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Department for Environment Food & Rural Affairs

# Habitats Regulations Assessment of the National Policy Statement for Water Resources

Final Methodology Report



March 2018

Amec Foster Wheeler Environment  
& Infrastructure UK Limited



### Report for

Water Infrastructure Team  
Department for Environment Food & Rural Affairs  
Nobel House  
17 Smith Square  
London  
SW1A 3JR

### Main contributors

Mike Frost  
Pete Davis  
Alex Melling  
Russell Buckley

### Issued by

.....  
Alex Melling

### Approved by

.....  
Pete Davis

### Amec Foster Wheeler

Redcliff Quay  
120 Redcliff Street  
Bristol BS1 6HU  
United Kingdom  
Tel +44 (0)117 317 8950

Doc Ref. 39649-07bri015ir

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### Document revisions

No.	Details	Date
1	Draft HRA Methodology Report	18.8.17
2	Final Draft HRA Methodology Report	10.09.17
3	Final HRA Methodology Report	10.10.17
4	Final HRA Methodology Report (Published)	08.11.17
5	Final HRA Methodology Report (Post-consultation)	12.03.18
6	Final HRA Methodology Report	14.03.18



# Executive Summary

## Overview

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

The NPS itself is to be subject to the provisions of article 6(3) of the "Habitats Directive" (92/43/EEC) and the requirements of regulations 105, 107 and 109 of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations')<sup>1,2</sup>. These provisions require an assessment of whether there are any 'likely significant effects' (LSE) on any European site<sup>3</sup> as a result of the implementation of the NPS (either on its own or 'in combination' with other plans or projects) and, if so, whether these effects will result in any adverse effects on that site's integrity.

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

## Purpose of this Report

The purpose of this Methodology Report is to set out the approach to undertaking the HRA of the NPS for Water Resources, consistent with current European Commission guidance<sup>4</sup> and covering:

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

Defra has consulted statutory and other selected consultees on this HRA Methodology Report (alongside a separate Appraisal of Sustainability Scoping Report). Using the approach set out in this report, as amended on the basis of consultation responses where appropriate, the potential effects of the draft NPS will be appraised against the requirements of regulation 105 of the Habitats Regulations.

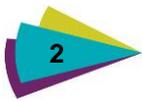
Once completed, the HRA Report will be published as part of the formal public consultation on the draft NPS.

<sup>1</sup> SI 2017 No. 1012; available at [https://www.legislation.gov.uk/uksi/2017/1012/pdfs/ukxi\\_20171012\\_en.pdf](https://www.legislation.gov.uk/uksi/2017/1012/pdfs/ukxi_20171012_en.pdf)

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

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

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



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# 1. Introduction

## 1.1 Overview

- 1.1.1 Public water supplies and future water availability will be affected by population and economic growth, changes in consumer behaviour and the impacts of climate change. The Government's '25 Year Environment Plan'<sup>5</sup> states that:

*"Water companies must develop and implement robust long-term plans that develop new water resources where needed. New supplies will include large infrastructure, such as reservoirs and water transfers, which are needed to make sure the water industry can provide sufficient water for homes and businesses and reduce abstraction from some sources to protect the environment".*

- 1.1.2 The Government has set out how it will enhance its policy framework to ensure the long term resilience of the public water supply in 'Creating a great place for living: Enabling resilience in the water sector'<sup>6</sup>. It highlights that in order to meet this challenge, the water industry may need to develop new water supply infrastructure that could be considered to be 'nationally significant' and that the Government is minded to prepare a National Policy Statement (NPS) to support the delivery of this infrastructure. Subsequently, in her Written Statement<sup>7</sup> of 14<sup>th</sup> March 2017, the Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities confirmed that the Government will prepare an NPS for nationally significance water resources infrastructure. The preparation of the NPS was identified in the actions contained in the '25 Year Environment Plan'. This work is being led by the Department for Environment, Food and Rural Affairs (Defra).
- 1.1.3 The NPS for Water Resources will guide the Secretary of State (SoS), Planning Inspectorate and developers in the consideration of any applications for development consent in relation to water resource-related nationally significant infrastructure projects (NSIPs) in England. Its development will be informed by the 'Climate Change Risk Assessment 2017'<sup>8</sup>, the 'Water resources long term planning framework (2015-2065)<sup>9</sup>, other evidence<sup>10,11</sup> and water resources management plans (WRMPs) prepared by water companies.
- 1.1.4 Once the NPS has been designated, the Secretary of State will be required to determine any applications for development consent in accordance with it, unless certain other criteria (set out in the Planning Act 2008) apply. The NPS will support the delivery of future large supply projects identified in water company WRMPs, helping the water companies to plan, fund and develop any new large infrastructure that will improve the resilience of future water supplies. The NPS is likely to be non-site specific, focussing on the high level assessment principles against which development consent order applications will be considered, rather than identifying specific sites.
- 1.1.5 Both water management and planning are devolved issues. Therefore, the Welsh Government, Northern Ireland Executive and Scottish Government each have responsibility for these issues in or as regards their respective countries. The NPS will apply to England only.

<sup>5</sup> HM Government (2018) *A Green Future: Our 25 Year Plan to Improve the Environment*. Available from <https://www.gov.uk/government/publications/25-year-environment-plan> [Accessed February 2018]

<sup>6</sup> Defra (2016) *Creating a great place for living: Enabling resilience in the water sector*. Available from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504681/resilience-water-sector.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504681/resilience-water-sector.pdf) [Accessed August 2017].

<sup>7</sup> UK Parliament (2017) *Affordable, Resilient Water Supplies: Consultation on the Government's Strategic Priorities for Ofwat: Written statement - HCWS530*. Available from: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-03-14/HCWS530/>

<sup>8</sup> Committee on Climate Change (2017) *UK Climate Change Risk Assessment 2017*. Available from <https://www.theccc.org.uk/tackling-climate-change/preparing-for-climate-change/uk-climate-change-risk-assessment-2017/> [Accessed August 2017].

<sup>9</sup> Water UK (2016) *Water resources long term planning framework*. Available from [https://dl.dropboxusercontent.com/u/299993612/Publications/Reports/Water%20resources/WaterUK%20WRLTPF\\_Final%20Report\\_FINAL%20PUBLISHED.pdf](https://dl.dropboxusercontent.com/u/299993612/Publications/Reports/Water%20resources/WaterUK%20WRLTPF_Final%20Report_FINAL%20PUBLISHED.pdf) [Accessed August 2017].

<sup>10</sup> Defra (2016) *Guiding Principles for Water Resources Planning*.

<sup>11</sup> Environment Agency and Natural Resources Wales (2016) *Final Water Resources Planning Guideline*. Available from <https://naturalresources.wales/media/678739/ea-nrw-and-defra-wg-ofwat-technical-water-resources-planning-guidelines.pdf> [Accessed July 2017].

- 1.1.6 The NPS is subject to the provisions of article 6(3) of the ‘Habitats Directive’ (92/43/EEC) and the requirements of the Conservation of Habitats and Species Regulations 2017 (the ‘Habitats Regulations’)<sup>12</sup>. These provisions require an assessment of whether there will be any ‘likely significant effects’ on any European site as a result of the plan/project’s implementation (either on its own or ‘in combination’ with other plans or projects) and, if so, whether these effects will result in any adverse effects on the site’s integrity. This process is generally known as Habitats Regulations Assessment (HRA).

## 1.2 Purpose of this Methodology Report

- 1.2.1 Defra has commissioned Amec Foster Wheeler Environment and Infrastructure UK Ltd (Amec Foster Wheeler, now Wood) to undertake the HRA of the NPS for Water Resources. This Methodology Report provides a brief overview of the HRA process and sets out the methodology for the assessment of the NPS.
- 1.2.2 An initial version of this report supported early discussions with statutory consultees and provided information to other potentially interested stakeholders during a consultation exercise which ran from 13<sup>th</sup> November to 22<sup>nd</sup> December 2017 (see **Section 1.5**).

## 1.3 Water Resources Planning – An Overview

- 1.3.1 The Water Industry Act 1991, as amended by the Water Act 2003 and Water Act 2014, requires all water companies to prepare, maintain and publish statutory WRMPs. The plans set out how water companies intend to maintain the balance between water supply and demand and ensure security of supply over at least the next 25 years in a way that is economically, socially and environmentally sustainable.
- 1.3.2 Part III of the Water Industry Act 1991 states the following role for water companies in water supply:
- “37.—(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—*
- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and*
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes, as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.*
- 37A.—(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.”*
- 1.3.3 The Government has set out its priorities for water companies in developing their WRMPs via the ‘guiding principles’<sup>13</sup>. The Water Resources Planning Guideline<sup>14</sup> produced by the Environment Agency and Natural Resources Wales, meanwhile, provides a framework for the development and presentation of water company plans. The process of developing a WRMP requires an estimation of baseline supply forecast to be prepared, along with an estimation of baseline demand forecast. The uncertainties and target headroom required are then estimated. The calculation of the baseline supply demand balance for each year of the plan’s period are then used to determine if

<sup>12</sup> SI 2017 No. 1012; available at [https://www.legislation.gov.uk/ukxi/2017/1012/pdfs/ukxi\\_20171012\\_en.pdf](https://www.legislation.gov.uk/ukxi/2017/1012/pdfs/ukxi_20171012_en.pdf) [Accessed March 2018].

<sup>13</sup> Further information available at <https://www.gov.uk/government/publications/water-resources-planning-managing-supply-and-demand/water-resources-planning-how-water-companies-ensure-a-secure-supply-of-water-for-homes-and-businesses>. A full copy of the guiding principles can be requested from [water-company-plan@environment-agency.gov.uk](mailto:water-company-plan@environment-agency.gov.uk)

<sup>14</sup> Environment Agency and Natural Resources Wales (2016) *Final Water Resources Planning Guideline*. Available from <https://naturalresources.wales/media/678739/ea-nrw-and-defra-wg-ofwat-technical-water-resources-planning-guidelines.pdf> [Accessed July 2017].

there are any years or critical periods where there is likely to be a supply-demand balance deficit. Once this information has been established, options which could be used to manage the supply demand balance deficit are considered with the final planning solution for managing supply and demand presented in the WRMP. Following public consultation on the draft WRMP, amendment, review and direction by the Secretary of State for Food, Environment and Rural Affairs, the water company will publish the final WRMP.

- 1.3.4 The process of option development that underpins WRMP preparation includes a review of as many potential solutions as possible (the 'unconstrained list' of options) to identify 'feasible' (constrained) options. These 'feasible' options are then reviewed to identify 'preferred options' to resolve any supply deficits. The types of options considered in preparing WRMPs can be broadly categorised as follows:
- ▶ supply side measures – increasing the water available for use in the local supply area through an increase in deployable output;
  - ▶ water transfer – importing water from an area of surplus into an area of deficit;
  - ▶ demand management - reducing the demand for water through a combination of leakage reduction and water efficiency measures.
- 1.3.5 Once the WRMP is adopted, the preferred options are then implemented as schemes. Schemes that include the development of new water supply infrastructure usually require planning consent under the Town and Country Planning Act 1990. This planning framework has helped water companies understand future needs and maintain the balance of supply and demand within their boundaries.
- 1.3.6 The Environment Agency's 2011 'Case for Change'<sup>15</sup> considered the implications of climate change for water supplies regionally and nationally and concluded that while demand management will have an important role, significant new water resources will be needed to meet the needs of people, businesses and the environment. The Government requested that the water industry develop a national water resources long term planning framework to establish water needs and the strategic options that could meet these needs. The Water UK's 2016 'Water resources long term planning framework (2015-2065)' noted the importance of demand management in conjunction with a combination of localised initiatives and strategic schemes to provide future resilience. Reflecting the recommendations of this report, the Government has confirmed<sup>16</sup> that a 'twin track' approach to improving the resilience of water supplies is required, with investment in new supplies complementing measures to reduce the demand for water.

## National Policy Statement for Water Resources

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

<sup>15</sup> Environment Agency (2011) *The case for change – current and future water availability*. Report No: GEHO1111BVEP-E-E

<sup>16</sup> See Defra (2007) *The government's strategic priorities and objectives for Ofwat*. Available from [https://consult.defra.gov.uk/water/consultation-on-a-new-sps/supporting\\_documents/Draft%20SPS%20for%20consultation%20%20FINAL.pdf](https://consult.defra.gov.uk/water/consultation-on-a-new-sps/supporting_documents/Draft%20SPS%20for%20consultation%20%20FINAL.pdf) [Accessed August 2017].

infrastructure that are classed as ‘nationally significant’. This is in order to ensure that the right type and scale of projects are included to address the water resilience challenge.

## 1.4 Habitats Regulations Assessment

- 1.4.1 Regulation 110 of the Habitats Regulations applies the provisions of regulations 105, 107 and 109 of the Habitats Regulations to National Policy Statements<sup>17</sup>.
- 1.4.2 Regulation 105 states that where a land-use plan “(a) is likely to have a significant effect on a European site<sup>18</sup> or a European offshore marine site<sup>19</sup> (either alone or in combination with other plans or projects); and (b) is not directly connected with or necessary to the management of the site” then the plan-making authority must “...make an appropriate assessment of the implications for the site in view of that site’s conservation objectives” before the plan is given effect.
- 1.4.3 The plan-making authority may agree to the plan only if it has determined that it will not adversely affect the integrity of the European site; or, where this is not the case, that the project meets the provisions of regulation 107 (that there is no satisfactory alternative; and that the plan must be authorised for imperative reasons of overriding public interest (IROPI)). The process by which regulation 105 of the Habitats Regulations is met is generally known as HRA<sup>20</sup>.
- 1.4.4 In accordance with the Habitats Regulations, there is a need for Defra to consider whether the NPS for Water Resources is likely to have a significant effect on any specified European sites. If this screening were to show that such effects were likely, Defra should make an appropriate assessment of the implications for these sites. The need for these actions arises because the NPS is not directly connected with, or necessary for the management of, any European sites, which would otherwise exempt the NPS from these requirements.
- 1.4.5 Defra notes that all development consent order applications which are made pursuant to the NPS for Water Resources, once designated, will be subject to the requirements of the planning system under the Planning Act 2008.

## 1.5 Consultation and Stakeholder Engagement

- 1.5.1 The initial Methodology Report was issued for consultation to the UK statutory consultees for the Habitats Regulations, and to the other relevant bodies identified in **Box 1.1** for comment between 13<sup>th</sup> November and the 22<sup>nd</sup> December 2017. Whilst this technical consultation was primarily aimed at the statutory nature conservation consultees, identified under the Habitats Regulations, Defra also made the initial Methodology Report publicly available. The initial AoS Scoping Report and a consultation document on the NPS (concerning proposed principles to be used to guide the detailed development of the NPS and proposals to change the types and sizes of new water supply infrastructure defined in the Planning Act 2008) were also issued for consultation at the same time.

<sup>17</sup> The regulations apply the provisions of articles 6(3) and 6(4) of the Habitats Directive 92/43/EEC to land-use plans in England and Wales; these are applied to land-use plans by regulations 85A – 85E of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (SI 1994 No. 2716) in Scotland; and by regulation 64B of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (SI 1995 No. 380) in Northern Ireland.

<sup>18</sup> Strictly, ‘European sites’ are: any Special Area of Conservation (SAC) from the point at which the European Commission and the UK Government agree the site as a ‘Site of Community Importance’ (SCI); any classified Special Protection Area (SPA); any candidate SAC (cSAC); and (exceptionally) any other site or area that the Commission believes should be considered as a SAC but which has not been identified by the Government. However, the term is commonly used when referring to potential SPAs (pSPAs), to which the provisions of article 4(4) of Directive 2009/147/EC (the ‘new wild birds directive’) apply; and to listed Ramsar Sites, to which the provisions of the Habitats Regulations are typically applied a matter of Government policy (e.g. National Planning Policy Framework (NPPF) para. 118; EN-1 para. 5.3.9). “European site” is therefore used in this report in its broadest sense, as an umbrella term for all of the above designated sites. The protection provided by the Habitats Regulations is sometimes (but not always) explicitly extended to include possible SACs (pSACs) by Government policy (e.g. the NPPF specifically includes pSACs in para. 118; EN-1 does not).

<sup>19</sup> ‘European offshore marine sites’ are defined by regulation 15 of *The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007* (as amended).

<sup>20</sup> The term ‘Appropriate Assessment’ has been historically used to describe the process of assessment; however, the process is now more typically termed ‘Habitats Regulations Assessment’ (HRA), with the term ‘Appropriate Assessment’ limited to a specific stage within the process.

**Box 1.1 Specific Consultees**

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

- 1.5.2 Comments on any aspect of the initial Methodology Report were welcomed although views were particularly sought in response to the following questions:
- ▶ Do you think that the proposed approach to assessing the NPS against the Habitats Regulations is appropriate? For example, you may consider if the approach described is proportionate and whether it would provide a suitable level of information about potential habitats impacts. If not, how do you think the intended approach should be amended, and why?
  - ▶ Do you think that the HRA Methodology Report sets out sufficient information to establish the context for the Screening Report and later Appropriate Assessment? If not, which areas do you think have been missed and where is the information available from?
- 1.5.3 A total of 30 responses to the initial HRA Methodology Report were received from a range of bodies and individuals including: statutory consultees; the energy sector; water companies and other water sector representatives; local planning authorities; environmental groups; and individuals. Responses particularly concerned:
- ▶ possible alternatives to the NPS in the context of a twin track approach and a focus on demand management;
  - ▶ the overall level of detail provided in the report in terms of the proposed approach to the HRA;
  - ▶ the need for additional clarity with regard to the geographic scope of the assessment;
  - ▶ the consideration of in-combination effects;
  - ▶ the need to ensure that mobile species are fully considered in the assessment;
  - ▶ requests to review HRAs undertaken in support of water company Water Resources Management Plans.
- 1.5.4 **Appendix A** contains a schedule of the consultation responses received on the initial Methodology Report.
- 1.5.5 It is intended that the draft NPS and accompanying HRA Report, alongside the Appraisal of Sustainability (AoS) Report (see **Section 1.6**), will be made available in 2018 in a full public and parliamentary consultation.

## 1.6 Appraisal of Sustainability

- 1.6.1 Concurrent with the HRA, and in fulfilment of section 5(3) of the Planning Act 2008, an AoS of the NPS for Water Resources is also being completed. The AoS will ensure that the likely environmental and socio-economic effects of the NPS are identified, described and evaluated. The AoS will also need to satisfy the requirements of the European Union Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (commonly



referred to as the Strategic Environmental Assessment (SEA) Directive) and relevant implementing regulations<sup>21</sup> (the SEA Regulations).

- 1.6.2 The findings of the AoS will be presented in an AoS Report that will be published alongside the draft NPS and HRA Report for consultation. The findings of the HRA will be used to inform the AoS and in particular with respect to the consideration of the effects of the draft NPS on biodiversity.

## 1.7 Structure of this Methodology Report

- 1.7.1 This report is structured as follows:

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

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<sup>21</sup> The Environmental Assessment of Plans and Programmes Regulations 2004 S.I. 2004 No. 1633.

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

### 2.1 Overview

2.1.1 Current European Commission guidance<sup>22</sup> suggests a four-stage process to carry out a HRA, although not all stages are necessarily required. These stages, and the assessment process, are summarised in **Box 1** below.

**Box 1 – Stages of Habitats Regulations Assessment**

**Stage 1 – Screening:**  
This stage identifies the likely impacts upon a European site of a project or plan, either alone or ‘in combination’ with other projects or plans, and considers whether these impacts are likely to be significant.

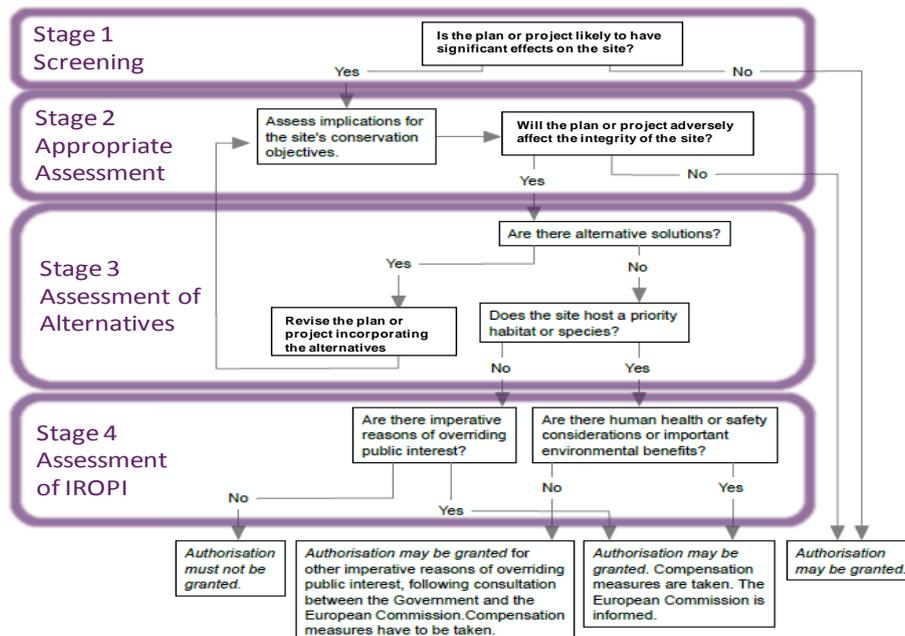
**Stage 2 – Appropriate Assessment:**  
Where there are likely significant effects, or where this is uncertain, this stage considers the effects of the plan or project on the integrity of the relevant European sites, either alone or ‘in combination’ with other projects or plans, with respect to the sites’ structure and function and their conservation objectives. Where it cannot be concluded that there will be no adverse effects on sites’ integrity, it is necessary to consider potential mitigation for these effects.

**Stage 3 – Assessment of Alternative Solutions:**  
Where adverse effects remain after the inclusion of mitigation, this stage examines alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of European sites.

**Stage 4 – Assessment Where No Alternative Solutions Exist and Where Adverse Impacts Remain:**  
This stage assesses compensatory measures where it is deemed that the project or plan should proceed for imperative reasons of overriding public interest (IROPI). The EC guidance does not deal with the assessment of IROPI.

2.1.2 The application of the HRA stages to a plan or project is illustrated in **Figure 2.1**.

Figure 2.1 Application of HRA Stages to a Plan or Project



<sup>22</sup> Methodological guidance on the provisions of article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC 2002). Available at: <http://bit.ly/1LXRR8Z>

- 2.1.3 Regulation 105 of the Habitats Regulations essentially provides a test that the final plan must pass; there is no statutory requirement for HRA to be undertaken on draft plans or similar developmental stages. However, it is accepted best-practice for the HRAs of strategic plans or policy documents to be run as an iterative process alongside their development. This helps ensure that policies that plan positively for the environment are developed from the outset of the plan-making process, rather than the HRA being a purely retrospective assessment exercise applied towards the end of a plan's development.

## 2.2 Guidance on HRA

- 2.2.1 There is little specific guidance on the application of HRA to National Policy Statements, particularly as similar high-level policy documents are often excluded from the HRA process<sup>23</sup>. However, the HRA of the NPS for Water Resources will be based on case-practice established through the HRAs of similar National Policy Statements (for example, NPSs EN-1 – EN-5) and the following general guidance:
- ▶ Department for Environment, Food and Rural Affairs [Defra] (2012) The Habitats and Wild Birds Directives in England and its seas: Core guidance for developers, regulators & land/marine managers. Defra, London;
  - ▶ DTA Publications (2016) The Habitats Regulations Handbook [online]. Available at: <http://www.dtapublications.co.uk/handbook/> [Accessed July 2017];
  - ▶ European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of article 6(3) and (4) of the Habitats Directive 92/43/EEC;
  - ▶ European Commission (2000) Managing Natura 2000 sites: The provisions of article 6 of the Habitats Directive 92/433/EEC. European Commission, Brussels; and
  - ▶ European Commission (2007/2012) Guidance document on article 6(4) of the Habitats Directive 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion Of The Commission. European Commission, Brussels.

## 2.3 Key Issues for the HRA of the NPS

### Purpose and Scope of the NPS

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

### Infrastructure to be covered by the NPS

- 2.3.2 The infrastructure to be covered by the NPS will reflect the definitions for nationally significant infrastructure that are related to water as set out in Sections of 27 and 28 of the Planning Act 2008. These currently include:

<sup>23</sup> European Commission guidance on the application of article 6(3) (*Managing Natura 2000 sites: the provisions of Article 6 of the Habitats Directive 92/43/EEC* (EC, 2000) states that "...a distinction needs to be made with 'plans' which are in the nature of policy statements, i.e. policy documents which show the general political will or intention of a ministry or lower authority. An example might be a general plan for sustainable development across a Member State's territory or a region. It does not seem appropriate to treat these as 'plans' for the purpose of Article 6(3), particularly if any initiatives deriving from such policy statements must pass through the intermediary of a land use or sectoral plan. However, where the link between the content of such an initiative and likely significant effects on a Natura 2000 site is very clear and direct, Article 6(3) should be applied."

- ▶ the development of dams or reservoirs where they are constructed in England by one or more water undertakers and have a capacity in excess of 10 million cubic metres of water;
- ▶ the alteration of dams or reservoirs where they are located in England, altered by one or more water undertakers and result in an increase in capacity in excess of 10 million cubic metres of water;
- ▶ the transfer of water resources, where the development is carried out in England by one or more water undertakers, in excess of 100 million cubic metres of water per year, does not relate to the transfer of drinking water and will enable the transfer of water resources:
  - ▶ between river basins in England,
  - ▶ between water undertakers' areas in England, or
  - ▶ between a river basin in England and a water undertaker's area in England.

2.3.3 Infrastructure of this scale has the potential to adversely affect European designated sites during both the construction and operational phases of development. Construction-related effects may be direct (due to, for example, the loss of habitats and species associated with land take) or indirect (for example, disturbance and emissions to air caused by vehicle movements and the operation of plant and machinery). Operational effects, meanwhile, may be associated with changes to the hydrological regime of affected water bodies (it is quite common for European sites to be vulnerable to changes in hydrology, be it either changes in groundwater or surface water) or the spread of invasive non-native species.

2.3.4 As set out in **Section 1.3**, alongside the development of the NPS, the Government is reviewing the Planning Act 2008 definitions of the types of water supply infrastructure that are classed as 'nationally significant' in order to ensure that the right type and scale of projects are included to address the water scarcity challenge. Consultation on proposals to amend these thresholds took place between 13<sup>th</sup> November and 22<sup>nd</sup> December 2017 and the responses received are currently being considered by Defra.

## Geographical Coverage of the NPS

2.3.5 The Water Resources NPS will provide the framework for decision making on development consent order applications for the construction of new water resources infrastructure in England<sup>24</sup>. In Scotland, Wales and Northern Ireland, planning consents for all nationally significant water resources infrastructure projects are devolved to the Scottish Parliament, Welsh Government and Northern Ireland Executive respectively. The examining authority will not examine applications in these territories and the NPS will not apply there. However, European sites in adjacent countries (most notably sites in Wales or Scotland given their common borders with England) may be vulnerable to the outcomes of the NPS due to the risk of cross-border impacts. This reflects the potential for water resource management schemes in England to impact upon adjacent areas in Scotland and Wales due to the transboundary nature of hydrological systems, such as rivers flowing across borders or bulk transfers.

## 2.4 What can be Assessed, and How?

2.4.1 As highlighted in **Section 2.3** above, the construction and operation of water resources infrastructure can affect European sites in a number of ways; however, it must be noted that the NPS for Water Resources will likely be a high-level policy document, without a spatial component. The principle mechanisms by which European sites could be affected will therefore be indirect, through the policies that control the future development of water resources infrastructure. The HRA, which will be an ongoing assessment undertaken alongside the development of the NPS, will therefore assess the likely effects and outcomes of the NPS with a particular focus on:

<sup>24</sup> This includes the Severn Trent, Dwr Cymru/Welsh Water and Dee Valley Water areas where a NSIP is in England.

- ▶ the overarching objectives of the NPS;
- ▶ the development principles; and
- ▶ the generic impacts and siting considerations, including generic mitigation measures.

2.4.2

As potential sites are unlikely to be identified in the NPS, any European site in England (and several in adjacent countries) could be affected by the activities to which the NPS will relate. However, attempting to identify and assess specific effects on specific sites is not appropriate where no potential development site has been identified. It is more appropriate for the assessment to focus instead on identifying the protective measures that can be included in the development of the NPS in order to safeguard European sites generally.

## 3. Approach

### 3.1 Data Collection and Scope

#### European Sites

- 3.1.1 The spatial scope of any HRA should be based on the likely outcomes of the plan and its 'zone of influence'; and the interest features of the European sites that may be affected and their potential vulnerabilities<sup>25</sup>. As noted in **Section 2.3**, the NPS for Water Resources will apply to England<sup>26</sup>, but several European sites in adjacent countries (most notably sites in Wales or Scotland given their common borders with England) may be vulnerable to its outcomes due to the risk of cross-border impacts. This reflects the potential for water resource management schemes in England to impact upon adjacent areas in Scotland and Wales due to the transboundary nature of hydrological systems, such as rivers flowing across borders or bulk transfers. It also reflects the potential for effects on mobile species from European sites outside England.
- 3.1.2 In the UK, there are currently:
- ▶ 651 SACs / SCIs;
  - ▶ 271 SPAs; and
  - ▶ 149 Ramsar sites<sup>27</sup>.
- 3.1.3 Since nationally significant water resources infrastructure could, in theory, be located anywhere in England, information on all of the above European sites, plus European offshore marine sites, will initially be collected to minimise the risk of sites or features being overlooked. Information on the European sites (citations, boundaries, Site Improvement Plans etc.), their interest features, and their sensitivity to potential effects associated with the NPS will be obtained from the Joint Nature Conservation Committee (JNCC); Natural England (NE); Natural Resources Wales (NRW); and Scottish Natural Heritage (SNH). It may be possible to later exclude some sites from assessment (see 'screening' below) on the basis of their location and the absence of potential impact pathways.

#### 'In Combination' Plans, Programmes and Projects

- 3.1.4 Regulation 105 of the Habitats Regulations requires that potential effects on European sites must also be considered "*in combination with other plans or projects*". The 'in combination' assessment must also consider within-plan effects (i.e. between different aspects of the policy) to ensure that there are no internal conflicts that may affect European sites. Consideration of 'in combination' effects is not a separate assessment, but is integral to the screening and appropriate assessment stages and the development of avoidance/ mitigation measures. There is limited guidance available on the scope of the 'in combination' element, particularly regarding which plans or projects should be considered. However, the assessment should not necessarily be limited to plans at the same level in the planning hierarchy and there is consequently a wide range of plans that could have potential 'in combination' effects with the NPS for Water Resources due to its national scale.
- 3.1.5 The plans identified by the AoS will form the basis for the assessment of 'in combination' effects; these plans will be reviewed to identify any potential effects that need to be considered (as necessary) within the screening or appropriate assessment stages. Plans or proposals likely to be considered for 'in combination' are identified in the topic chapters of Appendix B to the Final AoS Scoping Report.

<sup>25</sup> The vulnerability of an interest feature will depend on its 'sensitivity' and 'exposure' to a potential effect.

<sup>26</sup> This includes the Severn Trent, Dwr Cymru/Welsh Water and Dee Valley Water areas where a NSIP is in England.

<sup>27</sup> Joint Nature Conservation Committee (2017) *UK Protected Sites*. Available at: <http://jncc.defra.gov.uk/page-4> [Accessed August 2017].

## 3.2 Screening

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

## 3.3 Appropriate Assessment (AA)

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

## 3.4 Assessment of Alternatives

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

new water resources infrastructure. The NPS will establish the need for new nationally significant infrastructure in line with the Government's stated objectives and will detail the evidence base for this conclusion. Ofwat and water companies have also identified a need for strategic water resources infrastructure in conjunction with optimising demand management and improved local schemes. As it is the UK Government's view that there is a need for the infrastructure, the question of whether large infrastructure is necessary is not considered to be a relevant or feasible alternative.

- 3.4.3 Whilst it is the view of Government that an NPS would reduce uncertainty in the planning process and facilitate the timely delivery of nationally significant water resources infrastructure, it is still considered likely to be useful to assess the effects of proceeding with no NPS. In such circumstances, for nationally significant water resources infrastructure projects, a development consent order would still be required under the Planning Act 2008; however, its development and subsequent examination would be undertaken without the explicit guidance of an NPS.
- 3.4.4 Assuming that a NPS will be developed, it is anticipated that the focus will be on the alternatives to delivering water resources infrastructure through a non-site specific NPS, which could include:
- ▶ Amending the proposed scope of the NPS by (for example):
    - ▶ revising and/or extending the types of water resource infrastructure included in the Planning Act 2008;
    - ▶ revising and/or supplementing the volume thresholds for the types of water resources infrastructure included in the Planning Act 2008;
    - ▶ setting out generic water resources NSIP criteria in the Planning Act which are not specific to any type of infrastructure but which consider the volume thresholds a scheme would need to meet to be nationally significant.
  - ▶ Proposing an NPS that is non-site specific but applies criteria for cases where new water resources infrastructure would not be suitable (for example, criteria based on excluding areas of specific environmental concern such as nationally/internationally designated nature conservation sites or national landscape designations). Consideration could also be given under this alternative to the use of buffer zones for distances to different sensitive receptors.
  - ▶ Proposing a location-specific NPS that identifies candidate sites for nationally significant water resources infrastructure. There are examples of other NPSs taking a site specific approach: for example, the nuclear generation NPS (EN-6) identifies potentially suitable sites for the deployment of new nuclear power stations whilst the draft Airports NPS identifies Heathrow as the preferred location for new runway capacity and infrastructure in the south east of England.
  - ▶ Proposing a location-specific NPS that sets thresholds for nationally significant water resources infrastructure based on the scale of the supply demand deficit forecast by a water company and for which demand management and local supply options would be insufficient.
- 3.4.5 In all of the above instances, the approach would need to relate to the projects identified in the WRMPs for companies operating wholly or mainly in England.
- 3.4.6 The assessment of alternatives will determine whether there are any more appropriate approaches for the NPS that could ensure that adverse effects on European sites will not occur. Note that, when considering alternatives that are all likely to result in adverse effects, case-law<sup>28</sup> suggests that the 'least damaging' alternative does not inevitably need to be selected, rather that "*the choice requires a balance to be struck between the adverse effect on the integrity of [the site] and the relevant reasons of overriding public interest.*"

<sup>28</sup> Commission of the European Communities v Portuguese Republic (Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(4) — Castro Verde special protection area — Lack of alternative solutions) (Case C-239/04)

### 3.5 Assessment of IROPI and Identification of Compensatory Measures

- 3.5.1 If no alternatives to the NPS for Water Resources are suitable, it will be necessary to identify the Imperative Reasons of Overriding Public Interest (IROPI) in order to designate the NPS in a particular form. Any reliance on IROPI will be appropriately documented in the HRA, based on information provided by the Government.
- 3.5.2 Article 6(4) of the Habitats Directive and regulation 109 of the Habitats Regulations require that any compensatory mechanisms necessary to “ensure that the overall coherence” of the Natura 2000 network be secured. Specific compensatory mechanisms may be difficult to identify at the NPS level since it is unlikely to be spatially specific (specific adverse effects will not be identifiable such that bespoke compensation could be determined). In this case, the NPS will need to set out the framework for ensuring that any compensatory measures that are required by new water resources infrastructure meet the requirements of European Commission guidance<sup>29</sup> (i.e. that any compensation measures must be available, achievable and judged likely to be effective; and must be in place before the adverse effect occurs).

### 3.6 Outputs and Key Stages

- 3.6.1 As noted, regulation 105 of the Habitats Regulations essentially provides a test that the final NPS for Water Resources must pass; there is no statutory requirement for HRA to be undertaken on draft versions or developmental stages of a plan, or for formal reporting at, for example, the screening stage. However, it is accepted best-practice for policy-based HRAs to be undertaken iteratively alongside policy development.
- 3.6.2 The results of the HRA will be documented in a HRA Report that will summarise the assessment process and provide a formal assessment of the NPS that is intended to be adopted; this will incorporate screening.
- 3.6.3 If it is not possible to conclude that the NPS will have no adverse effect on the integrity of any European sites, it will be necessary to document and assess the alternative solutions, and (if necessary) any IROPI arguments and compensatory measures. In this case, the HRA Report would be adapted to include details of the assessment of alternatives, and the Government’s IROPI together with a framework for compensatory measures.
- 3.6.4 The HRA Report (including the assessment of alternatives and any required IROPI arguments and compensatory measures) would accompany the consultation on the draft NPS and the AoS Report. Following consultation, an analysis of any submissions received and any subsequent amendments to the NPS, the HRA Report will be reviewed to ensure that it continues to provide an objective assessment of the effects on integrity on European sites of the NPS upon designation.

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<sup>29</sup> European Commission (2007) *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion of The Commission*. European Commission, Brussels. Available at: <http://bit.ly/1DOQ7XC>

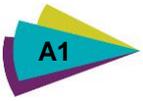
## 4. Next Steps

### 4.1 Summary

- 4.1.1 This Final HRA Methodology Report presents the approach to the HRA of the NPS for Water Resources. It has been produced following a consultation exercise between the 13<sup>th</sup> November and the 22<sup>nd</sup> December 2017 to enable technical experts from a number of statutory organisations, and other consultees, to comment on the proposed scope of the HRA of the NPS.

### 4.2 Next Steps

- 4.2.1 Using the approach set out in this document, the potential effects of the draft NPS will then be assessed against regulation 105 of the Habitats Regulations. Once completed, the HRA Report will be published as part of the formal public consultation on the draft NPS.



# Appendix A

## Schedule of Consultation Responses



Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
<b>National Infrastructure Planning Association (NIPA)</b>				
NIPA1	1	<p>NIPA's comments in respect of alternatives set out above [<i>in respect of the AoS Scoping Report</i>] should also be taken into account in respect of the HRA [<i>repeated below</i>].</p> <p>NIPA's view is that the AoS should consider alternative means of meeting water demand to large-scale infrastructure. Whilst the NPS will establish need for this infrastructure as part of a 'twin track' approach, NIPA suggests that, for example, demand management methods should be considered in the AoS in terms of being a sole solution, even if just by way of a brief acknowledgement and dismissal.</p> <p>NIPA also queries whether there is a need to consider properly alternative policy approaches. Whilst the AoS Scoping Report does reference a 'non-NPS' scenario (presumably with WRMPs), there are no alternatives mentioned in terms of other potential policy frameworks.</p> <p>Obviously assessment of reasonable alternatives is essential under SEA law to establish a legally robust NPS. The approach to alternatives should therefore be very carefully considered, to avoid legal challenge and delay in the delivery of these important schemes.</p>	<p>Comment noted. The AoS is being undertaken in a manner to meet the requirements of the SEA Directive 2001/42/EC. The SEA Directive requires the identification, description and evaluation of “<i>the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme</i>”.</p> <p>The NPS will provide planning policy guidance against which development consent order applications for any nationally significant water resources infrastructure project will be examined. It will also set out why nationally significant water resources infrastructure is needed, within the context of the twin track approach.</p> <p>Whilst it is valid to consider whether the need case for water resources infrastructure is appropriate, within the context and requirements of the SEA Directive, unless demand management infrastructure could be envisaged to be of such scale as to be within the scope of the NPS, it is unlikely that it could be considered a reasonable alternative. However, for completeness, it will be referenced in a section in the AoS Report that describes in detail the consideration of the alternatives to the NPS, and identifies which of those alternatives are considered reasonable. These reasonable</p>	N/A

Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
			alternatives will be taken forward and included within the subsequent appraisal.	
<b>EDF Energy</b>				
EDF1		No comment.	Noted.	N/A
<b>Chartered Institute of Water and Environmental Management (CIWEM)</b>				
CWM1	1	CIWEM welcomes the use of an HRA which will assess whether the NPS is likely to impact on any designated sites.	Comment noted.	N/A
<b>National Farmers Union (NFU)</b>				
NFU1	1	No comment.	Noted.	N/A
NFU2	2	No comment.	Noted.	N/A
<b>Blueprint for Water</b>				
BFW1	1, 2	<p>Recognising that there is little specific guidance on the application of HRA to National Policy Statements, we welcome the decision to undertake a HRA based on case-practice established through the HRAs of similar NPSs, and on the guidance cited. Given that the NPS will not have a spatial component, meaning that the principle mechanisms by which European sites could be affected will therefore be indirect, we welcome the approach of instead focussing on identifying the protective measures that can be included in the development of the NPS in order to safeguard European sites generally.</p> <p>However, it must be made clear in future guidance that site-specific impacts will therefore need to be assessed through the planning process for individual scheme applications, and that inclusion in the NPS does not mean that the impacts of particular infrastructure types have already been screened out and need not be assessed at that stage.</p> <p>The HRA consultation lacks detail in how the proposed approach will consider impacts on protected sites. The NPS should consider not just those protected sites in close proximity to NSIP schemes, but all those potentially hydrologically impacted by any changes to water flow and chemistry. The assessment should also consider impacts of any NSIP scheme on groundwater and consequently groundwater dependent protected areas. We also highlight that the HRA requirements</p>	<p>Comments noted.</p> <p>Comment noted. This comment relates to the draft NPS as opposed to the HRA Methodology Report and will be considered by Defra in preparing the draft NPS.</p> <p>Comment noted. The proposed approach is set out in the HRA Methodology Report. As this notes, it is unlikely to be possible to undertake a meaningful assessment of specific impacts on individual sites; in practice, the absence of any spatial or scheme detail means that virtually every site will be theoretically vulnerable to the</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>

Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
		<p>under the Habitats Directive requires the assessment of impact on the network of European Protected Sites and welcome the mention of this in the HRA.</p> <p>We welcome the provisional indication from Defra that the NPS will be subject to an ‘appropriate assessment’ as the possibility of ‘significant’ effects on European sites cannot be easily ruled out. With regards to the approach of setting out a framework for ensuring that any compensatory measures that are required by new water resources infrastructure (under IROPI) meet the requirements of European Commission guidance, this is in line with the approach we would advocate in relation to the above point on site-specific assessment, and we would welcome comparable guidance on the local assessment of impacts at individual project level.</p>	<p>outcomes of the NPS (i.e. the construction and operation of water resources schemes). Without any detail, the assessment of specific effects on specific sites would be entirely speculative – the number of imaginable impact pathways would be substantial, and the analysis would ultimately be generic observations. There is obviously a balance between identifying potential mechanisms by which sites could be affected (so as to ensure that policy is appropriately drafted) and attempting an exhaustive ‘assessment’ of all of the potential pathways by which individual sites might be affected.</p> <p>Comment noted. Requested detailed requirements for inclusion in the NPS do not fall within the scope of the HRA Methodology Report but will be considered by Defra in preparing the draft NPS.</p>	N/A
<b>Woodland Trust</b>				
WT1	1	No comment.	Noted.	N/A
WT2	2	No comment.	Noted.	N/A
<b>WSP</b>				
WSP1	1	Our only comment is to ensure that when undertaking a HRA, these are not restricted to European designated sites but also include Ramsar designations in tandem with both PPS9 and the NPPF.	Comment noted. The HRA of the NPS will include the consideration of Ramsar sites. No change to the HRA Methodology Report is considered necessary.	N/A

Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
WSP2	2	Many protected habitats are not necessarily natural and/or currently in good/favourable condition, so appropriate guidance on the 'baseline' against which impacts should be assessed could prove useful.	<p>Comment noted. Information on European sites will be included in the HRA. Paragraph 3.1.2 of the HRA Methodology Report identifies the number of Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), Special Protection Areas (SPAs) and Ramsars in the UK. Paragraphs 3.1.3 states "<i>Since nationally significant water resources infrastructure could, in theory, be located anywhere in England, it is proposed that information on all of the above European sites, plus European offshore marine sites, will initially be collected to minimise the risk of sites or features being overlooked. Information on the European sites (citations, boundaries, etc.), their interest features, and their sensitivity to potential effects associated with the NPS will be obtained from the Joint Nature Conservation Committee (JNCC); Natural England (NE); Natural Resources Wales (NRW); and Scottish Natural Heritage (SNH).</i>"</p> <p>No change to the HRA Methodology Report is considered necessary.</p>	N/A
<b>Natural Resource Wales</b>				
NRW1	1, 2	We welcome and support your commitment to HRA, and for starting consideration of the HRA at this early stage of the NPS's development - the iterative approach proposed will have the greatest opportunity to influence the developing NPS itself, thereby helping to avoid and minimise potential impacts on European sites. We also welcome being given the opportunity to comment at this early stage of both the HRA and NPS's development.	Comment noted.	N/A

Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
		<p>Note that from 30<sup>th</sup> November 2017, references to the Habitats Regulations should now refer to the Conservation of Habitats and Species Regulations 2017.</p> <p>Our detailed comments to the HRA are set out below:</p> <ul style="list-style-type: none"> <li>It is unclear to us which types of transfers of water resources are to be covered in the NPS. In particular, having read the third bullet point in paragraph 2.3.2, it remains unclear whether water could be transferred from cross border catchments, i.e. catchments that are partly within England and partly within Wales, or from cross border water undertakers' areas i.e. water undertakers' areas that are partly within England and partly within Wales, both of which could therefore have potential effects on European sites in Wales. This needs to be clarified in order to determine which European sites could be affected by policies within the NPS.</li> <li>We understand that Government will be reviewing the thresholds of the types of water supply infrastructure that are classed as 'nationally significant' during the winter 2017, as described in paragraph 2.3.3. It is our view that any revisions that come out of this review would constitute a material change to the NPS, and would therefore either</li> </ul>	<p>Comment noted. The HRA Methodology Report has been updated to reflect the revised Habitats Regulations (which came into force during the consultation).</p> <p>Comment noted. The HRA will consider the likely significant effects of the draft NPS on European sites in England and, where appropriate, on European sites in Scotland and Wales. This reflects the potential for water resource management schemes in England to impact upon adjacent areas in Scotland and Wales due to the transboundary nature of hydrological systems, such as rivers flowing across borders or bulk transfers. Sections 2.3 and 3.1 of the HRA Methodology Report have been amended to make the scope explicit.</p> <p>The infrastructure to be covered by the NPS will reflect the definitions for nationally significant infrastructure that are related to water as set out in Sections of 27 and 28 of the Planning Act 2008. Alongside the development of the NPS, the Government is reviewing the Planning Act 2008 definitions of the types of water supply infrastructure that are classed as 'nationally significant'. In this context, Defra will consider further this response.</p> <p>Comment noted. The NPS is new and will reflect the outcome of the consultation on the thresholds and types of infrastructure classed as 'nationally' significant. There will be no need for revisions in the manner envisaged in</p>	<p>All sections</p> <p>Sections 2.3 and 3.1</p> <p>N/A</p>

Ref	Consultation Question	Consultation Response	Commentary / Action Taken	Relevant location in Final Report
		<p>need to be considered as part of this current HRA, or would need to be the subject of a separate HRA before being adopted, depending on the timetable of the review.</p> <ul style="list-style-type: none"> <li data-bbox="488 411 1243 595">• The geographical coverage of the NPS is set out in paragraph 2.3.5. However, it isn't made clear in this paragraph that the NPS covers proposals that have the potential to affect European sites in Wales (and Scotland). We recommend this clarification is recognised within the NPS and supporting assessments.</li> <li data-bbox="488 632 1243 842">• In relation to the in-combination assessment of plans and projects, it is not immediately clear from the information provided in the HRA or the Appraisal of Sustainability (AoS), which plans and projects it is proposed to include. We therefore ask that this is set out more clearly in the subsequent HRA, and opportunity be provided for us to comment on this aspect.</li> <li data-bbox="488 911 1243 999">• In relation to the assessment of alternatives set out in paragraph 3.4.4, it would be useful to clarify the potential role of the Statutory Consultation Bodies during this stage.</li> <li data-bbox="488 1067 1243 1369">• We agree that the NPS and accompanying HRA will need to set out the framework for ensuring that any compensatory measures that are required by new water resources infrastructure meet the requirements of the Habitats Regulations (2017) (3.5.2). It is our view that this plan level consideration of compensatory measures should provide a clear overview and agreement of the type of compensation expected for the sites involved, and should include reference to a more detailed set of principles. These can be found in the following publications:</li> </ul>	<p>the comment. The HRA will be applied to the NPS.</p> <p>Comment noted. Sections 2.3 and 3.1 of the HRA Methodology Report have been amended to make the geographic scope explicit.</p> <p>Comment noted. The HRA will set out how in-combination effects have been assessed. Given the timeframe of the NPS, it is not practical to identify the plans and programmes to be considered in the assessment at this stage as they are subject to change prior to publication of the final HRA Report.</p> <p>Comment noted. Statutory consultation bodies will be consulted as appropriate during the development of the NPS and in undertaking the HRA.</p> <p>Comment noted. Paragraph 3.5.2 of the HRA Methodology Report sets out details of the proposed approach to compensatory measures. Paragraph 2.2.1 sets out the guidance to be used to inform the HRA which includes those documentations listed in this response.</p>	<p>Sections 2.3 and 3.1</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

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		<ul style="list-style-type: none"> <li>○ European Commission (2007/2012) Guidance document on article 6(4) of the Habitats Directive 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion Of The Commission. European Commission, Brussels.</li> <li>○ DTA Publications (2016) The Habitats Regulations Handbook [online]. Available at: <a href="http://www.dtapublications.co.uk/handbook/">http://www.dtapublications.co.uk/handbook/</a></li> </ul> <ul style="list-style-type: none"> <li>● In relation to the outputs and key stages set out in Section 3.6, this should include setting out the approach to compensatory measures, as referred to above.</li> </ul> <p>We emphasise the need for the NPS to be clear that Natural Resources Wales must be consulted, under the Habitats Regulations 2017, regarding the development of lower tier plans or projects that follow this NPS, if they have potential direct or indirect impacts on European sites in Wales.</p>	<p>Comment noted. Paragraph 3.5.2 of the HRA Methodology Report sets out details of the proposed approach to compensatory measures. In response to this comment, Section 3.6 has been amended to also refer to compensatory measures.</p> <p>Comment noted. Requested detailed requirements for inclusion in the NPS do not fall within the scope of the HRA Methodology Report but will be considered by Defra in preparing the draft NPS.</p>	<p>Section 3.6</p> <p>N/A</p>
<b>Northern Ireland Environment Agency</b>				
NIEA1	1	We consider that the Habitats Regulations Assessment should also include migrating birds that are features of some Northern Ireland Natura 2000 sites. Whooper Swan are known to travel back and forth between Ireland and the mainland, and some species of duck have staging posts in the mainland.	Comment noted. Further consideration will be given to the likely significant effects on mobile species from European sites outside England, Scotland and Wales as part of the HRA. Section 3.1 of the HRA Methodology Report has been amended to make the scope explicit.	Section 3.1
<b>Natural England</b>				
NE1	1	We consider that the described methodology for assessing the NPS against the Habitat Regulations is appropriate. We note however, that the explanatory diagram (Fig.2.1 HRA Methodology) is taken from the project level assessment guidance and that a 'plan' level assessment will need to have	Comment noted. Figure 2.1 in the HRA Methodology Report has been amended as per this response.	Figure 2.1 (Section 2.1)

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		greater iteration and consideration of policy development as part of the assessment. A detailed guide to HRA plan level assessment is included in the HRA Handbook.		
NE2	2	<p>The steps outlined within the Methodology Report are factually correct and set out the correct steps. We consider that the assessment could be improved if the following amendments are made:</p> <p>1) As the HRA of the NPS is unlikely to be able to rule out no likely significant effect, then the HRA can be used to set the context for project level HRAs, in terms of the likely significant effects that they should be looking at. By setting parameters for the individual projects, the overarching NPS can help to reduce impacts and focus assessments on key potential impacts.</p> <p>2) Greater reference could be made to the findings of the Water Resource Management Plan Habitat Regulations Assessments. These assessment will have considered many of the likely effects of the projects that the NPS will cover and will be invaluable in terms of identifying potential risks and sources of mitigation.</p> <p>3) The description of the assessment could more clearly set out the opportunities for the mitigation of effects, before arriving at a conclusion of Imperative Reasons of Overriding Public Interest. Identification of mitigation opportunities could then be used to set the context for project level assessments.</p>	<p>Comment noted.</p> <p>Comment noted. The HRA will seek to identify the parameters for project level HRA where practicable and meaningful. This could include consideration of effects and appropriate mitigation measures to take into account at site investigation, construction and operational stages.</p> <p>Comment noted. Due consideration will be given to the findings of the HRAs of WRMPs throughout the HRA process, acknowledging that whilst they may provide a useful indication of the range of potential effects arising from different types of infrastructure, the WRMPs will be for the period 2020-2045 and may not include any NSIPs covered by the NPS.</p> <p>Comment noted. Opportunities for the mitigation of effects will be considered as part of the HRA of the draft NPS. No change to the HRA Methodology Report is therefore considered to be necessary.</p>	<p>Section 3.</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
<b>Affinity Water</b>				
AW1	1	It is recognised that it is difficult to apply an SEA/HRA to a non-site specific NPS, and would therefore direct the NPS to the dWRMPs where potential infrastructure and options might	Comment noted. Due consideration will be given to the draft Water Resources Management Plans (dWRMPs) throughout	N/A

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		<p>provide further information that could help the NPS focus on infrastructure types.</p> <p>It was noted that the assessment of alternatives in the HRA did not have a 'No NPS' option, is that correct?</p>	<p>the assessment process and in the preparation of the draft NPS.</p> <p>No change to the HRA Methodology Report is considered necessary.</p> <p>Comment noted. The potential alternatives listed in Section 3.4 of the HRA Methodology Report are indicative only at this stage. However, in response to this comment, a 'No NPS' alternative has been identified.</p>	Section 3.4
<b>South East Water</b>				
SEW1	1	No comment.	Noted.	N/A
SEW2	2	No comment.	Noted.	N/A
<b>South West Water</b>				
SWW1	1	Yes.	Comment noted.	N/A
SWW2	2	Yes.	Comment noted.	N/A
<b>Northumbrian Water</b>				
NW1	1	Yes.	Comment noted.	N/A
NW2	2	Yes.	Comment noted.	N/A
<b>United Utilities</b>				
UU1	1	We agree that the proposed approach is appropriate.	Comment noted.	N/A
UU2	2	We think that the HRA report sets out sufficient information.	Comment noted.	N/A
<b>Individual 1</b>				
I1	1, 2	No answer, by setting this survey out you already know the answer.	Comment noted.	N/A
<b>Clean Rivers Trust</b>				
CRT1	1	It is unlikely to stand up after the UK leaves the EU.	<p>Disagree. The HRA will be undertaken to meet the requirements of the Habitats Directive 92/43/EEC and the requirements of the Conservation of Habitats and Species Regulations 2017.</p> <p>No change to the HRA Methodology Report is considered necessary.</p>	N/A

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CRT2	2	The methodology needed to have been consulted on rather than the cover all approach.	Disagree. The level of detail provided in the HRA Methodology Report is considered to be sufficiently detailed.  No change to the HRA Methodology Report is considered necessary.	N/A
<b>Friends of the Lake District</b>				
FLD1	1	If the principle that demand reduction and leakage, greater efficiency is compulsory, then the deficit gap and hence scale of infrastructure needed will be changed. This in turn means that a different suite of solutions may be feasible, not necessarily on the NSIP scale.	Comment noted. Requested detailed requirements for inclusion in the NPS do not fall within the scope of the HRA Methodology Report but will be considered by Defra in preparing the draft NPS.	N/A
FLD2	2	No comments.	Noted.	N/A
<b>Lake District National Park Authority</b>				
LDNP1		No comments.	Noted.	N/A
<b>Water UK</b>				
WUK1	1, 2	Yes.	Comment noted.	N/A
<b>Canal and River Trust</b>				
CART1	1, 2	No comments.	Noted.	N/A
<b>Hampshire County Council</b>				
HCC1	1	Yes, the proposed approach is appropriate.	Comment noted.	N/A
HCC2	2	Yes, the methodology report sets out sufficient information.	Comment noted.	N/A
<b>Jacobs</b>				
J1	1	As a methodology to assess the implications of a high-level strategy without a spatial component, we consider the methodology of the Habitats Regulations Assessment (HRA) of the National Policy Statement (NPS) to be broadly satisfactory.  The methodology would, however, benefit from clearly defining the source-receptor-pathways that will be considered in the HRA. This detail would enable a more effective feedback loop for the development of the NPS and consultees to be able to assess the adequacy of the assessment scope. Currently, the methodology provides for the identification of generic potential impacts (although these are not defined) and collation of sensitivity information on all 1071 European sites in the UK.	Comment noted.  Comment noted. Given the uncertainties with regard to the nature, scope and content of the NPS at this stage, defining a source-receptor pathway is not considered to be appropriate and would be a more appropriate consideration at the project stage. In consequence, no change to the HRA	N/A  N/A

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		<p>Effect pathways are only alluded to (section 2.3.3) and some examples are presented. The intended focus of the HRA note (section 2.4) is to assess the outcomes of the NPS with respect to generic impacts and to identify protective measures to safeguard European sites, generally. This would provide only a very broad appreciation of the potential influence of the NPS on European sites. Stage 1 Screening as described in the methodology, is extremely high-level and, as it has already been concluded that an Appropriate Assessment (AA) would be required for the NPS, screening is not focused on pathways, but on the assimilation of baseline data.</p> <p>Bypassing the Screening Stage in this way presents a risk that the HRA would fail to identify the very specific vulnerabilities of some Natura 2000 sites, particularly the potential for in combination within-plan effects. The approach could therefore fail to identify themes that should feed back into the development and refinement of the NPS.</p> <p>The methodology might consider grouping European sites according to their susceptibility to particular source-receptor effect pathways. This would provide consultees reassurance that the HRA would adequately capture the sometimes very specific vulnerabilities of particular sites and that the NPS would develop in full appreciation of potential effects on the Natura network. Currently, for example, it is not clear that impacts on Annex II migratory fish species (for which migratory passage could be interrupted by the development of dams) will be considered. Also, that impacts on mobile species (from loss of supporting habitat and/or prey availability) from Natura sites potentially a considerable distance away will be assessed - not only connectivity to sites in Wales and Scotland.</p> <p>Further, it is noted that the methodology establishes (in section 3.1.1) that the vulnerability of an interest feature will depend on that feature's "sensitivity and exposure to a potential effect." We suggest that information on a feature's extent, current condition and its prospects for recovery are also relevant to a feature's</p>	<p>Methodology Report is considered to be necessary.</p>	

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		specific vulnerability and necessary to facilitate a clear evaluation of the impacts and inform mitigation.		
J2	2	Yes	Comment noted.	N/A
<b>Severn Trent Water</b>				
STW1	1	Yes.	Comment noted.	N/A
STW2	2	Yes.	Comment noted.	N/A
<b>Wessex Water</b>				
WW1	1	Yes, given the information provided.	Comment noted.	N/A
WW2	2	No view.	Noted.	N/A
<b>Historic England</b>				
HE1	1, 2	N/A	Noted.	N/A
<b>Group Against Reservoir Development</b>				
GARD1	1,2	In general, GARD is satisfied at this stage with the approach and content of the HRA Methodology Report. We note however that the sole focus on sites which are in some way designated or occupy a special position within the framework of legislative regulation of impact assessment, can often overlook the importance of 'linking environments'. This approach can lead to a 'ghetto-isation' of the natural environment as a network of environmental 'jewels' linked by countryside which is mainly concreted over. There needs to be some consideration that the disappearance of large tracts of countryside, or the degradation of extensive networks of 'ordinary' natural water-courses, to provide water infrastructure are in themselves outcomes against which the NPS (or subsidiary policy) needs to guard. The proper inclusion of demand-side measures in the NPS is the single most effective guard against this.	<p>Comment noted. The Habitats Regulations require an assessment of whether there are any 'likely significant effects' (LSE) on any European site as a result of the implementation of the NPS (either on its own or 'in combination' with other plans or projects) and, if so, whether these effects will result in any adverse effects on that site's integrity. The broader effects of the draft NPS on biodiversity and nature conservation will be assessed as part of the AoS.</p> <p>Requested detailed requirements for inclusion in the NPS do not fall within the scope of the HRA Methodology Report but will be considered by Defra in preparing the draft NPS.</p> <p>No change to the HRA Methodology Report is considered necessary.</p>	N/A
<b>Thames Water</b>				
TW1	1	Thames Water agrees that the overall proposed approach is appropriate. Given that the NPS is a policy statement rather	Comment noted.	N/A

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		<p>than a specific spatial plan or project, the proposed approach is a pragmatic way of considering HRA requirements in the absence of any specific knowledge of which European sites might be affected.</p> <p>The HRA may benefit from one or two case studies drawn from the draft Water Resources Management Plan submissions by English water companies to help illustrate the types of effects that relevant large water resource schemes may have on European sites (both aquatic and terrestrial, and from construction and operational phases).</p> <p>It may be possible to identify some European sites that will not be at any risk of adverse effects from any large-scale (as defined in the NPS) schemes (as proposed in the Methodology Statement).</p> <p>Inclusion of the draft Imperative Reasons of Overriding Public Interest (IROPI) case (as proposed in the methodology report) would be welcome in order to provide further clarity as to the arguments that would be made to explain why harm to a European site is outweighed by the public interest.</p> <p>Detailed points: It should be noted that the Habitats Regulations were replaced by a new version on November 30th 2017 and are now: "The Conservation of Habitats and Species Regulations 2017" (SI 2017/1012). This means that the Regulation numbers referred</p>	<p>Comment noted. Due consideration will be given to the dWRMPs throughout the assessment process and in the preparation of the draft NPS.</p> <p>Comment noted. At this stage it is considered unlikely to be possible to screen out specific European sites given the anticipated nature of the NPS. However, this informal screening conclusion applies, at this stage, to the anticipated NPS as a whole; depending on its contents and structure it may be possible to 'screen out' individual elements of the NPS to ensure that any appropriate assessment is suitably focused. It may also be possible to 'screen out' particular European sites from further consideration.</p> <p>Comment noted. The IROPI case (if required) is not available at this early stage. No change to HRA Methodology Report is therefore considered to be necessary.</p> <p>Comment noted. The HRA Methodology Report has been updated to reflect the revised Habitats Regulations (which came into force during the consultation).</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>All sections</p>

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		<p>to throughout the HRA methodology report will need to be revised, with reference to Regulation 102 now being Regulation 105, and Regulation 103 now being Regulation 107. It is notable that the 2017 Regulations (Regulation 110) indicate that the NPS requires HRA.</p> <p>We agree that application of HRA to policy statements is challenging. As a general point, the currently-accepted HRA process is not designed for, or well-suited to, policy statements such as the proposed NPS.</p> <p>Paragraphs 3.1.4 and 3.1.5 of the HRA Methodology Report should refer to both plans and projects (not just 'plans').</p> <p>It is noted at Paragraph 50 of the main Consultation Document that a term 'designated habitats sites' is used; this is not a familiar term in respect of HRA and could be misinterpreted. It would be better for this to be rephrased as 'designated European sites', in keeping with the HRA Methodology Report. Furthermore, the footnote to Paragraph 50 is incorrect: the Regulations are commonly referred to as the 'Habitats Regulations' (not 'Directive', which is different).</p>	<p>Comment noted.</p> <p>Agreed. Paragraphs 3.1.4 and 3.1.5 of the HRA Methodology Report have been revised to refer to both plans and projects (not just 'plans').</p> <p>This comment has been noted by Defra.</p>	<p>N/A</p> <p>Paragraphs 3.1.4 and 3.1.5 (Section 3.1)</p> <p>N/A</p>
TW2	2	<p>Yes, there is generally sufficient information to establish the context for the HRA Screening Report in terms of the data collation proposed and the various HRA guidance documents that are proposed to be consulted, but we would make the following comments.</p> <p>No mention is made in the Methodology Report about consulting the Site Improvement Plans for each European site and its associated Favourable Condition targets which Natural England usually require to be considered in carrying out the HRA screening.</p>	<p>Comment noted.</p> <p>Comment noted. The HRA Methodology Report has been amended to refer to Site Improvement Plans.</p>	<p>N/A</p> <p>Section 3.1</p>



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		<p>Similarly, the HRA screening will need to consider proposed or candidate European sites and any compensatory habitat and off-site functional habitat (that supports qualifying features), as appropriate.</p> <p>It is not entirely clear to Thames Water from the Methodology Report how the Appropriate Assessment stage will be carried out, but the over-arching principles set out in the report appear pragmatic. More clarity on the analysis would be helpful.</p> <p>We agree that it will be important to determine any appropriate mitigation measures for inclusion in the NPS which can ensure that adverse effects on site integrity do not occur as a result of its implementation, or any NSIP development undertaken in a manner consistent with it. Exploration of such measures will be very helpful.</p> <p>Whilst not part of the HRA Regulations or HRA screening report, it would be useful to understand how effects on Marine Conservation Zones are to be considered and assessed.</p>	<p>Comment noted. The HRA Methodology Report includes specific reference to proposed and candidate European sites at footnotes 3 and 17. No change to the Methodology Report is therefore considered to be necessary.</p> <p>Comment noted. The approach to Appropriate Assessment detailed in Section 3.3 of the HRA Methodology Report is considered to be appropriate at this stage. Further information on the approach will be contained in the HRA Report, once the form and content of the draft NPS has been confirmed and the approach subsequently refined. No change to the Methodology Report is therefore considered to be necessary.</p> <p>Comment noted.</p> <p>Comment noted. Consideration of Marine Conservation Zones is outside the scope of the HRA of the draft NPS and therefore no change to the HRA Methodology Report is considered to be necessary. However, it should be noted that reference to Marine Conservation Zones has been included in the AoS Framework.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
<b>CLA</b>				
CLA1	1, 2	We are not in a position to comment on this.	Noted.	N/A

