrial freshwater abstraction. Although there has been significant damage to a feature since the previous permission, there would be no possible impact on the feature from terrestrial freshwater abstraction. In this instance the content of the previous HRA might be re-used, with an additional note to indicate that the change to a SAC feature was not relevant.

Re-using parts of an existing HRA to complete a new HRA

If a competent authority needs to complete a new HRA, they should make use of any relevant parts of an existing HRA where possible. This could be an HRA that was previously carried out by themselves or by another competent authority.

For example, a renewal of an abstraction licence is being considered on the same terms as before, but new monitoring data is available that is relevant to understanding how abstraction could affect the site's features. In this case, the previous HRA may still provide useful context, but its conclusions are no longer based on the best available information, so a new HRA would be required.

If the HRA being re-used does not contain all the information and evidence needed for a decision, the competent authority must get the rest of the information and evidence for their new HRA. They can do this by asking the applicant, using other relevant sources, or both.

If a competent authority decides to re-use some of an existing HRA, they are still responsible for making the decisions on the plan or project they are considering.

13. How helpful is the detail in this section on when an existing HRA can and cannot be used?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 - somewhat helpful. The section provides a useful and practical framework for when and how existing HRAs can be reused, and is particularly helpful in:

- Setting out clear conditions under which reuse is appropriate (e.g. no material changes, robust conclusions, best available evidence)
- Distinguishing between full reuse and partial reuse, which reflects real-world practice
- Including worked examples, which help illustrate application

These elements support a more efficient and proportionate approach, helping to avoid unnecessary duplication of assessment while maintaining legal compliance. However, the detail is only somewhat helpful overall, as there remains ambiguity and scope for inconsistent interpretation, which could limit its effectiveness in practice.

14. Will this section give support to users in avoiding unnecessary repetition of work related to HRAs?

- Yes
- No
- Somewhat
- Don't know

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: Yes, to a degree. This section does provide a helpful basis for avoiding unnecessary repetition of HRA work, particularly by explicitly encouraging reuse of existing HRAs (in whole or in part), and setting out clear scenarios where reuse is appropriate (e.g. same project, same permission). It also reinforces the principle of using existing evidence and assessments where still valid, which supports a more proportionate and efficient approach, which should reduce duplication in straightforward or unchanged cases.

However its effectiveness is limited by some caution and conditional framing where the criteria for reuse are relatively strict. In practice, many projects may trigger at least minor changes, meaning full reuse may rarely be applied. And there remains some ambiguity in language and key terms, leaving these open to interpretation.

Section 3 – Checking for likely significant effects on a habitats site

Section purpose: Explains how to determine if a plan or project could have a significant effect on a site, including considering design features and defining likely and significant effects.

[Section 3 guidance extract](#)

Checking for likely significant effects on a habitats site

Considering the design of the plan or project

A plan or project may incorporate measures into its design that avoid or reduce adverse effects to a habitats site. These measures could:

- *avoid or reduce the potential for harm to a habitats site but not have been added to the plan or project with the intention of doing this*
- *be part of the design that are added intentionally to avoid or reduce the potential for harm to a habitats site – these are known as HRA-specific mitigation measures*

At the screening stage, the competent authority cannot consider HRA-specific mitigation measures. They can consider elements of the plan or project’s design that may reduce or avoid harm to a habitats site, as long as these are constituent or inherent elements of the plan or project, including where a design element is typically incorporated in plans or projects of the same type.

One practical way to consider if a design measure is not an HRA-specific mitigation measure, and could therefore be taken into account in screening, is to ask whether the measure would have been included in the plan or project regardless of the existence of the habitats site. For example, a measure intended to shield residents from construction noise that also protects birds that are a protected feature of the habitats site from disturbance.

HRA-specific mitigation measures are only considered if the plan or project goes to stage 2 of the HRA process. However, the applicant may still discuss HRA-specific mitigation measures with the competent authority at an early stage of the process. This may save time when these measures are assessed at stage 2 of the HRA process.

If it is clear that, without HRA-specific mitigation measures, a plan or project is likely to have a significant effect on a habitats site, the competent authority should move straight to Stage 2: Appropriate assessment.

Deciding whether an effect is likely

In the context of an HRA, an effect is 'likely' if a risk of it occurring cannot be ruled out using objective information.

For an effect to be likely there needs to be more than a hypothetical risk. There must be credible evidence that the risk is real. This means that there does not need to be zero probability of an effect for it to be ruled out.

Deciding if an effect of a plan or project is likely may depend on its location. The competent authority should consider the area where the plan or project would take place, and where the effects of the plan or project would be felt.

The effect could be on:

- *the same site, if the plan or project is on a habitats site*
- *a nearby habitats site*
- *an area of land, water or sea outside a habitats site, that is necessary for the ecological functioning of the site's protected features - for example migration routes or feeding areas used by individuals within the population of a protected species of the habitats site*

Applicants and competent authorities should consider whether a plan or project could also affect a site in another nation in the UK. If it could, they should consult the relevant SNCB in that nation.

Deciding whether an effect is significant

An effect is 'significant' if it could undermine the conservation objectives of a habitats site now or in the future.

Competent authorities must refer to conservation objectives to determine whether an effect may be significant. Depending on the conservation objectives of the site, a significant effect may be an effect on the:

- *extent and distribution of habitats, or supporting habitats for species*
- *structure and function of habitats, or supporting habitats for species*
- *supporting processes on which habitats or species rely*
- *populations of species*
- *distribution of species*

If a site is already in an unfavourable state and is not meeting its conservation objectives, a plan or project that would add to this impact and so make the objectives harder to achieve, may have a significant effect.

Where the conservation status of a site is unfavourable, the scope for approving activities which affect the site is necessarily limited, but it is not nil. For example, additional impacts

below a certain level may be incapable of causing changes to the conservation status or restricting the restoration of favourable condition.

Where a site in unfavourable condition has a ‘restore’ conservation objective, plans or projects should not undermine its restoration, but they are not required to provide a contribution to the restoration of the site.

Applicants and competent authorities can find details of the conservation objectives for habitats sites in England on [Natural England’s designated sites database](#)

Applicants should give information about possible effects on a site’s conservation objectives to competent authorities in their application.

Natural England’s designated sites database includes supplementary advice which is relevant to understanding and applying each site’s conservation objectives. Applicants and competent authorities should read this supplementary advice for:

- *detailed descriptions of each site’s protected features, including their attributes, and targets that best describe the site’s ecological integrity*
- *information on what is needed for the site to achieve its conservation objectives*

15. How helpful is the detail in this section on determining whether a plan or project could have a significant effect on a protected site?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 3 - Neither helpful nor unhelpful: There are some elements that lack clarity in the draft HRA text as follows:

1. The term “habitats site” is used as opposed “European site” – given the considerable amount of European and local case law, previous and parallel HRA guidance (such as for NSIPs) and cross-referencing across other legislation, it might be more appropriate to retain the term European site.
2. The section starts by requiring applicants to check whether the plan or project is directly connected with or necessary for conservation management. Whilst this is a longstanding requirement under the Habitats Regulations, it would be helpful to note that this relates to a relatively narrow category of plans or projects that exists purely to manage the conservation of the site's protected habitats or species, for example habitat restoration works.
3. Whilst there is reference in the preamble to consultation with SNCBs and voluntary evidence plans, the section on Stage 1 Screening contains no advice for applicants to consult as opposed to

the 2024 NSIP HRA guidance which states “The views of the ANCB and a relevant non-statutory body, or bodies, may be relevant to this process and should be obtained early by the applicant during the pre-application stage”. It would help if there was more consistency between the two sets of guidance, and it might be helpful to the applicant to consult with SNCBs and other stakeholders to compile the information necessary to decide on screening.

4. It is helpful that the section provides guidance on those measures to avoid or reduce the potential for harm to a habitats site which can, and those measures which cannot, be included for the purposes of screening. It is noted however that NSIP guidance (Advice Note 5/2018 and the 2024 NSIP HRA) is more cautious in its approach with the 2024 guidance stating “Applicants may consider and that measures are integral or incorporated within the NSIP application and not intended specifically to avoid or reduce effects on any European site. However, applicants are encouraged to take a precautionary approach and progress any such measure to HRA Stage 2”. That appears to be overly cautious and the draft text which takes a practical approach is preferable, but it is important to have consistency and make it clear to applicants which guidance is to be followed.

5. We note also that the updated Guidance now contains explicit reference to Functionally Linked Land (FLL). It is useful to include an explicit reference to FLL, which we note is not included in the current Guidance. However, there is a lack of clarity in practice as to what constitutes FLL, how it is identified and categorised, and how effects on FLL should be assessed, mitigated or compensated. The typical position at present is to rely upon a historic Natural England document, however this document is of some age. In current practice, there is a risk, which in our experience can play out in reality, that the lack of definition of FLL creates circumstances where a much broader boundary than the designated site is effectively sterilised from development, based on limited evidence and assertions of the precautionary principle.

We note that there is reference on page 16 of the Guidance to areas outside a habitat site which are ‘necessary for the ecological functioning of the site’s protected features’, however FLL is not referenced here so it is not clear if this is supposed to be an explanation of FLL.

The draft guidance provides a good opportunity to give clarity on these points for applicants, SNCBs and competent authorities, including providing a standardised approach to identification and assessment, with examples. The guidance could usefully set out that FLL is necessary for supporting ecological function (i.e. providing some unique function, rather than just being used). Government could also consider whether the burden ought to be on those seeking to argue land is FLL, rather than applicants having to disprove the absence of FLL (which is necessarily challenging and lacking in data). That would be more consistent with, e.g., the position when proposing that a designation is extended.

16. How helpful is the detail in this section on how a real (as opposed to hypothetical) risk should be identified and evidenced?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 – somewhat helpful

The guidance is helpful in highlighting that the risk of likely effects must be evidence-based and that the risk must be real rather than hypothetical. Also, that applicants/competent authorities understand the conservation objectives of the habitat site affected and draw on evidence to assess likely significant effects considering those conservation objectives. It is noted, however, that save for reference to an effect on a site in another nation in the UK where consultation with the relevant SNCB is advised, there does not seem to be any reference to a consultation stage to elicit comments and evidence from SNBCs on risk of likely effects. As we noted in response to question 15, experience from HRAs for NSIPS is that consultation with SNCBs and other stakeholders can provide important data which could be of assistance in screening outcomes, particularly in assessing significance.

The guidance is helpful in explaining that Natural England's database provides details of the conservation objectives and supplementary advice to determine whether an effect is significant. Particularly where a site is in an unfavourable state, it is clarified that a project should not undermine restoration but also is not required to contribute to the restoration.

Section 4 – Checking for in-combination effects with other plans and projects

Section purpose: Describes when and how to assess cumulative impacts from multiple plans or projects.

[Section 4 guidance extract](#)

Checking for in-combination effects with other plans and projects

Competent authorities may need to consider whether a plan or project could have a significant effect on a site when combined with effects from other plans and projects. This is known as an in-combination assessment.

When it is not necessary to check for in-combination effects

If a plan or project by itself has a likely significant effect on a habitats site, the competent authority should take that effect forward to stage 2. They do not need to assess whether this

effect is significant in combination with other plans or projects, because it is already clear that the effect requires assessment at Stage 2: Appropriate Assessment.

If a plan or project has no effect at all on a habitats site, it cannot have an in-combination effect on that site. The competent authority should end the screening stage and can screen out the plan or project from any further stage of the HRA.

When competent authorities do need to check for in-combination effects

If a plan or project is likely to have an effect on a habitats site, but that effect is not significant alone, the competent authority must consider whether the combined effect of that plan or project and other plans and projects could be significant.

How to check for in-combination effects

Other plans and projects that are potentially relevant when checking for in-combination effects include:

- *applications for a new permission*
- *applications to change an existing permission*
- *permitted development proposals, where known*
- *granted permissions that have not begun – including unused parts of licences*
- *granted permissions that are being considered for renewal*
- *plans that have been drafted and published, but not yet given effect*
- *adopted plans that have not been fully delivered*

Plans and projects that are underway, operational or have been completed are not included within the scope of ‘other plans and projects’ for the purpose of an in-combination assessment. These should form part of an assessment of the site’s baseline conditions, which will inform the risk assessment.

To identify other plans and projects that are potentially relevant, competent authorities and applicants can:

- *request information about other plans and projects from public bodies such as LPAs – requests must be relevant to the plan or project, specific and be for a proportionate amount of information*
- *search the public register of marine licence applications and decisions*
- *search the register of planning decisions for plans and projects on land*
- *search for Environment Agency permit applications at Environmental permitting: notices of applications made*

When considering in-combination effects, the competent authority should exercise judgement in deciding which other plans and projects to take into account. They should only consider parts of plans and projects that could combine with the one under consideration to create a new significant effect, make the possible significant effects more likely, or make the effect more significant.

When considering in-combination effects, it is only the remaining effects of those other plans and projects, after mitigation is applied, that should be taken into account.

The competent authority or the applicant is not required to list and consider every proposed plan and project that is likely to affect the site that's being assessed. The competent authority should only check whether the plan or project they are assessing could have a combined significant effect with at least one other proposed plan or project. If the check shows that there is likely to be a significant effect when combined with another plan or project, the search may stop. This is because it is already clear that stage 2 is triggered. The competent authority should then consider the effects of the other plans and projects contributing to the combined effect at Stage 2: Appropriate Assessment.

When an adverse effect arises from several projects together, each developer is responsible for their own impact, including any additional impact caused by interactions between impacts, or in-combination effects. Competent authorities should work together to manage the overall effect.

17. How helpful is the detail in this section on how in-combination effects should be considered?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 somewhat helpful

It is noted that under the 2024 HRA guidance for NSIPs, projects under construction are relevant when checking for in-combination effects. The section on in-combination effects in the draft guidance explains that projects that are underway should form part of the assessment of the site's baseline condition rather than be added to the in-combination effects. There does need to be consistency between the two sets of guidance.

The section does help clarify the difference between no effect, non-significant effect, and significant effect alone, and makes clear that projects with no effect cannot have in-combination effects. It also rightly emphasises the need to focus on realistic risks.

However, in-combination assessment remains one of the least consistently applied aspects of HRA. The guidance does not yet go far enough in addressing baseline vs other plans/projects, phased schemes and long-term programmes. Clearer guidance is needed on when the identification of other plans and projects can reasonably stop, based on credible pathways and realistic spatial and temporal overlap.

In particular, further clarity is needed on the point at which emerging plans or projects legitimately need to be taken into account. Plans or projects that are at an early stage and for which information has been published may still be incoherent and subject to extensive change.

18. Should this section include further detail on what should be considered an in-combination effect?

- Yes
- No
- Somewhat
- Do not know

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response – Yes - if the final guidance is meant to improve practice enough to reduce pressure for legislative reform, this section needs to go further. In-combination assessment is one of the main areas where users need help moving from abstract legal principle to practical, proportionate application. Better guidance here could materially reduce unnecessary duplication and over-scoping without lowering the legal standard.

In particular, further guidance would be helpful when considering in-combination effects with plans as opposed to projects and also in relation to typically difficult to access information, for example in relation to some types of Environmental Permits. The consideration of potential for in-combination effects arising from unimplemented elements of development plans has potential to be an extensive and time-consuming exercise in the absence of further clarity. Linkages to the guidance on using previous HRAs to inform assessment would be useful in this regard.

Section 5 – How to use screening criteria

Section purpose: *Outlines the use of thresholds or criteria to rule out negligible risks.*

[Section 5 guidance text](#)

How to use screening criteria

If an effect is judged not to be significant either alone or in combination, it does not need to be considered further.

This includes where competent authorities can demonstrate that, because of the very small size of the likely impact, there would be no credible risk of a significant effect even in combination.

Competent authorities can use screening criteria or thresholds to demonstrate that impacts do not pose a sufficient risk.

Thresholds may be developed by competent authorities, and for specific impacts may sometimes be developed by an SNCB.

Competent authorities should use their expert judgement to reach these conclusions where it provides sufficient certainty, without needing more detailed information such as surveys or modelling.

For example, it may be possible to make a sufficiently certain judgement by considering the scale of the effect from the plan or project, alongside high-level information about other plans or projects that could act in combination (for example, the number of houses which could realistically be expected to come forward in an area).

When using screening criteria or thresholds, the competent authority must be sure that their use would not result in a real risk of a significant in-combination effect on sites.

They should only consider real, not hypothetical risks. To decide whether a risk is real, the competent authority should judge whether looking further into the effects of other plans and projects might alter the screening decision. They should consider:

- *the degree of risk and magnitude of the effect of the plan or project alone*
- *the rate at which plans or projects that might realistically act in combination, can be expected to come forward for approval*
- *whether there's a risk that continuing use of thresholds or screening criteria over time could lead to significant in-combination effects being missed*

Competent authorities should record their reasoning and evidence, for example data or expert judgment, so it's clear why they are satisfied that the risk is not real.

19. How helpful is this section at setting out the purpose of the screening criteria?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 somewhat helpful

In the first instance where competent authorities or SNCBs use or develop criteria they should be based on accepted scientific principles and use up-to-date information.

We have made comments on in-combination effects above, and they apply equally to this section. For instance, reference is made to considering plans and projects in preparation coming forward for approval, but critical elements in these plans or projects may change once approved.

20. How helpful is the detail in this section on what criteria must be met for a plan or project to be screened out?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*

- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 somewhat helpful

Use of thresholds or criteria are important in determining significant effects (provided they are up to date and scientifically robust) and the guidance adequately advises on how criteria are to be used to determine a real rather than hypothetical risk.

It would be helpful if the Guidance could address a scenario where a significant effect might arise from other plans or projects but the additional contribution of the plan or project being assessed is demonstrated to be very small

The section of information required by an applicant should, we suggest, also advise that consultation with SNCBs and stakeholders may improve the quality of the information provided.

Section 6 – Assessing the potential effect of a plan or project on the integrity of a site

Section purpose: *Explains how to apply the relevant test at the “appropriate assessment” stage of the HRA process.*

Section 6 guidance extract

Assessing the potential effect of a plan or project on the integrity of a site

An appropriate assessment should consider those aspects of a plan or project that can realistically affect the conservation objectives of the site’s relevant features, alone or in combination with other plans or projects. It should assess what might happen to the protected features if that plan or project went ahead, in view of the conservation objectives of the site.

A plan or project could affect the integrity of a habitats site by:

- *destroying, damaging or significantly changing all or part of the site*
- *significantly disturbing the population of a species*
- *harming the site’s ecological connectivity with the wider landscape, for example, harming a woodland that is important in supporting a species from a nearby habitats site*
- *harming the site’s ecological function, or its ability to survive damage, and reducing its ability to support a species*
- *changing the site’s physical environment, for example, the chemical makeup of its soil, causing pollution or changing the site’s hydrology*
- *restricting access to resources outside the site that are important to a protected species, for example, food sources or breeding grounds*

- *preventing or disrupting restoration work, or the potential for future restoration, if it undermines the site's conservation objectives*

To assess if a plan or project could affect the integrity of a habitats site, the competent authority should consider how it could affect relevant protected features. They should consider:

- *any effects on the features' ecological requirements, in relation to the conservation objectives - supplementary advice from the SNCB may be relevant here*
- *the current condition or conservation status of the site's designated features being affected, if known*
- *any identified risk of combined effects with other plans or projects*
- *the magnitude, extent, timing, duration, reversibility and likelihood of the potential for predicted effects*
- *how certain they are of the likely effects occurring*
- *the precise location of protected features in relation to the location of any impact*
- *the proportion of the feature that might be at risk*

21. How helpful is the detail in this section on the definition of site integrity?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 somewhat helpful: The guidance provides a pithy and accurate definition of site integrity based on meeting the site's conservation objectives. It might be helpful to add that whether a site has a high or low degree of integrity directly dictates how the conservation objectives are framed (maintain v restore) which alters how a project's impact is assessed.

22. How helpful is the detail in this section on the role of conservation objectives?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 somewhat helpful: The guidance provides a good explanation of the role of the conservation objectives by directing that the appropriate assessment should assess how the plan or project alone or in-combination, affects the conservation objects. Whilst

the examples given are helpful for land-based sites, there should be more information on marine sites.

Section 7 – Checking effects against a site’s conservation objectives

Section purpose: Explains the link between the integrity test and conservation objectives, showing how to determine if a plan or project could undermine “maintain” or “restore” conservation objectives.

[Section 7 guidance extract](#)

Checking effects against a site’s conservation objectives

Under the conservation objectives a ‘maintain objective’ applies if the feature is considered to be in a favourable condition. A ‘restore objective’ applies if the feature is considered to be in an unfavourable condition.

A plan or project would affect the integrity of a habitats site if it would undermine the site’s conservation objectives. The competent authority should check if a plan or proposal would undermine:

- *a maintain objective by causing the condition of the feature to become unfavourable*
 - *a restore objective, by preventing or making the restoration of the feature more difficult*
- If a plan or project does not undermine the achievement of a site’s conservation objectives, the integrity of the site will not be adversely affected.*

Where there’s a temporary effect, the site’s objectives will not be undermined if the effect will:

- *be fully undone*
- *not prevent a site achieving its conservation objectives*
- *not prevent affected areas from returning to the same level of ecological functionality within an appropriate timescale*

23. How helpful is this section on how maintain and restore objectives should be handled when assessing an impact on site integrity?

- *1 – very unhelpful*
- *2 – somewhat unhelpful*
- *3 – neither helpful nor unhelpful*
- *4 – somewhat helpful*
- *5 – very helpful*

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA response: 4 - somewhat helpful in explaining how maintain and restore objectives should be handled when assessing an impact on site integrity. There are some potential improvements that could be made and other matters that could be considered where the

consideration of conservation objectives may overlap with other sections of the updated guidance. Additional considerations include:

1. Where there is a 'restore' objective, this is typically taken to mean that the relevant qualifying interest feature(s) is not achieving the relevant conservation objective. There is an interrelationship here with Section 3 '*Checking for likely significant effects on a habitats site*', under the sub-section titled '*Deciding whether an effect is significant*', which states: '*If a site is already in an unfavourable state and is not meeting its conservation objectives, a plan or project that would add to this impact and so make the objectives harder to achieve, may have a significant effect. Where the conservation status of a site is unfavourable, the scope for approving activities which affect the site is necessarily limited, but it is not nil. For example, additional impacts below a certain level may be incapable of causing changes to the conservation status or restricting the restoration of favourable condition...*' It would be useful cross-refer to this text within the '*Checking effects against a site's conservation objectives*' section.
2. It would be useful to give hypothetical examples for assessment against a 'maintain' objective and also against a 'restore' objective.
3. Reference to the importance of supplementary advice on conservation objectives would also be appropriate here. This is because the objectives themselves are typically generic and site/qualifying interest agnostic, whereas supplementary advice often clarifies the SNCB position on whether 'maintain' or 'restore' objectives apply in relation to specific qualifying interests and impact pathways.

Section 8 – Considering reasonable scientific doubt

Section purpose: *Explains that plans or projects cannot proceed unless competent authorities are satisfied that there is no reasonable scientific doubt that there will be no adverse effect on the integrity of a site and sets out how to handle uncertainty.*

[Section 8 guidance extract](#)

Considering reasonable scientific doubt

Plans or projects must not be approved unless the competent authority is satisfied beyond reasonable scientific doubt that there will be no adverse effect on the integrity of the site. The competent authority must show this in their appropriate assessment. [reasonable scientific doubt example]

This conclusion of no adverse effect does not have to be established with absolute certainty. It involves a judgement by the competent authority, based on the evidence available.

To be satisfied beyond reasonable scientific doubt, the competent authority does not always have to assess the reasonable worst case scenario, and it is not necessary for there to be no risk.

The competent authority must base their decision on objective evidence. Reasonable scientific doubt may arise from a lack of, or uncertainty in, available evidence. If there is a lack of evidence about the predicted effects, and it is not possible to gather additional evidence, it may be difficult to conclude that there is no risk of adverse effects on site integrity. However, if there is no accepted methodology available to understand or quantify the predicted effect, appropriate estimates and expert judgement can be used.

In other cases, there may be some residual uncertainty within the evidence. For example, if an accepted methodology has been used but there is some inherent uncertainty in the predicted outcomes. In these cases, decision makers may be able to satisfy the need to remove reasonable scientific doubt by applying a safety margin or conservative assumptions.

Doubts which are not reasonable should not prevent an appropriate authority from concluding that there is no adverse effect on integrity. Whether there are grounds for reasonable scientific doubt will always be a matter of judgement for the competent authority.

Competent authorities should consider using legally enforceable frameworks to achieve the necessary level of reasonable, but not absolute, certainty.

24. How helpful is this section in explaining what constitutes reasonable scientific doubt?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA response: 4 - somewhat helpful in explaining what constitutes reasonable scientific doubt. However, we seek clarity on a number of broader matters that should be addressed to increase the effectiveness of this section, including in relation to further steps to be taken.

The precautionary principle and the idea of ‘strict protection’ help to inform much of the jurisprudence around habitats. This has led to a position adopted throughout case law that assessments must be complete, precise and definitive, and that all reasonable scientific doubts as to the effects on a proposed area must be dispelled. It seems that, in the draft guidance, the Government is seeking to explain that the precautionary principle remains important and will feature in the formation of policy, whilst also focusing on whether

development poses a threat of serious or irreversible environmental damage, and seeking that decision-makers apply the principle in those circumstances in a proportionate manner.

The Corry Review stated that *“Defra needs to deliver on both nature recovery and on economic growth, ensuring that neither are in conflict in the medium and long term, although there might be short term trade-offs. However, it is not currently effectively delivering on either, with risk averse decision-making heavily influenced by a long-entrenched precautionary principle to protect the current landscape, inhibiting growth and missing the opportunity to deliver place-based nature renewal at scale”*. This supports the view that an overly precautionary approach is currently being applied.

We note that Recommendation 11 of the Fingleton Review suggested that the Conservation of Habitats and Species Regulations 2017 are applied or modified to *“remove the need to provide a negative when drawing a conclusion on impacts, so that the wording of the regulation refers to the need for scientific evidence and excludes merely hypothetical or speculative risks”*. In response, the Government’s Fingleton Nuclear Taskforce Response stated that it would be taking significant steps to improve the application of Habitats Regulations Assessments *“including but not limited to guidance”*. It is this point that we wish to focus on – i.e. that changes in guidance absolutely can and must deliver a more proportionate delivery of the precautionary principle wherever possible. The Guidance should clearly set out a statement supported by examples explaining how Government anticipates that a strengthened and more robust approach to the precautionary principle ought to be applied. The text should make clear to applicants, SNCBs and other stakeholders how the updated Guidance expects assessments and decisions to be undertaken differently and will lead to more proportionate assessment compared to current practice.

In addition to the concept of reasonable scientific doubt, the precautionary principle and approach to HRA also engages the need for best available scientific evidence. As is currently being discussed in the offshore wind sector in particular, the HRA case law relating to these concepts – starting with the landmark *Waddenzee* ruling – requires evidence that is truly ‘best available’ – not unduly precautionary or selective. This feeds into, for example, the studies and data used to inform how many species are to be impacted by a given development. The information that should feed into that stage of an assessment should be truly ‘best available’ – which involves meaningful engagement of all available sources. It does not mean using only the most conservative studies under the guise of the “precautionary principle” – to do so would be to ignore data, take an unduly narrow approach to evidence, and is inconsistent with the “best available” approach required of case law. If the Government’s ambitions for major infrastructure development are to be achieved, the guidance needs to give the clear message to SNCBs and stakeholders that a more proportionate approach to the precautionary principle and ‘best available’ scientific evidence is consistent with HRA law and policy and can be achieved now.

The guidance should address the need for SNCBs to update their own guidance and advice to reflect the best available evidence including emerging monitoring data, where relevant. We consider that SNCB guidance on impact assessment should be based on the totality of evidence and not biased towards one particular study or small sets of historic data which

point to the greatest level of impact. The precautionary principle is currently applied considering all of the evidence available and, in our view, is not a justification for selecting the most conservative study when advising on impact assessment inputs.

Again using the offshore wind sector as an example, we draw your attention to a recently-published paper entitled ‘Application of precaution in ornithology impact assessments for offshore wind project applications: Evaluation of current approaches’¹. Whilst this paper focuses on offshore wind assessment, the author (Sue O’Brien) raises pertinent points regarding the use of best available scientific evidence. The case is made that it is ecologically more accurate and would be consistent with the proper interpretation of CJEU case law for precaution to be applied at the decision-making stage of an Appropriate Assessment, rather than at each ‘input’ stage into the applicant’s report to inform Appropriate Assessment.

NIPA also recognises that there may be some circumstances or scenarios where, as emphasised in the Corry and Fingleton reviews, further reform of the precautionary principle by statutory means may be required. NIPA would like to understand the work that the Government is doing to understand that risk and the options for reform of the precautionary principle across wider HRA practice.

NIPA would very much welcome the chance to work with the Government on the ‘best available evidence’ aspect, the offshore wind sector experience, and possible future statutory reform of the precautionary principle, if there is any opportunity to do so.

In terms of the guidance, the ‘reasonable scientific doubt’ section would be more impactful if it explicitly stated and gave examples of how the Government’s proposed new proportionate approach to the precautionary principle (which NIPA supports) is to operate and to apply in practice. Examples across a variety of sectors (for instance, nitrogen deposition in watercourses, coastal and air-quality sensitive habitats; ornithology assessments in energy development and linear development that could interact with ground-nesting birds) could help SNCBs and applicants understand how the new guidance is looking to shift the focus. Clear examples and ‘steers’ should be provided to inform these industry bodies how the principles are intended to work now compared to previously, including examples that clearly show where the adoption of the new approach would result in a different outcome from the current system.

We note that the guidance contains a placeholder – “[reasonable scientific doubt example]” – for this. This example, and others, must be provided to assist with the interpretation.

Finally, we note that the guidance states that it “currently applies to Habitats sites in England and inshore waters (within 12 nautical miles of the coast). We are proposing to draft the guidance so that it also applies to Habitats sites in the offshore waters of England (12 to 200 nautical miles off the coast)”. We consider it likely that stakeholders will apply the principles to the offshore waters regime regardless. However, there are aspects of the guidance that

¹ <https://www.offshorewindscotland.org.uk/media/mu5jr4yy/181225-kp-application-of-precaution-in-ornithology-impact-assessments-for-offshore-wind-project-applications.pdf>

would need to be carefully and specifically considered from an offshore perspective (see more details in the Compensation response at section 9 below).

To reiterate, we welcome this section of the guidance but consider that wider reform is necessary, along with the provision of practical examples, to appropriately clarify the position to be adopted by SNCBs, competent authorities, applicants and other stakeholders undertaking and feeding into appropriate assessments.

Section 9 – Securing compensatory measures

Section purpose: *Details how to design and secure measures that compensate for damage when a derogation is granted, ensuring the coherence of the national network of habitats sites is protected.*

[Section 9 guidance extract](#)

Securing compensatory measures

If there are no alternative solutions and there are IROPI, the competent authority should ask the applicant to identify compensatory measures. The competent authority should attach necessary conditions to the permission for the plan or project that guarantee the delivery of agreed compensatory measures to protect the overall coherence of the national site network, or the national Ramsar site series.

The relevant secretary of state is responsible for making sure these measures are secured. They will need confirmation from competent authorities that measures are secured when they are notified that the competent authority intends to agree to the plan or project on the basis of an IROPI decision.

The competent authority should work with the applicant and should seek advice from the relevant SNCB to identify, design and secure compensatory measures. They should identify compensatory measures that they're confident will achieve effective ecological outcomes to protect the national site network's overall coherence and the compensatory measures should normally benefit the same designated features as those that would be adversely affected or would risk being adversely affected by the plan or project. As far as possible, measures should address local circumstances and should normally be put in place as close as possible to the site. Compensatory measures do not need to exactly replace the damage caused by the plan or project or relate to the affected site. For example, replacing one prey species for another, or the loss of feeding grounds being compensated by breeding grounds may be acceptable where this would protect the overall coherence of the network.

Where there is a benefit to delivering measures at a wider scale or where compensation measures involve the exercise of statutory powers, a coordinated approach to delivery may be appropriate.

In line with the 'polluter pays' principle, applicants are expected to cover any costs associated with the delivery of compensatory measures.

Compensatory measures must ensure the coherence of the national network of habitats sites is maintained, despite damage to a particular site that might arise from the plan or project under consideration. The measures should:

- *have clear objectives, delivery milestones and measurable targets*
- *be in addition to any normal site management measures that can reasonably be expected to be carried out in the absence of the plan or project coming forwards*
- *only cover the plan or project's own impacts*
- *not have a negative effect on any habitats site*

Suitable compensatory measures could include:

- *creating a new area of habitat or extending an existing one*
- *enhancing habitats within an existing site*

A compensatory measure may sometimes involve creating or restoring a habitat that is not part of a habitats site. Where this happens, the compensatory habitat is protected as if it were a designated habitats site. It should be considered for designation by the Secretary of State once it meets the relevant criteria.

Competent authorities should:

- *include the compensatory measures in the conditions attached to the permission*
- *put in place all the necessary legal, technical, financial and monitoring arrangements to make sure compensatory measures will go ahead as agreed and will remain in place for all the time they're needed, which in most cases will be indefinitely*
- *request regular reports from the applicant about the implementation of the measures*
- *make provision for the measures to be adapted or changed if they are not working or are insufficient*

Competent authorities are not required to apply the test of 'no reasonable scientific doubt' to compensatory measures. However, they must be confident that the measures will fully compensate for the adverse effects of a plan or project.

Where an adverse effect arises from a plan or project when considered in combination with other plans or projects, the competent authority must be confident that the compensatory measures will fully compensate for the adverse effect associated with that plan or project. Other plans or projects are responsible for compensating for the adverse effects associated with their own impacts.

Competent authorities should consider how:

- *technically feasible and effective the measures will be, based on scientific evidence and previous examples*
- *financially viable the measures are – the applicant must have enough funds to cover costs*
- *the measures will be carried out, managed and monitored – including whether they will need to be adapted over time to be fully effective in offsetting damage*
- *the compensatory measures will be secured*

In circumstances where compensatory measures can't be in place and operational before the adverse effect on a site is allowed to occur, additional compensatory measures may be required to account for these delays.

Applicants should report to the competent authority when measures have been delivered.

If no compensatory measures can be found, or the competent authority is not satisfied that the measures would be appropriate, effective or be secured, the plan or project cannot be permitted, carried out or adopted.

25. How helpful is the detail in this section on compensatory measures?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA response: 4 - somewhat helpful. In particular it is useful see the two sets of bullet point lists of what competent authorities should consider (the second list on p. 38, and the list on p. 39), and the list of what compensatory measures should do (the first list on p. 38).

In NIPA members' experience of consenting and advising on compensation packages on a range of schemes, the securing of compensation measures can be a very time-consuming and complex exercise, which can present a real hurdle to successful progression of planning applications, DCOs and delivery of consented schemes at the post-consent stage.

The challenges to securing compensation stem from issues such as:

- Technical and Ecological - agreeing compensation ratios, particularly for impacts where quantifiable ecological effects can often not be predicted with any confidence (e.g. air quality impacts) and how to scale measures
- Evidentiary – demonstrating the anticipated success of a measure where evidence is necessarily lacking because the measure is nascent
- Additionality – disagreements with stakeholders over what is an 'additional' compensation measure, to activities that could be otherwise undertaken (but are not being delivered)
- Land interests – signing-up land interests at a pre-Financial Investment Decision (FID) stage of a project
- Financial – connected to the point above, incurring costs at a pre-FID stage of a project, noting that costs for compensation measures can be substantial
- Seed-funding: supporting a nascent but promising compensation project, when the costs associated with Research & Development may not be affordable or justifiable by the project, particularly at a pre-FID stage.
- Non-like-for-like measures: reaching agreement with competent authorities and nature conservation advisers on non like for like compensation measures, i.e. measures that may not directly address the AEOI impacted species but may

nevertheless help secure the overall coherence of the network, particularly in terms of agreeing their role in overall coherence at all, then in terms of scale.

Defra will be familiar with many of these issues from the offshore wind sector, which has sought to address similar challenges through the introduction of the strategic Marine Recovery Fund. Although this mechanism does exist there is still an urgent need for there to be sufficient quantity and capacity of effective measures to be in the library of compensation. To aid this process, the guidance could explicitly state that for a measure to enter, there does not need to be absolute certainty, and it is not necessary for there to be no risk.

However, comparable resolution mechanisms are not available across all sectors, particularly for projects located within the intertidal environment.

We note also that a similar fund is shortly due to be introduced in non-OWF regimes pursuant to the Nature Restoration Fund (NRF) and Environmental Delivery Plans (EDPs) pursuant to the Planning and Infrastructure Act 2025. At the time of writing, the details of EDPs and the NRF are not yet known. It is important that the EDP and NRF regimes properly support the unlocking of compensatory measures, and that the guidance supports applicants, competent authorities and nature conservation advisors in utilising the NRF. The guidance should be updated to acknowledge this, as there is currently no reference to the interaction with securing compensatory measures and the NRF.

Other aspects that it would be useful for the guidance to address, in addition to the concerns listed above, include:

- P. 37 final paragraph:
 - Guidance and examples could usefully be provided on what evidentiary standard is required for a decision-maker to have “confidence” in compensatory measures, particularly where compensatory measures are nascent and hence lacking in evidence but otherwise indicate promising ecological outcomes.
 - The line “confident will achieve effective ecological outcomes” could be interpreted as stating that the applicant must demonstrate that *outcomes* will be achieved. This does not recognise that outcomes in the natural environment cannot be guaranteed, because of intervening factors outside the applicant’s control such as climate change. This is where tools such as adaptive management help give that confidence, and the phrasing could usefully be updated to reflect this.
 - The phrase “normally benefit the same designated feature”, without further examples or explanation, could make it difficult to justify where the alternative scenario – i.e. where non-like-for-like compensation is suitable, appropriate and acceptable. The principle of accepting non-like-for-like compensation has been accepted, i.e. in the Offshore Wind regime through the ongoing reform in that space. This guidance could usefully clarify how those principles are to extend and be applied here.
 - The phrase “As far as possible, measures should address local circumstances and should normally be put in place as close as possible to the site” could, for

the same reasons above, make it difficult to justify where the exception is appropriate and acceptable. Explanation and examples should be provided. This statement also fails to recognise that there may be positive ecological reasons supporting meeting the “overall coherence” standard that would be preferred by compensation being delivered further afield from the impact.

- We note also that the guidance does not apply to the offshore environment. However, we think it is highly probable that stakeholders could consider the guidance as setting generally accepted principles for HRA and compensation. There are tangible and real scenarios where it is not possible to locate compensation close to the impact, for positive ecological reasons, and this should be made clear in the guidance preferably with examples so that applicants and stakeholders have clarity.
- P.38 “Competent Authorities should...”
 - Second bullet point: it needs to be clear that the conditions securing compensation can include the requirement for post consent plans to secure details that it would otherwise be impossible, unknowable or undeliverable for an applicant to secure at consent stage (for the reasons outlined above).
 - Second bullet point: “...which in most cases will be indefinitely”. This line is not explained and does not reflect a substantial number of developments, such as the majority of energy projects, which operate for fixed periods. In those circumstances, or where impacts are temporary/arise from construction, it will be extremely difficult and a bar to development for projects to be required to deliver compensation indefinitely. A more proportionate approach would link the duration of securing compensatory measures to the nature and temporal extent of the impact, including, where appropriate, the engineering life of the project.
 - Conditions should also expressly allow for adaptive management.
 - Conditions should align with guidance, to be issued in due course, on the operation of the NRF and EDPs.
- P. 39 Second complete paragraph
 - It would be useful if this paragraph clarified explicitly (which we understand to be the intention) that applicants can assume the compensation delivered by other projects will be secured and therefore discounted from their compensation calculations.
 - It would also be useful if the guidance could confirm how this is to apply in the scenario of non-like-for-like compensation (i.e. where the overall coherence is secured) and where the NRF is relied upon to discharge a compensation obligation.
- **Monitoring measures:** more broadly in terms of monitoring measures, monitoring conditions should relate to the specific impacts of a project (rather than, e.g., being seen as an opportunity for general data gathering) and only when mitigation is novel or to address uncertainties.
- **Seasonal restrictions:** these are a commonly recommend mitigation or compensation measure, however they can cause substantial impacts to project deliverability, as well

as onerous expense and delay. The guidance could usefully contain an example explaining that seasonal restrictions should only be imposed if essential and viable, and the totality of any seasonal restrictions for multiple seasons needs to be considered in the round.

- **Alternative solutions:** although not in the compensatory measures section, we note that the first example given in the Alternative Solutions section is of an alternative that would not meet the original objective, relating to alternative non-renewable sources of energy compared to a proposed low carbon development. This therefore suggests that different technology types are potential alternative solutions to a development. That is contrary to the established practice of derogation cases, where alternative solutions are alternative developments within the same sector and type (i.e. only within offshore wind). We strongly recommend changing the draft guidance to reflect this established practice, which has been supported by the Secretary of State in a number of derogation cases.

Section 10 – Habitats regulations assessments: guide for applicants

Section purpose: The “guide for applicants” is a short document intended to sit alongside the main guidance and explain, at a high level, what is required of applicants as part of the Habitats Regulations Assessment process.

[Section 10 guidance extract](#)

26. How helpful is this additional guidance at setting out how to engage with the HRA as an applicant?

- 1 – very unhelpful
- 2 – somewhat unhelpful
- 3 – neither helpful nor unhelpful
- 4 – somewhat helpful
- 5 – very helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

NIPA Response: 4 – somewhat helpful. The “guide for applicants” is a useful and welcome addition, providing a more accessible, high-level overview of how applicants should engage with the HRA process. It helps to:

- demystify the process for applicants, particularly those less familiar with HRA requirements;
- reinforce the importance of early engagement and evidence-led submissions; and
- provide a clearer entry point alongside the more detailed main guidance.

This supports improved preparedness from applicants, which in turn can contribute to more efficient and effective HRAs. However, the guide is high-level, but in doing so it does not always provide clear detail on what “good” looks like in practice, or specific expectations for

timing, content, and quality of HRA inputs. There is also limited alignment with NSIP and offshore practice. For major infrastructure (particularly NSIPs and offshore projects), the guide does not sufficiently reflect the iterative and evidence-heavy nature of HRA, the need for structured pre-application engagement, or interaction / alignment with NPSs and marine planning frameworks.

The guide could more clearly encourage proportionate evidence gathering and the reuse of existing data and HRAs where appropriate, and strengthen the emphasis on early and ongoing engagement.

Efficiency impacts of the updated HRA guidance

27. What impact do you expect the refreshed guidance to have on the overall time taken to complete an HRA?

- *Significantly shorter overall time*
- *Slightly shorter overall time*
- *No impact on overall time*
- *Slightly longer overall time*
- *Significantly longer overall time*
- *Don't know*

Please provide any reasoning to support your response.

NIPA Response: Slightly shorter. The refreshed guidance has the potential to deliver a modest reduction in the overall time taken to complete HRAs by promoting a more structured, proportionate and transparent approach to the process.

In particular, the guidance should help improve efficiency by:

- providing clearer expectations and principles, which will support earlier scoping of issues, more focused evidence gathering, and reduced risk of late-stage rework;
- encouraging the reuse of existing HRAs (in whole or in part) where appropriate, thereby avoiding unnecessary duplication of assessment;
- emphasising the importance of early identification of evidence gaps and timely consideration of key issues, which can help to reduce delays during later stages of assessment; and
- supporting a more constructive and proactive approach by competent authorities, which, if applied consistently, should improve the timeliness and effectiveness of engagement with applicants.

However, the overall impact on timescales is likely to be limited to a slight reduction, rather than a significant one, for the following reasons:

- some elements of the guidance remain open to interpretation, with the use of non-directive or subjective language (e.g. 'consider', 'where appropriate', 'material change'), which may lead to inconsistent application and risk-averse behaviours in practice;

- the guidance does not yet fully define roles and expectations for SNCBs, whose input is often critical to the pace of HRA progression. Without clearer expectations around early and proactive engagement, delays associated with iterative advice are likely to persist; and
- for complex projects, particularly NSIPs and offshore developments, the duration of HRAs will continue to be influenced by project-specific factors, including the availability of environmental data, the need for iterative assessment and the complexity of cumulative effects.

Amending the HRA guidance to include the offshore

The HRA guidance currently applies to Habitats sites in England and inshore waters (within 12 nautical miles of the coast). We are proposing to draft the guidance so that it also applies to Habitats sites in the offshore waters of England (12 to 200 nautical miles off the coast).

28. Do you agree with the proposal to draft the HRA guidance so that it applies to Habitats sites in the offshore waters of England, as well as the inshore waters?

- *Agree*
- *Disagree*
- *Do not know*

Please provide any reasoning or evidence to support your response

NIPA response: Agree, with qualifications. NIPA supports the proposal to draft the HRA guidance so that it applies to Habitats sites in both offshore and inshore waters, as this is a logical and necessary step toward creating a more coherent and consistent framework for HRA application across England's marine environment.

Extending the scope in this way will help to reduce fragmentation between regimes, improve clarity for applicants operating across both inshore and offshore areas, and support more consistent and efficient decision-making. However, this support is subject to important qualifications to ensure the guidance is effective in practice.

For offshore projects in particular, the HRA process operates within a complex policy landscape. It is therefore critical that the guidance is fully aligned with marine planning guidance and relevant National Policy Statements (NPSs). Without this alignment, there is a significant risk of duplication of assessment requirements, conflicting policy expectations, and delays and increased costs for applicants. The guidance should explicitly recognise this interface and ensure a **joined-up approach across** HRA guidance, marine plans and NPSs, providing a clear and consistent framework for offshore development.

29. Are there any parts of the HRA process in the offshore which you would like us to focus on in the guidance?

- *Yes*

- *No*
- *Do not know*

Please provide any reasoning or evidence to support your response

NIPA Response: Yes. NIPA considers that there are several aspects of the HRA process in the offshore environment where additional focus in the guidance would be beneficial, given the scale, complexity and policy interactions inherent in offshore projects.

In particular, further guidance would be valuable in the following areas:

Alignment with marine planning and NPS frameworks

Offshore HRAs sit within a complex and overlapping policy environment, including:

- Marine Plans
- Marine licensing regimes
- National Policy Statements (NPSs) for NSIPs

Greater clarity is needed on how HRA should be aligned and applied alongside these frameworks, to avoid duplication, inconsistency, and uncertainty for applicants and decision-makers.

Strategic and cumulative assessment

Offshore projects often involve:

- large spatial scales; and
- multiple concurrent developments (e.g. wind farms, interconnectors, cables).

Guidance should provide clearer direction on:

- how to undertake cumulative and in-combination assessments;
- how to apply strategic approaches across projects; and
- the role of plan-level or regional evidence.

This is critical to improving efficiency and avoiding repeated reassessment of the same issues.

Proportionality and evidence requirements

Offshore HRAs can be data-intensive and resource-heavy.

Further guidance would be helpful on:

- applying proportionate, risk-based evidence requirements;
- making best use of existing datasets and previous HRAs; and
- dealing with uncertainty and evidence gaps, particularly in evolving offshore environments.

Early and proactive engagement (including SNCBs)

The effectiveness and speed of offshore HRAs is highly dependent on timely engagement.

The guidance would benefit from clearer expectations on:

- early, structured engagement between applicants, competent authorities, and SNCBs;
- maintaining ongoing, iterative dialogue; and
- adopting a solutions-focused approach, particularly in complex offshore schemes.

Reuse of HRAs across related offshore consents

Offshore projects often require multiple, linked consents (e.g. DCO, marine licence and environmental permits).

Further clarity would be helpful on:

- how HRAs can be reused across these regimes;
- how to avoid duplication of assessment; and
- how to ensure consistency between decisions made by different competent authorities.

Clarity of drafting for complex offshore scenarios

Given the complexity of offshore development, it is particularly important that the guidance:

- uses clear, unambiguous language; and
- provides practical direction on application, rather than high-level principles alone.

This will help reduce variability in interpretation and support more consistent decision-making.

NIPA members feel that strengthening these areas would support a more efficient, coherent and predictable HRA process for offshore development, while maintaining robust environmental protection.

Further comments on the draft Habitats Regulations Assessment Guidance

We would welcome any further comments on the draft Habitats Regulations Assessment Guidance

[Related information](#)

30. The full updated draft Habitats Regulations Assessment Guidance can be found in the above fact bank. Are there any aspects of the draft guidance not already covered in the previous questions you would like to comment on?

Please provide any reasoning or evidence to support your response

NIPA Response: The draft guidance provides a strong foundation and NIPA welcomes the progress made in clarifying the HRA process. However, its overall effectiveness would be significantly enhanced by:

- improving clarity, structure, and practical usability;
- strengthening consistency across regimes and guidance;
- embedding proportionality and risk-based decision-making more explicitly;
- clarifying interactions between key HRA concepts and stages; and
- supporting deliverable, adaptive, and evidence-led approaches.

These refinements will be critical to ensuring the guidance is clear, consistent and capable of supporting efficient, proportionate and legally robust HRA processes in practice, while also enabling the timely delivery of nationally important infrastructure.

NIPA recognises the importance of the HRA regime in achieving both environmental protection and sustainable development, and would welcome the opportunity to work collaboratively with DEFRA to refine and implement the guidance. In particular, NIPA would be pleased to support further development of the guidance by:

- sharing practical experience from across sectors, including NSIPs and offshore development;
- contributing to the development of worked examples and case studies, particularly on areas such as proportionality, precautionary principle, and in-combination effects; and
- providing input on deliverability and real-world application including compensation, evidence requirements and cross-regime coordination.