



Oil & Gas
Authority

OGA response to the consultation on the Habitats Regulations
Assessment of the 14th Onshore Oil and Gas Licensing Round

Consultation Response

URN: 15D/401 17th December 2015

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General information

Purpose of this document:

This document sets out the OGA's response to the consultation on the Habitats Regulations Assessments of the 14th Onshore Oil and Gas Licensing Round published on 18 August 2015.

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Quality assurance:

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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Response to the Habitats Regulations Assessment of the 14th Onshore Oil and Gas Licensing Round

Introduction and background

1. This is the Oil & Gas Authority's (OGA) response to the consultation on the Habitat Regulations Assessment (HRA) of the 14th Onshore Oil and Gas Licensing Round, which opened on 18 August 2015 and closed on 29 September 2015. This document describes the respondents replying to the consultation, summarises the responses received, and sets out the OGA's response to the issues raised in the consultation and the OGA's next steps. It is intended to accompany, and sit alongside, the amended HRA Technical Report, *Habitats Regulations Assessment: 14th Onshore Oil and Gas Licensing Round – Post Consultation Final Report* and to support and explain the conclusions reached in it following the consultation process.
2. Under the Petroleum Act 1998, the exclusive right of searching and boring for and getting petroleum¹ vests in Her Majesty. The Secretary of State for Energy and Climate Change may confer this exclusive right on licensees by granting licences covering the petroleum in a defined geographical area (Ordnance Survey "blocks") and for a specified period of time. Importantly, however, these licences do not, in their own right, directly confer on the licensee any consent, permission or authorisation to carry out any kind of development activity for the purposes of searching and boring for and getting the petroleum to which the licence relates.
3. The oil and gas licensing system under the Petroleum Act 1998 is administered by the OGA, an executive agency of the Department of Energy and Climate Change (DECC), on behalf of the Secretary of State for Energy and Climate Change. The function of oil and gas licensing was transferred from DECC to the OGA on 1st April 2015.
4. On 28 July 2014, DECC opened the 14th licensing round for companies seeking onshore petroleum licences under the Petroleum Act 1998. The application round closed formally on 28 October 2014. In total, DECC received 95 licence applications covering 295 blocks in England, Scotland and Wales. Following reviews of geotechnical analysis, and scrutiny of the applicant licensee's competency, financial viability, capacity and environmental awareness, and following the decision not to award licences in Scotland and Wales, this was reduced to 159 blocks for further consideration.
5. Each of these remaining 159 blocks, which were considered for award, was then analysed and assessed in accordance with the requirements of the Conservation of Habitats and

¹ "Petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Species Regulations 2010 (SI 2010 No. 490) (as amended), hereafter referred to as the “Habitats Regulations”, which implement the Habitats Directive (92/43/EEC) and Birds Directive (2009/147/EC) within the UK. The Habitats Regulations provide for certain protections to be afforded to specified sites, including Special Areas of Conservation (SACs) and Sites of Community Importance (SCI), which have been designated under the Habitats Directive, and Special Protection Areas (SPAs) designated under the Birds Directive, because of the flora and fauna which they support. UK planning policy also affords the same level of protection to sites listed or proposed under The Convention on Wetlands of International Importance, called the “Ramsar Convention”, and to possible/proposed SPAs and candidate SACs. Collectively, all of these sites are referred to in this document as “European sites”.

6. In order to satisfy the requirements of the Habitats Regulations, an analysis and assessment is required of any “plan or project” that is likely to have a significant effect on a European site. The first step in this process, the initial threshold assessment, is designed to determine whether the proposed plan or project is likely to have a significant effect on a European site(s). If this analysis determines that that plan or project is likely to have such an effect on a European site, that plan or project must be made subject to a further detailed assessment (an “appropriate assessment”) in order to determine whether approval of it would adversely affect the integrity of the European site(s) concerned. If adverse effects would arise, and these cannot be avoided, mitigated or justified by reference to reasons of overriding public importance, the plan or programme must not be approved.

7. This process has been carried out for the 14th licensing round. It is the purpose of the strategic plan-level Habitats Regulations Assessment, which was published for consultation, to analyse whether the approval of the 14th licensing round, and the grant of individual licences, would be likely to have a significant adverse effect on relevant European sites. The Habitats Regulations Assessment accordingly presents the scientific findings of the appropriate assessment for each of the 159 blocks for which licence applications have been received and which were taken forward for consideration of award. The consultation was designed to seek views on the approach to the assessment.

8. The consultation document asked two questions: the first concerning the approach to the assessment, and the second concerning the assessments that were carried out for individual licence blocks. The formal questions posed by the consultation were:

- ▶ Q1. Do you have any comments on the Habitats Regulations Assessment carried out for the 14th onshore oil and gas licensing round?
- ▶ Q2. Do you have any comments on the assessments carried out for individual licence Blocks? (You may wish to comment on more than one Block.) Please provide the reference for the Block you are commenting on.

Responses received

9. A total of 912 consultation responses were received from a range of individuals and organisations, including local authorities, parish councils, town councils, national park authorities, industry, Non-Governmental Organisations (NGOs), campaign groups and the statutory consultee and appropriate nature conservation body in England for HRA, Natural England.

10. These responses were received through a variety of media:

- ▶ e-portal or email: 713² responses were received in this way;
- ▶ postcards: 193 responses were received in this way; and
- ▶ hand-written letters: six responses were received in this way.

11. Table 1 below presents a summary of the responses received in terms of the media in which they were received and the category of consultee responding.

12. In terms of responses to each of the two questions posted by the consultation, of the 912 responses:

- ▶ 844 submissions provided comments to the first question; and
- ▶ 532 submissions provided comments to the second question.

² In 14 instances an individual made two separate responses and in one instance an individual provided three separate responses – for the purposes of the analysis, these have been treated as separate submissions.

Table 1: Summary of the responses received by media and type of consultee

	E-portal or email	Postcard	Letter	Total	Consultee (including but not necessarily limited to) ³
Statutory HRA consultee	1			1	Natural England
Other Government department or agency	0			0	
Local authority	18			18	Forest of Dean District Council, Hampshire County Council, Isle of Wight Council, North Somerset Council, Somerset County Council, Borough of Poole, Lancashire County Council, Lancaster City Council, Gloucestershire County Council, Wiltshire Council, Dorset County Council, Nottinghamshire County Council
Parish council or town council	18			18	Langton Matravers Parish Council, Hushwaite Parish Council, West Keal and Keal Coates Parish Council, Minting & Gautby Parish Council, Heywood Parish Council, Bratton Parish Council, Staunton Coleford Parish Council, West Dean Parish Council, Chitterne Parish Council, Poulshot Parish Council, Worton Parish Council, Westwood Parish Council, Horwich Town Council, Helmsley Town Council, Swanage Town Council
National park authority or Areal of Outstanding Natural Beauty (AONB)	4			4	North Yorkshire Moors National Park, South Downs National Park, Peak District National Park, Wye Valley AONB
Academic	1			1	Signatories from the School of Earth and Environment, Leeds University
Industry	10			10	EDF Energy, Energy UK, UK Oil & Gas (UKOG), UK Onshore Oil and Gas (UKOOG), Atkins, Cuadrilla, Aurora
NGO	11			11	RSPB, Friends of the Earth, Somerset Wildlife Trust, Yorkshire Wildlife Trust, Wiltshire Wildlife Trust, Wildfowl & Wetlands Trust
Campaign group	27			27	South West Friends of the Earth, Keep Kursford and Wisborough Green, Frack Free Banwell and Weston-Super-Mare, Frack Free Isle of Wight, Gloucestershire Friends of the Earth, Frack Free Somer Valley, Wiltshire Clean Energy Alliance, Dean Natural Alliance
Individual	597	193	6	796	193 postcards were received from individuals but as part of an organised campaign re East Lindsey
Other	26			26	Green Party Isle of Wight, Pewsey Environmental Action Team, Mendip Caving Group
Totals	713	193	6	912	

³ A full list of organisations responding is at Annex 1.

Summary of views expressed and OGA response

13. Respondents expressed a wide range of views with some being supportive of the assessment and others disagreeing with the proposed methodology/approach or its findings and conclusions.

14. Approximately 99 percent of consultation responses provided comments on the HRA, with many submissions disagreeing with aspects of the assessment. Nearly all consultees who disagreed with the methodology and/or the findings of the assessment assumed that the onshore oil and gas licences were to be awarded for hydraulic fracturing, and many used the consultation to register their objection to fracking. Reasons varied but included concerns over effects on human health, water quality, induced seismicity, landscapes and the natural environment. Responses also provided comment on the assessment, identifying additional information to be included and requesting improvements. Where appropriate, the assessment has been updated in response to the comments received; the updated HRA Technical Report (with its associated appendices) has, therefore, been republished alongside this consultation response.

15. Table 2 below presents the summary of the views expressed through the consultation and the OGA's response to the comments made.

Table 2: issues raised during consultation and OGA response

Consultation issues raised	Response
<p><u>Inadequate consultation</u></p> <p>Approximately 15% (110) of respondents felt that the consultation process had been insufficient to provide potentially affected stakeholders with an opportunity to review proposals and provide a considered response.</p> <p>Frequent comments were that the duration and timing of the consultation (six weeks and beginning within the summer holiday period) was inconsistent with the Government's consultation guidelines. It was also suggested that the consultation was framed in such a way that it was very difficult for people without specialist ecological experience or knowledge to respond. For example, comments included:</p> <ul style="list-style-type: none"> • the documentation was complex and jargon laden and a plain English version of the assessment was not made available; • the documentation could not be accessed; • it was unclear how people could respond to the consultation (some consultees felt that the questions, the links, and access to the e-portal were obscure); • there was no easily accessible link to allow the average person to check if all SPAs and SACs were included in the consultation. <p>It was stated that the consultation was not publicised and local community awareness of the consultation was considered to be low by consultees. It was not evident to some consultees how, if at all, the Government had contacted communities or interested parties (such as mineral planning authorities).</p>	<p>The consultation has been carried out in accordance with the Government's Consultation Principles: (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf). The guidance states that consultation may typically vary between two and 12 weeks, depending on the nature of what is being consulted upon. Given the purpose of this consultation, the duration and timing is considered sufficient to provide consultees with time to provide a considered response. This is supported by the scale, organisational spread and geographic extent of the consultation responses. The approach to, and duration of the consultation, is also consistent with the HRAs of offshore oil and gas licensing. However, if a specific consultee requested more time to respond, a short extension was granted to facilitate the provision of a more full response.</p> <p>To help a non-technical audience understand the assessment and its conclusions, the OGA produced an abridged version of the main Technical Report. The abridged version totalled 16 pages in length compared to 49 pages and approximately 500 pages of appendices for the Technical Report.</p> <p>A press release announcing the launch of the consultation was issued by the OGA to more than 200 media outlets on 18 August 2015. This generated significant national, regional and online coverage on the BBC and ITV, and in newspapers including The Financial Times, The Telegraph and The Guardian.</p> <p>The OGA also informed the Planning Officers Society Minerals and Waste Group to alert them to our consultation, which is the relevant representative body of officers in mineral planning authorities (who are responsible for local planning policy with regard to oil and gas development).</p>
<p><u>Predetermination</u></p> <p>A limited number of respondents felt that there was evidence of predetermination in the assessment – i.e. certain options were ruled out before the assessment was conducted.</p> <p>The respondents considered that some statements made in the Technical Report and some of the assumptions upon which the report</p>	<p>At the outset of the process, 95 applications covering 295 blocks in England, Scotland and Wales were received. Following scrutiny of the operators' competency, financial viability, environmental awareness and geotechnical analysis, and following the decision not to award licences in Scotland and Wales, 159 blocks were then considered within the HRA. The HRA is a contribution to the final decision to award, and no prior decisions have been taken on</p>

<p>relies, pre-empt the assessment process and that the assessment could not have arrived at an outcome that a licence could not have been granted or that a block could have been placed in Category 1. (Category 1 recommends that a licence be granted but all or certain activities would be prohibited anywhere in the block as all the block was within a European site).</p> <p>In some instances, the respondents suggested that the Category 1 award was appropriate to named blocks – for example, NZ90, SD17, SD26a, SD26b, SE69, SO51, ST25, and SZ09a.</p>	<p>those licence blocks where likely significant effects on European Sites could not be ruled out.</p> <p>Not awarding a licence did remain an option available to the OGA throughout the whole assessment process, and indeed we would be legally required to refuse a licence award if the assessment had concluded that adverse effects on the integrity of a European site(s) could not be avoided by the grant of a licence and that adequate mitigation measures were not available in any circumstances. To that extent, the three distinct Categories of outcome detailed in the Technical Report are all predicated on the assumption that adverse effects could in some circumstances be avoided. Category 1 awards (where a licence may be awarded but no specific activities would be permitted at or near to the surface anywhere in the block) were not identified as the assessment concluded it was not appropriate to do so.</p> <p>For the blocks identified by the respondent (listed in column one of this row), the assessment identified potential adverse effects on integrity (AEOI) during Stage B, C and D activities and, as a consequence, such activities will be prohibited at or near to the surface within the boundaries of all European sites in the relevant block through licence conditions. The assessment did not identify potential AEOI during Stage A activities in relation to these blocks, and thus the carrying out of Stage A activities does not need to be subject to the same restriction.</p>
<p>Omission of pSPAs</p> <p>One respondent said that whilst an inclusive approach had been taken to the definition of “European Sites” in the HRA – i.e. possible/proposed SPAs, candidate SACs and listed or proposed Ramsar sites had been included, in line with the National Planning Policy Framework – it had not been consistently applied to all possible/proposed SPAs and should be re-checked and revised accordingly. The following sites were identified as having been omitted:</p> <ul style="list-style-type: none"> • Flamborough and Filey Coast pSPA; • Teesmouth and Cleveland Coast SPA possible extension. <p>The respondent identified that the omitted potential and possible European sites are relevant to the following blocks: NZ52b; NZ52c, TA08; TA17; and TA18.</p> <p>The respondent recommended that the OGA re-consult Natural England over these sites and blocks.</p>	<p>The Flamborough and Filey Coast potential Special Protection Area (pSPA) was proposed in 2013 and subjected to consultation in 2013. The possible extension to the Teesmouth and Cleveland Coast Special Protection Area (SPA) was published in a Technical Information Note by Natural England in July 2015.</p> <p>Neither appeared on any of the Joint Nature Conservation Committee (JNCC) datasets used to complete the assessment:</p> <ul style="list-style-type: none"> • JNCC summary of classified and potential SPAs (latest dated 15 April 2015) http://jncc.defra.gov.uk/page-1399; • JNCC SPA dataset (latest 15 April 2015) http://jncc.defra.gov.uk/page-1409; • JNCC list of SPAs (which includes status) http://jncc.defra.gov.uk/page-1400. <p>It is uncertain why the reference JNCC information does not include the Flamborough pSPA; however, in response to the point raised in the consultation, and in order to ensure the assessment is appropriate and uses up-to-date information, the effects of potential activities in licence blocks within the HRA on these potential and possible European sites have now also been assessed.</p> <p>The reassessment affected the following 13 licence blocks: NZ51; NZ52b; NZ52c; SE97a; SE98c; TA06b; TA07a; TA08; TA09; TA15; TA16; TA17; and TA18.</p> <p>The reassessment identified adverse effects on the integrity of the Flamborough and Filey Coast pSPA from activities that could follow licensing in blocks TA08, TA17 and TA18. The reassessment also identified adverse effects on integrity of the Teesmouth and Cleveland Coast SPA possible extension from activities that could follow licensing in blocks NZ52b and NZ52c. In consequence, licence conditions are proposed in accordance with the HRA methodology so as to prohibit the relevant activity in TA08, TA17, TA18, NZ52b and NZ52c.</p> <p>The reassessment identified no additional effects on integrity of European sites for licence blocks NZ51, TA09 and TA16.</p> <p>No adverse effects on the integrity of European sites were identified for SE97a, SE98c, TA06b, TA07a and TA15.</p> <p>Natural England has been consulted on these new assessments; they consider the methodology has remained unchanged and are satisfied with the outcome.</p>
<p>Failure to consider the effects on European protected species</p> <p>One respondent said that the assessment failed to comply with the Habitat Regulations, as it concerned itself only with the impact on 'European Sites' as defined in the assessment report. The respondent stated that the Habitat Regulations also require protection of European protected species and that this key aspect of the Habitat Regulations</p>	<p>Article 6 (3) of the Habitats Directive (92/43/EEC) states that:</p> <p>“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation</p>

<p>was not mentioned in the assessment report, and no consideration was given to potential impacts on European protected species, except in relation to the European sites. The respondent, therefore, felt that the assessment had failed to comply with the regulations and that the offer of licence blocks within the 14th round should be withdrawn until appropriate evaluation of the presence of European protected species or their migration paths has been conducted for each site.</p>	<p>objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”</p> <p>Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (SI 2010 No. 490) (as amended) implements the requirements of Article 6 (3) and requires that:</p> <p>“(1) Where a land use plan—</p> <p>(a) is likely to have a significant effect on a European site...(either alone or in combination with other plans or projects), and</p> <p>(b) is not directly connected with or necessary to the management of the site,</p> <p>the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives”.</p> <p>The HRA of the 14th Onshore Oil and Gas Round has been undertaken in accordance with the requirements of regulation 102 and the likely significant effects on each of the 159 blocks on European sites and/or European offshore sites has been identified, described and assessed. For the purposes of the assessment, ‘European sites’ have been defined as including Special Areas of Conservation (SACs) and Sites of Community Importance (SCI), designated under the Habitats Directive, and Special Protection Areas (SPAs) designated under the Birds Directive, as well as sites listed or proposed under The Convention on Wetlands of International Importance (called the Ramsar Convention), and to possible/proposed SPAs and candidate SACs – as UK planning policy affords the same level of protection to these.</p> <p>Regulation 102 does not require consideration of the effects of a plan or programme on European Protected Species, as distinct from European Sites, although consideration of species necessarily forms parts of the process through the analysis of the conservation features of each individual European site.</p>
<p><u>Failure to describe the characteristics and specific environmental conditions</u></p> <p>One respondent commented that the Waddenzee judgment, paragraph 48, states that “...in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project”.</p> <p>They further commented that any assessment of an SAC, SPA or Ramsar site must begin with the characteristics and specific environmental conditions of the site, to provide the baseline by which to assess the potential effects (whether the effects are likely to be significant either alone or in combination with other plans or projects) and must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives, and, if doubt remains, the effect remains significant because of the precautionary principle of the Habitats Directive. They felt that the information provided in the HRA Annex D to establish “the characteristics and specific environmental conditions” does not meet the criterion well established by the Waddenzee judgment. Therefore, they felt that the HRA did not meet this basic principle of HRA.</p>	<p>The methodology set out in Section 3 of the HRA Report outlines how information for each individual European site (including its interest features) taken from the JNCC datasets has been accessed through Geographic Information Systems (GIS) to enable the assessment of likely significant effects on, and AEOI of, each European site to be completed.</p> <p>Appendix B of the HRA Report lists all the European sites and their interest features that have been considered within the assessment.</p> <p>Appendix D of the HRA Report contains the detailed assessment of each proposed licence block and the potential impact of specified development activities that may follow licensing on European sites as well as the interest features of each European site.</p> <p>Buffer zones of either 1 km or 10 km have been applied to reflect differing characteristics of each European site and include, for example:</p> <ul style="list-style-type: none"> • highly mobile species such as bats and otters, which can travel significant distances for foraging, commuting and shelter; • coastal and riparian habitats that are ecologically, hydrologically and/or hydrogeologically continuous with European sites; • bird species/populations that are reliant on extensive habitats beyond a European site boundary to maintain the status of their population. <p>In consequence, characteristics and specific environmental conditions have been considered as a fundamental and integral part of this assessment.</p> <p>Natural England stated that the approach was reasonable and</p>

	appropriate in a meeting with the OGA on the 17th June (which was documented in the HRA Report, Section 1.3).
<p>Precautionary approach leading to IROPI</p> <p>Some respondents expressed the view that the OGA had failed to adopt a precautionary approach when carrying out the HRA.</p> <p>They stated that case law of the Court of Justice of the European Union (the Waddenzee judgment) underlines the precautionary nature of Directive 92/43/EEC and that the judgment concluded that, under the Directive, a plan or project may only be authorised “where no reasonable scientific doubt remains as to the absence of such effects”. They considered that the manner in which the assessment was undertaken and the assumptions on which it relied undermined the notion that the principle had been properly followed in this case, for example, in relation to:</p> <ul style="list-style-type: none"> • in-combination effects; • uncertainty about intensity of impacts; assumptions about impacts of Stages D and E; • assumption re normal operation (exclusion of the consideration of risks of accidents and unforeseen events); • conditions and mitigation that are limited to surface (or near surface) activities. <p>They noted that the Waddenzee judgment is clear that, in cases of high environmental sensitivity like European sites, a high degree of scientific certainty is expected in HRA assumptions and predictions, or else the HRA is expected to conclude that site integrity might be adversely affected. Given the uncertainties identified in the assessment and so, in their view, the absence of such removal of reasonable scientific doubt, at this stage, they felt that the assumption should be that the licensing round will have an adverse impact on site integrity, and Article 6(4) of the Habitats Directive – consideration of alternatives (including ‘no action’, i.e. no licensing), imperative reasons of overriding public interest, and compensatory measures – should apply.</p>	<p>The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union (EU). It aims to ensure a higher level of environmental protection through preventative decision taking in the case of risk.</p> <p>In completing the HRA of the 14th onshore oil and gas licensing round, the precautionary principle has been applied as, strictly, the licensing round is an administrative process that itself will not have any direct effect beyond giving exclusivity to the licence holder in respect of exploration or production in the licensed area. Any effects on sites will be caused by specific development activities, such as drilling, which are not directly authorised by the licences but instead are authorised separately under the planning and regulatory systems, and planning decisions will be subject to appropriate assessments wherever required by law and in the full environmental context of each proposal. In consequence and in this instance, the HRA has been undertaken on a precautionary basis as it could be argued it is not strictly necessary.</p> <p>Nevertheless, each of the blocks for which a licence award was considered has been assessed against the requirements of the Conservation of Habitats and Species Regulations 2010 (SI 2010 No. 490) (as amended). Where likely significant effects on a European site, arising from the activities that may follow licensing, could not be ruled out, an Appropriate Assessment has been completed. This included the use of a ‘zone of influence’ that extended 10 km outside the boundary of the licence block in order to identify any adverse effects on the integrity of European sites. The use of a 10km distance reflects the following factors:</p> <ul style="list-style-type: none"> • an understanding of the activities that are associated with the four stages of the oil and gas exploration and production process; • a consideration of the evidence that exploration and production activities have effects on biodiversity and the distance beyond which, due to tried and tested mitigation measures and causal pathways, that it is considered extremely unlikely that those effects could occur; • the distance some highly mobile designated species (such as bats, birds and otters) travel outside a European site, in order, for example, to forage for food; • the heightened connectivity of non-designated habitats to designated habitats due to their proximity to water (e.g. wetland areas or coastal habitats). <p>In consequence, the 10 km distance has been deemed an appropriately precautionary zone of influence within which there could potentially be likely significant effects/adverse effects on integrity of the interest features of relevant European sites. In reality, the zone of influence for the majority of interest features will be much less than 10 km. Where the Appropriate Assessment has concluded that adverse effects on integrity from certain specified future activities are unavoidable, licence conditions have been recommended that would prohibit the activity and in consequence any adverse effects on integrity are avoided.</p> <p>This approach is necessarily consistent with the adoption of the precautionary principle. In consequence, and fundamentally at this strategic level, the OGA are confident that approval of the licensing round itself, and the grant of individual licences, will not directly lead to adverse effects on European sites, and that adequate measures have been put in place to minimise risk at future levels of project progression, with the strategic-plan level ensuring it does not put anything in place that would give weight to allowing a project to proceed where adverse effects could not be ruled out. Natural England support this assessment and conclusion.</p> <p>In addition to the above, it should also be noted that granting a licence does not imply any definitive or final clearance of Habitats Regulations considerations – any proposals for specific operations will be subject to further consideration of the Conservation of Habitats and Species Regulations 2010 (as amended) requirements by individual planning authorities and</p>

	possibly other permitting authorities at the project level once more information is available as to the nature and location of the activities proposed.
<p>Buffer zones</p> <p>The principle of the use of buffer zones was welcomed by a number of consultees as recognition by the OGA that there are areas outside the current boundaries of European sites that are important in maintaining the conservation status of one or more of a site's qualifying features.</p> <p>However, for a number of consultees, the extent of the buffer zones was questioned, with a view that both the generic 1 km extent and the interest feature specific 10 km extent are insufficient. Alternative distances were proposed that either seek to replace existing distances with those that are more extensive (and so more precautionary) but still generic or, alternatively, those that are modified to reflect the individual conservation features of the European site, as follows.</p> <p>In terms of generic extensions to buffer zones, the following was suggested:</p> <ul style="list-style-type: none"> • 1 km buffer zone should be extended to 4 km; • 10 km buffer zone should be extended to 15 km. <p>This reason given for these proposals was that it was felt it would align the HRA with the approach taken by mineral planning authorities in England.</p> <p>As noted, above, it was also suggested that buffer zones be modified to reflect individual features of European sites. For European sites designated for migratory species such as some birds or for landscape-scale species such as bats, the proposed buffer zones of 1 km and 10 km were felt to be insufficient. For example, it was suggested that SACs designated for barbastelle bats should be at least 15 km as foraging bats regularly travel further than 10 km from their roost site to forage.</p> <p>It was also suggested that the 1km buffer should be extended to include 3D factors, to address potential effects on underground bat roosts (such as caves and mines). For example, it was felt that underground vibrations could cause bats arousal from torpor, and could lead to mortalities during the winter hibernation period (which, it was felt, could affect the Wye Valley and Forest of Dean Bat SAC).</p>	<p>The OGA notes the broad endorsement provided by consultees to the use of buffer zones.</p> <p>Buffer zones have been developed for the purpose of this strategic-level HRA only. Section 4.2.3 of the HRA Report defines buffer zones for the purpose of this assessment as "areas that lie outside the designated area of a European site but which can play an important role in maintaining the conservation status of one or more of a site's qualifying interest features" – in this HRA, a 1 km has been applied around each European site although in a small number of circumstances a buffer zone of over 1km has been applied.</p> <p>In this HRA, buffer zones are treated by this assessment as potentially sensitive areas of land because of their proximity or connectivity to European site(s) but they are nonetheless areas of land where we have concluded that Stage A to D activities may be carried out without having adverse effects on the integrity of the adjacent European site itself – thus we are not restricting development activity in these areas.</p> <p>For the majority of potential effects arising from oil and gas exploration and production activities that could follow licensing, a 1 km wide buffer zone is considered to capture the potentially sensitive area given the characteristics of the European site. There are a small number of circumstances when a buffer zone of over 1 km has been applied due to the characteristics of the European site, namely:</p> <ul style="list-style-type: none"> • where the licence block includes or is within 10 km of a European site that is designated for highly mobile species such as bats and otters, which can travel significant distances for foraging, commuting and shelter; • coastal and riparian habitats that are ecologically, hydrologically and/or hydrogeologically continuous with European sites; and • bird species/populations that are reliant on extensive habitats beyond a European site boundary to maintain the status of their population. <p>We understand the concerns of consultees in terms of their comments about expanding and modifying buffer zones and recognise that, in some instances, populations of certain species may potentially be vulnerable to the unmitigated effects of developments over 10 km from a European site. This would be true for most types of development, if poorly sited, not just the type of works that may be licensed; however, we can find no examples from local authority plans (even in areas with bat SACs) of either hard or soft 'buffers' that are over 10 km in size being adopted. With regard to extending the 1 km buffer to 4 km, in order to align with local planning authority local plans, we note that there remains variability in their application which has cautioned against such alignment in this assessment. In our view, the initial buffer zones of 1km and 10km adopted are sufficient for the purposes of this assessment.</p> <p>The function of buffer zones, in this assessment, is to highlight within the assessment and to licensees, that these are potentially sensitive areas of land, given their proximity to European sites, when considering future oil and gas development. Where appropriate, an advice notice will, therefore, be included with the licence but this will not form part of any licence conditions because, our conclusion is, that at this strategic plan level Stage A to D activities can be carried out with the buffer zones without causing adverse effects on integrity.</p> <p>As noted above, the buffer zones are have been developed for the purpose of this plan-level HRA only; planning authorities will necessarily need to consider in a project-level HRA, the appropriate extent of any buffer zones for any potentially affected European sites, informed by information on proposed activities contained within the planning application and specific survey data gathered, when considering project level applications at the stage</p>

	<p>when the proposed development activity and its geographical location, extent and timing is known.</p> <p>It should also be noted that the study area ('zone of influence') agreed for the HRA of onshore oil and gas – and considered acceptable by Natural England – is 10 km from the block boundary; the implication being that significant effects are unlikely beyond this distance. When considering the nature and magnitude of the potential environmental impacts resulting from the specific development activities which may follow licensing, it was assessed that any consequential effects were highly unlikely to be identifiable beyond a 10 km distance (taking into account various assumptions relating to hydrological effects).</p> <p>Whilst we do note that a range of consultees requested an extension to the buffer zones, in one instance, a local planning authority did suggest that no buffer distance should be used at all as the local requirements can vary substantially and by applying a buffer there could be a reliance on this distance by local authorities or developers to be used as the 'search area' for European sites that could be impacted by proposals.</p> <p>This is not the case – the buffer zone is strictly for guidance to the licensee only and does not signify an area where adverse effects will be necessarily realised by development activity, nor does it indicate that further Habitats assessment is necessarily required for development in those areas – that of course will be determined on a case-by-case basis depending on the scientific and factual circumstances of each individual project proposal.</p> <p>At the lower-tier assessment stage it will be necessary, in line with good and standard practice, to consider site specific baseline information in tandem with the detailed specification of the proposed scheme in order to establish the 'zone of influence' of the development. It would not be appropriate for the developer or competent authorities to rely on any buffer distance identified at this strategic level when considering the likelihood of significant effects or adverse effects on integrity as there will be more detailed information available to establish exactly what the sensitive receptors are and where they would be located.</p> <p>Finally, we emphasise again that the HRA of onshore oil and gas does not rely on the buffer zones in order to restrict licensable activities and the assessment conclusions are reached irrespective of the buffer zone guidance.</p>
<p><u>Extending the scope of the assessment to include functionally linked sites</u></p> <p>Two consultation respondents said that whilst European sites do benefit from legislative protection through the Habitats Directive (92/43/EEC), there are other sites which play a key role in supporting European sites and/or which may meet the threshold for statutory designation but remain undesignated. They state that the importance of these additionally supporting sites should be recognised within the appropriate assessment by placing additional conditions to restrict or guide development within other environmentally sensitive areas such as designated sites, nature reserves and areas of functionally linked habitat.</p>	<p>Article 6 (3) of the Habitats Directive (92/43/EEC) requires that the likely significant effects on a European site of a plan or programme are considered and that the competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.</p> <p>Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (SI 2010 No. 490) (as amended) implements the requirements of Article 6 (3) and requires that:</p> <p><i>"(1) Where a land use plan—</i></p> <p><i>(a) is likely to have a significant effect on a European site...(either alone or in combination with other plans or projects), and</i></p> <p><i>(b) is not directly connected with or necessary to the management of the site,</i></p> <p><i>the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives".</i></p> <p>For the purposes of the assessment, 'European sites' have been defined as including Special Areas of Conservation (SACs) and Sites of Community Importance (SCI), designated under the Habitats Directive, and Special Protection Areas (SPAs) designated under the Birds Directive; as well as sites listed or proposed under The Convention on Wetlands of International Importance (called the Ramsar Convention), and to possible/proposed SPAs and candidate SACs – as UK planning policy affords the same level of protection to these.</p> <p>In consequence, and when considering what is defined as a European site, it is noted that Regulation 102 does not specify whether this includes functional areas outside the boundary of the European site. Despite this uncertainty, and in recognition that there are areas that lie outside the designated area of a European</p>

	<p>site but which can play an important role in maintaining the conservation status of one or more of a site's qualifying interest features, the HRA of the 14th licensing round has adopted buffer zones (of 1 km and 10 km distance) to reflect the importance, and thus the potential sensitivity, of wider areas around a European site because of their proximity or connectivity to European site(s). A buffer zone of 1km is adopted in respect of all European sites, whereas an extended buffer zone of 10 km has been adopted in respect of:</p> <ul style="list-style-type: none"> • coastal and riparian habitats that are ecologically, hydrologically and/or hydrogeologically continuous with European sites; • bird species/populations that are reliant on extensive habitats beyond a European site boundary to maintain the status of their population. <p>In consequence, and commensurate with a strategic level HRA, the approach to assessment has therefore considered the likely significant effects on functionally linked areas to European sites arising from specified oil and gas exploration and development activities that will follow licensing.</p>
<p>Assessing the effects from Stage A activities</p> <p>A few responses to the consultation propose that the identified effects arising from Stage A activities are reviewed. For example, one response suggested:</p> <p><i>"We would recommend expert advice is obtained on the potential for vibroseis to harm the integrity of a European site. Within Amec's report, section 2.3.2 describes vibroseis in stage A, including digging and temporary access tracks, but states "Whilst there is a degree of localised excavation... they do not involve deep drilling activities, and so for the purposes of this assessment are categorised as 'non-intrusive"'. It also required temporary access tracks. This means that, for example, in block SD21 while Stage A activities are prohibited in an SPA, they are permitted within an SAC."</i></p> <p>Alternatively, for example, another respondent stated:</p> <p><i>"We believe that the assessment of 'Stage A. Non-intrusive exploration (including: Site identification, selection, characterisation; Seismic surveys; Securing of necessary development and operation permits)' applies a blanket approach such that seismic surveying in European sites is taken to necessarily lead to an adverse effect on the integrity of a European site (AEOI). Paragraphs 60 to 63 of the document "The Habitats and Wild Birds Directives in England and its seas. Core guidance for developers, regulators & land/marine managers December 2012 (draft for public consultation)" address the assessment of possible AEOI. It appears from this guidance document that the blanket ban on certain activities within European sites proposed in this HRA, particularly those of a temporary nature such as surveying activities, is not supported."</i></p>	<p>Section 2.3 of the HRA Report sets out the activities that could following licensing, presenting these activities according to different stages in the oil and gas exploration and development project life cycle. Non-intrusive exploration includes:</p> <ul style="list-style-type: none"> • site identification, selection, characterisation; • seismic surveys (i.e. vibroseis and shallowly buried explosives but not passive monitoring such as gravity and magnetic surveys); • the securing of necessary development and operation permits. <p>Vibroseis is described in more detail in Section 2.3.2 of the HRA Report. Table 4.1 of the Report summarises the anticipated likely generic environmental changes and effects arising from each stage. It identifies vibration arising from vibroseis as a potential cause of disturbance to vibration-sensitive species that, in consequence, could lead to an effect on the integrity of an interest feature of a European site. The response that stated, <i>"for example, in block SD21 while Stage A activities are prohibited in an SPA, they are permitted within an SAC"</i> is incorrect. The recommended condition for licence block SD21 explicitly says that <i>"Stage B, C and D activities will be prohibited at or near to the surface within the boundaries of all European sites in this block. Stage A activities at or near to the surface will be prohibited in certain sites with potentially sensitive features. Stage A activities, at or near to the surface, are therefore also prohibited in any overlapping areas of two or more European sites, where such activities are prohibited in at least one of those sites."</i> As the SAC, Ramsar and SPA overlap, the Stage A activities will not be permitted in the European sites in the licence block.</p> <p>The approach taken to the consideration of the effects of seismic surveys as part of Stage A activities is not a blanket approach to all European sites, and will reflect the interest features of the individual site. For example, for licence block SD21, adverse effects on integrity are identified for the Sefton Coast SAC from Stage A activities but not for the Ribble and Alt Estuaries SPA and the Liverpool Bay/Bae Lerpwl SPA.</p> <p>For the avoidance of doubt, where the assessment refers to the prohibition of "Activity A" (non-intrusive exploration), this refers to seismic surveys – in other words, those involving shallowly buried explosives or vibroseis – and not to passive monitoring such as magnetic or gravity surveys. These latter surveys are frequently conducted from aircraft and cannot be considered to present any risk due to their passive nature. Where the licence condition is deployed to prohibit seismic surveys, the licence condition will make clear what is being prohibited.</p>

Failure to consider the effects on the water environment

A number (62) of respondents thought that the HRA failed to consider that impacts on the water environment are likely and that the complex and connected hydrogeology of parts of England, such as Somerset, Gloucestershire, Wiltshire, Nottinghamshire and the Isle of Wight, increase the risks associated with contamination of surface and groundwater. They stated that there is no discussion of the potential for the fracking operation itself to have any impacts and, in consequence, that the HRA does not assess the effects on water-based European Sites.

A number of consultees however, acknowledge that water-sensitive sites are considered and commented on how the sensitivities are addressed. For example, one respondent stated that:

"The assessment assumes that fracking does not take place in "riparian corridors". These corridors are not defined but the individual block assessments refer to "Land that is within 10 km of a riparian or estuarine European site, and which is also within 200 metres of a contributory watercourse to that site, is considered to be of a potentially sensitive nature (due to its connectivity to a European site)". Blocks proposed for licensing have such land within them. Yet the conditions proposed for the licences in these blocks are that "activities will be prohibited at or near to the surface within the boundaries of all European sites"

Section 2.3 of the HRA Report specifies certain development activities that could potentially follow licensing, for the full life cycle of oil and gas exploration and production. Specific reference is made to water resources and managing the effects where necessary.

For example in Section 2.3.3.1 ('Well Site and Pad Preparation, Road Connections and Baseline Monitoring') of the Report, it is stated:

"A well pad would then be constructed on the levelled site using compacted aggregate laid on an impermeable membrane and geotextile layer. Erosion and sediment control structures would be constructed around the site, along with bunds for screening and noise attenuation and pits for the retention of drilling fluid and, possibly, freshwater. Surface water runoff would be collected and attenuated via perimeter ditches.

Groundwater monitoring wells would be constructed within the boundary of the site, to an approximate maximum depth of 30 metres using a small drilling rig. If hydraulic fracturing is planned, in order to fulfil the groundwater monitoring requirements of section 50 of the Infrastructure Act 2015, the level of methane in groundwater will have to be monitored for a period of 12 months before any associated hydraulic fracturing begins. Groundwater monitoring would then take place throughout drilling, fracturing, flow testing, subsequent production and for an agreed period after well abandonment."

Section 2.3.3.3 of the Report continues:

"Well construction will be designed to provide multiple barriers between the groundwater and deep underlying production zones and will be constructed in accordance with regulations⁴ and guidance⁵."

Section 2.3.3.4 of the Report describes the activities associated with hydraulic fracturing and, with regard to chemicals that could be used as part of that activity, states:

"the Environment Agency will assess whether a substance proposed for use by the operator in well stimulation is hazardous as part of the environmental permitting process, by considering it against criteria for persistence, bioaccumulation and toxicity. Operators will not be able to use chemicals for well stimulation unless the Environment Agency considers them acceptable for use."

Section 4.2.3.2 of the Report also notes that importance of water environments to assessing the effects on European sites:

"Many riparian and coastal habitats across the UK have been designated at the European level for their nature conservation value. Such habitats (and species that are supported by them) can be ecologically and hydrologically/hydrogeologically contiguous across great distances. As such, there is the potential for likely significant effects/adverse effects on integrity to occur as a result of licensable activities that are undertaken within non-designated coastal and riparian habitats up or down stream, or, up or down the coastline from European sites."

Many of the European sites considered within the assessment are water-based (whether riverine, wetland, estuarine or coastal) and include (for example):

- Afon Tywi/ River Tywi SAC;
- Arun Valley SPA;
- Avon Valley Ramsar.

Appendix B of the HRA Report presents a full list of the European sites considered within the assessment.

The Post Consultation HRA Report includes three examples to illustrate clearly the application of the appropriate assessment to three separate licence blocks, and how the inclusion of licence conditions will be sufficient to avoid AEOI of the European site in

⁴ Offshore Installations and Wells (Design and Construction Etc) Regulations 1996, Borehole Sites & Operations Regulations 1995

⁵ Oil and Gas UK (2012), Well Integrity Guidelines: <http://www.oilandgasuk.co.uk/publications/publications.cfm>

	<p>question. The three examples have been selected to illustrate the effects on differing habitat types (upland moorland, riparian and coastal). The potential effects identified on the riparian habitat include the effects from changes in the hydrological regime.</p> <p>In consequence, the HRA Report identifies and describes the activities (including hydraulic fracturing) that could potentially affect the water environment and, through consideration of all potentially affected European sites, the effects on relevant aspects of the water environment are considered and assessed.</p> <p>It is also noted that one of the assumptions of the approach to assessment was that a developer would conform “to <i>standard good practice approaches to delivering the development, comply with planning conditions and legal agreements, and also requirements associated with relevant environmental consents</i>”.</p> <p>The Environment Agency requires the following consents for onshore oil and gas activity with respect to the water environment:</p> <ul style="list-style-type: none"> • notice to be served under section 199 of the Water Resources Act 1991 to ‘construct a boring for the purposes of searching for or extracting minerals’; • environmental permits for: <ul style="list-style-type: none"> • a groundwater activity; • a mining waste operation; • a water discharge activity. • a groundwater investigation consent; • a water abstraction licence. <p>Permits, licences and consents will only be granted if the Environment Agency is satisfied that the proposals do not present unacceptable risks/hazards to the environment or human health.</p> <p>Concerning any potential effects on those areas situated outside the boundaries of the European site, such as those in a riparian corridor for example, identified because of their hydrological connectivity, these have been identified within the advice notices that are included with the licence, which highlight the potential sensitivity of these areas (buffer zones) because of their proximity to the European site itself. For example, the advice notice to be issued with licence block SE52 indicates that:</p> <p><i>“Riparian or estuarine habitats and species may be sensitive to impacts on tributary watercourses by activities”.</i></p>
<p><u>Failure to consider the effects from fracking underneath European sites</u></p> <p>One respondent noted that it is proposed in the HRA Report that Category 2 blocks have the condition, “Licence to be granted but certain activities may be prohibited at or near to the surface within the areas of the block that are European site(s)”. The respondent stated that it is, therefore, proposed to prevent fracking at the surface in parts of some areas, including European sites, but to allow it underneath all such areas. The respondent questioned whether this was adequate.</p>	<p>The licence conditions proposed are considered adequate to ensure no adverse effects on integrity of European sites, including from activities carried out beneath the European site. The licence conditions will prohibit specified activities from being carried out at or near to the surface – in practice this will mean down to an approximate depth of 3 metres. Activities carried out at depth will not be restricted by way of licence conditions since the assessment has determined and concluded that, for all European sites assessed, Stage A to D activities undertaken at depth would not result in effects on ecological receptors at surface and, as such, will not result in AEOI of the European site.</p> <p>The licence conditions will necessarily operate in conjunction with other laws and regulations that will ensure well design, construction and operation do not have adverse effects on the environment or human health. For example, the Borehole Sites & Operations Regulations 1995 (SI 1995 No. 2038) requires wells to be designed and constructed to provide multiple barriers between any groundwater and deep underlying production zones. The Health and Safety Executive also has an active role under the 1995 regulations in approving any proposed modifications to well structures.</p> <p>Additionally, it should be noted for wider context that sections 4A and 4B of the Petroleum Act 1998 (as inserted by section 50 of</p>

	<p>the Infrastructure Act 2015) will, when in force, prohibit the defined activity of “associated hydraulic fracturing”⁶ from taking place in all land in England and Wales at a depth of less than 1,000 metres below the surface, and that in issuing any consent to undertake hydraulic fracturing (as defined in the Petroleum Act 1998), the Secretary of State for Energy and Climate Change is satisfied that a range of safeguards and conditions (including relating to the environment) have been met. It is also noted that for those protected areas defined in the draft Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015, associated hydraulic fracturing will not be permitted at depths less than 1,200m⁷.</p>
<p><u>In-combination effects of licence award</u></p> <p>Two respondents stated that Appendix C of the HRA considers the ‘in combination’ impacts from several licences on individual European sites by adding up the number of licence blocks within 10 km of each European site. They state that more than 90 European sites would have five or more blocks within 10 km (including directly on them), and more than 30 would have five or more blocks within 1 km. The respondents commented that it is:</p> <p><i>“difficult to envisage that the integrity of these sites would not be significantly affected ‘in combination’ by the proposed licenses. Aquatic ecosystems are particularly likely to be affected ‘in combination’ because of the ease of contaminants flowing downstream, between aquifers, or along the coast”.</i></p> <p>The respondent felt that the HRA does not consider the current status of the European site – i.e. whether it is already significantly affected by disturbance, noise etcetera or not – and that oil and gas activities that are ‘in combination’ with already high levels of disturbance, noise etcetera are different from those where there are not many other existing impacts.</p>	<p>Consistent with the requirements of Article 6(3) of the Habitats Directive, and Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended), a detailed assessment of the in-combination effects of a licence award has been undertaken.</p> <p>This aspect of the overall assessment has analysed whether specified development activities undertaken (Stage A, B, C and/or D) in more than once licence block could potentially result AEOI of European sites.</p> <p>Our assessment determined that, without some form of mitigation, there was potential for cumulative AEOI to arise from activities carried out in multiple licence blocks. Accordingly, it has been concluded that the imposition of licence conditions to restrict activities within the European sites themselves (and advice notices given to highlight the potential sensitivity of the buffer zones) will be sufficient to ensure that specified activities being undertaken within more than one licence block, and potentially by different licensees, will not have cumulative AEOI of European sites.</p> <p>This conclusion, in respect not only of in-combination effects but the entire HRA, does of course only apply at this strategic level and thus does not imply any definitive or final clearance on habitats issues. Specific proposals for development activities will necessarily be subject to further consideration by planning authorities and regulators (including a consideration of “in-combination” effects at project-level where a project-level HRA is deemed necessary in the circumstances of the case), and such permission may be granted subject to conditions, or indeed refused, in accordance with the requirements of the Habitats Directive and the Conservation of Habitats and Species Regulations 2010.</p>
<p><u>In-combination effects with other plans or projects</u></p> <p>A limited number of consultees stated that the OGA has failed adequately to assess in combination effects in accordance with Article 6(3) of the Habitats Directive. They felt that it was not sufficient to argue, as the OGA seeks to, that such impacts are unclear hence such an assessment is not possible. They therefore feel the assessment should be extended to include:</p> <ul style="list-style-type: none"> • the effects of licensed activities in combination with local development plans (e.g. Local Plans, Core Strategies and Mineral Local Plans); • the effects on other national infrastructure proposals (e.g. nuclear new build); • the effects on national importance infrastructure (e.g. existing power stations and offshore windfarms). 	<p>Consistent with the requirements of Article 6(3) of the Habitats Directive, and Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended), an assessment of the in-combination effects of licence award has been undertaken.</p> <p>Given the strategic level of this assessment, there are naturally a considerable number of uncertainties at this stage regarding the nature of activities which may follow licensing. While the geographic location and extent of each individual licence block is ascertainable, further and particular details of the precise nature, scale, timing, duration and location of any exploration and production activities (whether Stage A, B, C or D) is at this stage wholly unknown.</p> <p>These uncertainties are then compounded by the inherent uncertainties regarding the types of development activities which should, and indeed, can be considered as part of an assessment of in-combination effects. Local development plans, for example, set out the scale and location of future development for a 15-year period. As such, and not unreasonably, they have been identified by consultees as being worth considering within the context of in-combination effects. However, the status, incompleteness and variable pace of development anticipated within local plans or core strategies create uncertainties and variability which further frustrate any attempt to meaningfully assess the in-combination</p>

⁶ See section 4B(1) of the Petroleum Act 1998 for the definition

⁷ NB neither sections 4A and 4B of the Petroleum Act 1998, nor the Onshore Hydraulic Fracturing (Protected Areas) Regulations are in force at the point of publication of this report

	<p>effects of oil and gas licensing at the strategic level. Such issues are repeated when considering other potentially relevant local authority plans, such as mineral and waste plans and local transport plans. With reference to nationally significant infrastructure proposals, there are uncertainties concerning the location, scale and phasing of development that further affect the confidence of any in-combination assessment.</p> <p>In consequence, to consistently consider the effects of future oil and gas activities, in combination with future plans and projects, a variety of assumptions would be needed at this stage regarding the likelihood and phasing of possible future development, as well as any possible consequential effects. As indicated, any resulting assessment will be partial, unduly reliant on assumptions and open to question as to whether any likely significant effects could be meaningfully identified, given the many uncertainties.</p> <p>It is also noted that the granting of a licence does not, in its own right, directly grant any consent, authorisation or permission for any specific development activities – licensing is essentially an administrative process that itself will not have any effect beyond giving exclusivity to the licence holder in respect of exploration or production in the relevant licensed area. The carrying out of any proposed development activities within a licence block would necessarily and in all cases be subject to additional approval by planning authorities and environmental regulators, and indeed to further assessment under the Habitats Regulations where such activities would be likely to have significant effects on, and/or adverse effects on the integrity of, European sites, including a further assessment of in-combination effects.</p>
<p><u>Outcome of the assessment predetermines lower-level assessment</u></p> <p>Two consultation respondents noted that licence conditions being proposed included: <i>“activities will be prohibited at or near to the surface within the boundaries of all European site(s) in this block”</i> which they felt predetermines future appropriate assessments yet to be conducted by the competent Minerals Planning Authority.</p> <p>They felt that it is the local level where in-combination effects can most accurately be assessed in the context of a strategic assessment such as the assessment being considered here, along with the full environmental impact of any proposed development, determined through surveys and fieldwork, taking full regard of the evidence presented in any Environmental Impact Assessment or Habitat Regulations Assessment, as carried out as part of the formal planning process for specified development activities.</p> <p>The two consultation respondents felt that the conditions adopted at this stage to prohibit future activities should be caveated to enable their removal, should future localised survey work conclude that activities will not result in adverse effects on the integrity of a European site.</p> <p>They felt that a degree of latitude should be maintained to enable future decisions to be based on site-specific appropriate assessments conducted by the competent planning authority.</p>	<p>The OGA, as the competent authority for the HRA of the licensing plan, must be satisfied that approval of this plan (i.e. the 14th licensing round and the grant of individual licences) will not give rise to AEOI of European sites. Broadly speaking, the OGA is not able to approve the plan (in the absence of Imperative Reasons of Overriding Public Importance) unless this is the conclusion of the appropriate assessment.</p> <p>Although a licence does not, in its own right, directly grant any consent, authorisation or permission for any specific development activities, the methodology and assessment have adopted an approach that is wholly consistent with the precautionary principle, and have analysed the possible impact(s) of a range of development activities which may potentially follow licensing. Our assessment has determined that AEOI of European sites could be associated with the carrying out one or more types of development activities, and accordingly we have imposed a licence condition in order to directly address this and to avoid the AEOI that have been identified in this assessment.</p> <p>However, it is necessarily the case that any proposed development activities will be subject to further assessment and approval before they can be carried out within a licence block. To this extent, it is not accurate to state that the outcome of this assessment has pre-determined lower-level assessments – it is simply a fact that a two-tier approach may be required in certain circumstances, but that nonetheless the OGA is only able to approve the licensing plan where it has ascertained that doing so will not adversely affect European sites.</p> <p>It follows therefore that any proposals for specific development activities will necessarily be subject to further consideration under the Habitats Directive (92/43/EEC), Conservation of Habitats and Species Regulations 2010 (as amended) if the circumstances of the case indicate that the activity would have likely significant effects on, or adverse on the integrity of, European sites. Whether or not a further project-level assessment is required will be determined by individual planning authorities, and possibly other permitting authorities, at the project-level once more information is available as to the nature and location of the development activities proposed.</p>
<p><u>Modification to licence conditions and advice notices</u></p> <p>A wide range of consultees suggested modification to licence conditions and advice notices, with views diverging on whether these</p>	<p>Licence conditions will be adopted to ensure that, where our assessment has concluded that AEOI from specified future activities are unavoidable, the carrying out of the activity is prohibited when a licence is granted so that, in consequence,</p>

<p>should be more or less stringent, dependent on the consultee.</p> <p>In terms of being more restrictive, the following was suggested:</p> <ul style="list-style-type: none"> • advice notices and buffer zones should exclude activities under stages A to D. • Licence conditions should not permit activities in/under: <ul style="list-style-type: none"> • National Parks and AONBs • areas adjacent to proposed nuclear power stations. <p>In terms of being more permissive, it was suggested that:</p> <ul style="list-style-type: none"> • proposed licence conditions should be modified when applied to near shore assessments to permit seismic survey work that won't rely on vibroseis or use of localised explosions and when on shore, to permit other non-intrusive survey work currently not permitted under Stage A of exploration and production activity. 	<p>adverse effects on integrity of a site are prevented.</p> <p>The intention of the advice notice is to highlight the potential sensitivity of the buffer zone (due to its proximity or connectivity to the European site) and the fact that mitigation and/or alternative siting may therefore be required by planning authorities and possibly other permitting bodies further considering HRA issues for specific project-level development activities. However, at this strategic plan level, our conclusion is that Stage A, B, C and D activities can be carried out outside the European site (including within the buffer zones) without having AEOL of the European site itself. Accordingly, the advice notice issued with the licence will not be a formal licence condition, but will simply be advice directed to the licensee as to the potentially sensitive nature of the buffer zone. Authorities considering project-specific consent applications should nonetheless give further and detailed consideration to the specific features and elements of each proposed project and thus the likelihood for the proposed development activity to have a significant effect on a European site. This will ultimately determine whether a further, project-level HRA is required.</p> <p>In addition to the above, it should be noted for wider context that sections 4A and 4B of the Petroleum Act 1998 (as inserted by section 50 of the Infrastructure Act 2015) will, when in force, prohibit the defined activity of "associated hydraulic fracturing"⁸ from taking place in all land in England and Wales at a depth of less than 1,000 metres below the surface, and that in issuing any consent to undertake hydraulic fracturing (as defined in the Petroleum Act 1998), the Secretary of State for Energy and Climate Change is satisfied that a range of safeguards and conditions (including relating to the environment) have been met. Furthermore, the draft Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015, set out that associated hydraulic fracturing will not be permitted at depths less than 1,200m in specified protected areas. National Parks, the Broads, Areas of Outstanding Natural Beauty, World Heritage Sites and Source Protection Zones 1 are listed as protected areas in the draft Regulations⁹.</p> <p>Again, for wider context, the Government has also committed to ensure that hydraulic fracturing cannot be conducted from wells that are drilled at the surface of specified protected areas and is consulting with industry and other interested parties on how best to implement this. These areas include National Parks, the Broads, Areas of Outstanding Natural Beauty, World Heritage Sites, Source Protection Zones 1, Sites of Special Scientific Interest, Natura 2000 and Ramsar sites. This is not intended to impact on conventional drilling operations.</p> <p>For the avoidance of doubt, where the assessment refers to the prohibition of "Activity A" (non-intrusive exploration), this refers to seismic surveys – in other words, those involving shallowly buried explosives or vibroseis – and not to passive monitoring such as magnetic or gravity surveys. These latter surveys are frequently conducted from aircraft and cannot be considered to present any risk due to their passive nature.</p>
<p><u>Assessment unnecessary</u></p> <p>One respondent felt that it is not possible, or indeed necessary, at this stage to conduct a HRA appropriate assessment of generic activities in particular with respect of temporary, low-impact, Stage A surveying activities. Such assessments, they felt, should be conducted by the relevant Mineral Planning Authority once a detailed project scope to include work plans, location and timings is available. They felt that the approach taken in the current high-level HRA is inconsistent with the assessment approach recommended by DEFRA in 'The Habitats and Wild Birds Directives in England and its seas. Core guidance for developers, regulators & land/marine managers (2012)' which stresses that any 'AEOL decision must be considered on a case-by-case basis, taking account of the potential effects of the particular plan or project on the particular site and its protected features'. Furthermore, the</p>	<p>The OGA accepts that any effects on European sites that would be caused by specific development activities, such as seismic surveys, are controlled separately under the planning system, and are not directly authorised by the grant of a licence. Furthermore, individual planning decisions will be subject to HRA appropriate assessments wherever required by law and in the full environmental context of each proposal.</p> <p>Nevertheless, in line with the precautionary principle, the OGA decided to carry out assessments which it deemed appropriate before issuing licences.</p> <p>In consequence, the report contains the resulting assessment of the blocks for which a licence application had been received and was under consideration for award, required prior to OGA making</p>

⁸ See section 4B(1) of the Petroleum Act 1998 for the definition

⁹ NB neither sections 4A and 4B of the Petroleum Act 1998, nor the Onshore Hydraulic Fracturing (Protected Areas) Regulations are in force at the point of publication of this report

<p>conclusions of the current HRA that exploration activities necessarily lead to AEOI are not supported by reference to the impacts of historical surveying (and drilling) activities within the boundaries of European sites in the UK.</p>	<p>a decision to actually award licences. This includes appropriate assessment of the individual licence blocks for which an award was being considered. It has been undertaken in accordance with the European Commission Guidance (EC 2000)12 and with reference to other guidance and reports, including the Habitats Regulations Guidance Notes (EN 1997; Defra (2012), Tyldesley (2012), the National Planning Policy Framework (DCLG 201213) and English Nature Research report, No. 704 (Hoskin & Tyldesley 2006).</p>
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16. As set out above, and in response to these comments, we have undertaken further work to ensure that the conclusions reached in our assessment are sound. We have updated the HRA Technical Report and its appendices to reflect changes made following the consultation, or where appropriate we have added further explanations in the report to clarify the methodology and assessment that we have undertaken.

17. The key changes to the HRA Technical Report are outlined below:

- ▶ two European sites were identified by consultees that we had inadvertently omitted from our assessment – the ‘Flamborough and Filey Coast pSPA’, and a possible extension to the ‘Teemouth and Cleveland Coast SPA’. As a direct result of this response we have re-assessed and updated the conclusions for 13 licence blocks. The result of this is that new or additional restrictions in activities have been proposed for five licence blocks, in accordance with the same methodology set out in the consultation document.
- ▶ three illustrated case studies have been added to Chapter 4 to make the methodology we have used in assessing individual licence blocks more clear, and to help identify how the imposition of a licence condition will be sufficient to avoid adverse effects on European sites.
- ▶ we have expanded the commentary in Chapter 5 to make the methodology we have used to assess in-combination effects more clear.

18. Through our assessment, we have concluded that there will be no adverse effects on the integrity of any European site as a result of approval of the 14th round licensing plan, and of the grant of individual licences. The updated HRA can be found at:

<https://www.gov.uk/government/consultations/habitats-regulations-assessments-of-14th-onshore-oil-and-gas-licensing-round>.

Next steps

19. Having considered the responses to the consultation, as summarised above in Table 2, the OGA has concluded, through the use of the approach to assessment set out in the Technical Report, that the approval of the 14th round licensing plan, as described in the report, and the approval of individual licences will not directly lead to any adverse effects on the integrity of European sites. The OGA is, therefore, proceeding with approval of the 14th licensing round and the grant of the individual licences, subject to the conclusions and recommendations contained in the assessment.

20. The OGA will offer licences for the 159 blocks considered within HRA – this includes the 27 blocks that did not require further detailed assessment under the Habitats Regulations and the

132 that did require further assessment – but we will restrict certain activities in certain licence blocks – as set out in Appendix D of the Technical Report – through conditions contained in the licence to avoid adverse effects on the integrity of any European site. As set out in the report, the OGA will also issue advice notices to relevant licensees for certain blocks, but these notices will not be formal licence conditions.

21. It is worth emphasising that no specific development activity is directly authorised by issue of the licences (the award of which also does not imply prior consent of any actual activities). Instead, proposals for specific development activities will be considered and, if appropriate, authorised separately under the planning and regulatory systems. If, particularly in the case of planning permission, the factual and scientific circumstances of an individual application conclude that the proposed development in question would be likely to have a significant effect on a European site, that proposal will necessarily be subjected to further scrutiny in accordance with the Habitats Regulations. To this extent, it is important and necessary to emphasise that the approval of the 14th licensing round, and the granting of individual licences, does not imply any definitive or final clearance of Habitats Regulations considerations.

Annex 1: list of organisations responding to the consultation

22. Below is a list of organisations that responded to the consultation. As set out in the consultation document, personal names, addresses or other contact details are not listed. One organisation responding asked not to be named so is not include in the list.

Atkins Ltd
Aurora Energy Resources Limited
Bat Pro Limited & Gloucester Bat Group
Bath & North East Somerset Council
Borough of Poole Council
Bratton Parish Council
Chippenham Green Party
Chippenham Green Party*
Chitterne Parish Council
Cuadrilla Resources Ltd
Dean Community Energy Group
Dean Natural Alliance
Dilton Marsh Parish Council
Dorset County Council
E.ON UK Plc
EDF Energy
Energy UK
En-Venture
Europa Healthcare Solutions/Green Party of England and Wales/private individual
Everingham Conservation Group
FoE Gloucestershire network and FoE Wiltshire
Food Business in The Forest of Dean
Forest of Dean Cave Conservation & Access Group (FoDCCAG)
Forest of Dean District Council
Forest of Dean Friends of the Earth
Frack Free Banwell and Western Super Mare
Frack Free Chew Valley
Frack Free Devizes
Frack Free Isle of Wight
Frack Free North Yorkshire
Frack Free Nottinghamshire
Frack Free Ryedale
Frack Free Somer Valley
Frack Free South London

Friends of Sherwood Forest and Nottinghamshire
Friends of the Earth
Friends of The Forest
Friends of the Peak District/CPRE South Yorkshire
Frome Town Council (a Councillor)
GASCON – Gilling, Ampleforth, Stonegrave, Cawton, Oswaldkirk, Nunnington (a group of residents from these villages concerned about fracking)
Glastonbury Town Council (a Councillor)
Glastonbury Town Council (a Councillor)*
Gloucestershire County Council
Gloucestershire Wildlife Trusty
Green Party Isle of Wight
Gwent Wildlife Trust
Hampshire County Council
Hands Off Our Forest (of Dean)
Helmsley Town Council (a Town Clerk)
Heywood Parish Council
HOOT (Hands off our towns)
Horwich Town Council (a Town Clerk)
Howich [sic] Town Council (a Councillor)
Hull Friends of the Earth
Hull Friends of the Earth*
Hustwaite Parish Council
A Mendip District Councillor, and member of the cross-party Fracking Working Group
Isle of Wight Council
It's Our County (political party, Herefordshire)
Keep East Lancashire Frack Free (KELFF)
Keep Kurdford and Wisborough Green
Keep Wiltshire Frack Free
Lancashire County Council
Lancaster City Council
Langton Matravers Parish Council
Leeds City Council
Liverpool City Region local authorities
Local business
Mansfield Green Party
Melksham Without Parish Council
Member of West Wilts Frack Free
Mendip Caving Group

Minting and Gautby Parish Council
Natural England
North Somerset Council
North Yorkshire Moors National Park Authority
Nottinghamshire County Council
Peak District National Park
Pewsey Environmental Action Team
Pewsey Environmental Action Team*
Poulshot Parish Council
RSPB
Safe Air Action Group
Shared Earth Learning Forest School
Sheffield and Rotherham Wildlife Trust
Sheffield City Council
Signatories from the School of Earth and Environment, Leeds University
Somerset County Council
Somerset Wildlife Trust
South Downs National Park Authority
St Helens Green Party
St Helens Green Party*
Stroud District Council
Swanage Town Council (a Town Clerk)
The Wildlife Trust for Lancashire, Manchester & North Merseyside
Transition Forest of Dean
Trowbridge Area Frack Free
UK Oil & Gas Investments PLC
UK Oil & Gas (UKOG)
Warminster against fracking community
Warminster anti fracking community
Warminster Anti Fracking Group
Wareham St Martin Parish Council
West Dean Parish Council
West Keal Parish Council
West Wilts Green Party
Westwood Parish Council
Wildfowl & Wetlands Trust
Wiltshire Clean Energy Alliance
Wiltshire Council

Wiltshire Wildlife Trust
Wingfield Parish Council
Worton Parish Council
Wye Valley AONB
Yorkshire Wildlife Trust

* Note: we have denoted with an asterisk where two different responses were submitted on behalf of the same organisation.

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