DESNZ Environmental Impact Assessment guidance consultation: Link response

Wildlife and Countryside Link (Link) is the largest environmental coalition in England, bringing together 86 organisations to use their joint voice for the protection of the natural world.

Introduction

As a coalition of environmental organisations, we welcome the opportunity to respond to this DESNZ consultation on the draft supplementary guidance for the application of Environmental Impact Assessment (EIA) Regulations to offshore oil and gas projects. We have responded to questions where our direct expertise can add useful material. We wish to highlight in particular:

- The need to amend and strengthen the draft supplementary guidance to ensure that it fully applies the key learning from the Finch case; that the full environmental impacts of oil and gas extraction must be adequately and transparently considered.
- The importance of setting precise and clear EIA regulation application rules through the guidance. These rules should reduce the ability of developers to use ambiguities to conceal the full environmental impacts of oil and gas project proposals.
- The need to fully consider the negative impacts of increased emissions from oil and gas projects on biodiversity and nature recovery, in addition to climate impacts. All offshore energy should work in line with nature's recovery.

Clearer guidance on how to apply the EIA Regulations is essential to ensure a better understanding of the full impacts of individual oil and gas proposals, and whether, and how, these impacts conflict with the Government's climate and nature commitments. We urge DESNZ to consider the need for the below amendments to the guidance, to improve the draft so that it better informs decision making on oil and gas projects. Without these improvements, the guidance could fail to address the unlawfulness the Finch case found.

Responses to questions

Question 1: Do you agree with the advice in the draft supplementary EIA guidance on how the baseline scenario should be set out in an ES?

No.

Question 1(a): If not, please outline what else should be considered or done differently.

The proposals for baseline calculations in the draft supplementary guidance could conceal the accurate climate impacts from oil and gas projects. The wording gives developers license to use emissions data from existing oil and gas projects, including current and historical emissions, to establish a baseline scenario. This could enable the selective use of existing data to frame a project as making only a limited

contribution to emissions, for example by setting future emissions from the project against historically high emissions to show a theoretical percentage reduction.

A simpler, more transparent approach would be to specify that the baseline scenario should be that there would be zero scope 3 emissions without the project. This would make clear that any new offshore oil and gas projects will cause additional scope 3 emissions in comparison to a scenario where the project did not exist. This approach would also allow for direct comparability between proposed developments.

Question 2: Do you agree with the approach to the selection of relevant scope 3 emissions from different downstream activities to be included in the assessment, i.e., emissions borne from the refinery process, transport of the oil or gas and end-use combustion?

No.

Question 2(a): If not, please outline what else should be considered or what else should be left out.

The current wording gives license for accurate scope 3 emissions to be obscured. By giving developers the ability to select one of three different methodologies to break down and calculate scope 3 emissions, the draft supplementary guidance does not support standardised calculations across projects, which is essential for accurate assessment and comparison.

The presumption from the Finch judgement is that the extracted oil and gas will be combusted and the emissions should be calculated on this basis. A simpler, more transparent and standardised approach to assessment, fully applying the Finch judgement, would be to require all developers to calculate combustion emissions, using a central assessment method developed by DESNZ with input from environmental experts. This agreed approach to calculating downstream impacts would allow for accurate comparison between projects and provide clarity across the board.

Question 3: To what extent do you agree with the advice given in the draft supplementary EIA guidance for evaluating the likely significant effects of scope 3 emissions on climate is helpful when it comes to preparing an ES?

The advice is high-level and lacks specific detail, which could allow developers to omit key impacts.

Question 3(a): Do you have any other suggestions that could be considered?

The advice should be broadened to provide a clear and comprehensive checklist, against which developers must assess likely impacts. The baseline assumption underpinning the whole checklist should be that there would be no emissions without the project.

Items on the checklist should include:

- The impact of the project on space within carbon budgets drawn up to achieve the 1.5°C limit specified by the Paris Agreement.
- The full impact of the project on both climate and ecological declines, and the ability to reach UK and international climate and nature targets, including targets set under the Climate Change Act 2008 and Environment Act 2021.

The final point is critically important to improving the guidance. Ongoing climate change, driven by oil and gas extraction, is continuing to actively damage the natural world, including marine ecosystems. The 2023 'State of Nature' report found climate change to be the primary driver of species declines, including ongoing declines in keystone marine species.[1] Recent record UK sea temperatures of 4°C above average have placed extreme pressure on marine life, that direct impacts from oil and gas projects will exacerbate. These direct impacts include the discharge of oil, toxic chemicals and sediment into surrounding waters and noise pollution from seismic surveys, drilling and vessel operation, and damage to seabed features and habitats. Further degradation of natural habitats will in turn make it harder to mitigate and adapt to ongoing climate change.[2]

As climate and ecological declines are so closely intertwined, cumulative impacts on nature - both from climate change as a whole and directly from oil and gas developments - should be evaluated as likely significant effects resulting from scope 3 emissions.

Question 4: To what extent does the overview provided for assessing cumulative effects help convey the expectation on what other relevant projects (existing or planned) should form part of an assessment?

The overview is too narrow, suggesting that only existing or known other oil and gas projects should form part of the cumulative effects consideration, with no consideration of other greenhouse gas emission sources. There is also an unhelpful ambiguity within the narrow parameters; the wording of the draft guidance is not clear as to exactly which other oil and gas projects should be included, with no detail on which timeframes, or what geographical extent should be considered for cumulative impact assessment. The inclusion of the sentence stating that a project 'tied-back' to the main project under consideration should receive cumulative consideration is vague and implies that only directly connected projects should be included. This implication is not elaborated on elsewhere in the text.

Question 4(a): Do you have any other suggestions that could be considered?

This section of the draft supplementary guidance should be amended, to clearly state that all known other oil and gas projects within UK waters should form part of the cumulative effects consideration. The guidance should also require consideration of other known and existing greenhouse gas sources, including product manufacture and consumption using extracted oil and gas, to place the additional emissions in the context of UK-wide emissions and targets. This is necessary to ensure cumulative effects alongside all emission sources of greenhouse gas are considered. Consideration should also be given to the fact that emissions from fossil fuels extracted within UK waters have global impacts as much of the oil and gas produced by the UK is exported internationally.

[1] See State of Nature report: https://stateofnature.org.uk/
[2] See Link briefing on offshore oil and gas, April 2024: https://www.wcl.org.uk/docs/assets/uploads/OPL_Bill_Lords_committee_Link_briefing.pdf

When considering cumulative impacts, the guidance should consider scope 3 emissions effects on migratory routes for marine species, including on transboundary migration routes which extend beyond UK waters.[3] Cumulative impact consideration should also include possible negative impacts on nature-based solutions to climate change, such as seagrass restoration.

Question 5: To what extent does the draft supplementary EIA guidance provide clarity on how to approach identifying suitable mitigation measures and subsequently implementing those measures?

The text fails to mention that combustion emissions cannot be mitigated. The text inaccurately claims that offsetting is a viable mitigation option, when the evidence shows that offset schemes struggle to deliver environmental gains to the scale and rigour required to compensate for combustion emissions.[4] This fundamental inaccuracy undermines the clarity and efficacy of the mitigation guidance.

Question 5(a): Do you have any other suggestions that could be considered?

The guidance should include a presumption that combustion emissions cannot be offset and that, as such, they should be classed as unavoidable damage resulting from any decision to approve the project.

The guidance should also restate that the mitigation hierarchy (first seek to avoid, then to mitigate harms; with compensation only as a very last resort) must be rigorously applied to nature impacts from the project under consideration, with sustained monitoring of mitigation and compensation measures. Debate on the (subsequently not progressed) Offshore Petroleum Licensing Bill in Parliament in Spring 2024 saw concerns raised that the ecological impacts of oil and gas projects, particularly in Marine Protected Areas (MPAs), were not being properly considered. As revealed by Baroness Willis of Summertown at the Bill's committee stage:

''In a letter to DESNZ on the recent 33rd oil and gas licensing round, the JNCC wrote a strong letter stating that it was unable to agree with the conclusions that the projects would have no adverse impact on site integrity. The committee strongly advised that no new oil and gas infrastructures should be located anywhere within an MPA.''[5]

The draft supplementary guidance should provide an opportunity to address those concerns, and to restate that ecological impacts of a project, including on MPAs, should be fully considered in line with the mitigation hierarchy.

[3] See for example new evidence on large baleen whales migrating through the North Sea: https://www.sciencedirect.com/science/article/pii/S1385110122000247

[4] See Link briefing on carbon offsetting:
2021: https://www.wcl.org.uk/docs/Wildlife_and_Countryside_Link_Offsetting_Briefing_23042021.pdf
2023: https://www.wcl.org.uk/docs/Reforming_environmental_markets_Link_report_March_2023.pdf

[5] See Link briefing on offshore oil and gas, May 2024:
https://www.wcl.org.uk/assets/uploads/img/files/OPL_Bill_Lords_report_Link_briefing.pdf

Question 6: Are the expectations on environmental protection objectives clear?

No. The guidance should state exactly which environmental protection objectives a project should consider. The current text includes just one sentence referring to the Climate Change Act 2008 in its entirety. This is a vague and limited reference which falls short of the specific and relevant expectations the guidance should set.

Question 6(a): Do you have any other suggestions that could be considered?

The guidance could offer greater specificity on environmental protection objectives by requiring that assessment of likely significant environmental effects from a project should take into account:

- Climate mitigation targets set under Part 1 of the Climate Change Act 2008.
- Climate adaptation actions identified in the most recent report under section 56 of the Climate Change Act 2.
- Biodiversity targets set under sections 1 to 3 of the Environment Act 2021.
- The commitment to protect and manage at least 30% of land and sea for nature by 2030. This '30x30' commitment has been made by successive governments at a national level. Its delivery at sea is threatened by oil and gas projects in Marine Protected Areas, which must be free from damaging activities in order to count towards the 30x30 target.

This added specificity would allow the impacts of the project to be accurately considered against the full range of relevant environmental protection objectives, covering both climate and nature.

This response is supported by the following Link members:

Whale & Dolphin Conservation
Seal Research Trust
Oceana
ORCA
Institute of Fisheries Management
Feedback
RSPB

The briefing has also benefitted from input from the Northern Ireland Marine Task Force.

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