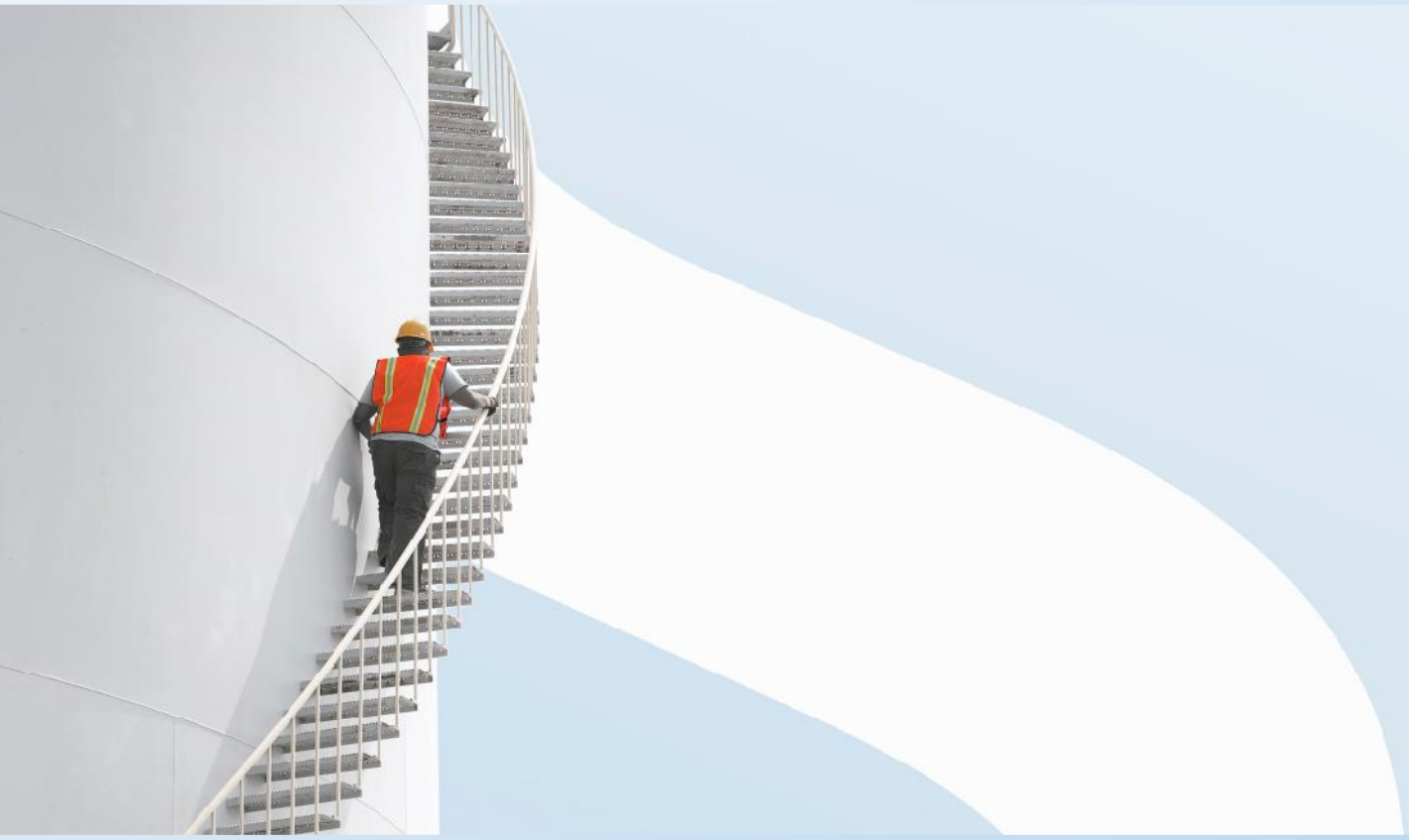
Department for Transport

Revised Ports National Policy Statement

Habitats Regulations Assessment Report



HRA_Report_V1
April 2025

Public

Department for Transport

Revised Ports National Policy Statement

Habitats Regulations Assessment Report

Type of document (version) Public

Project no. 70114805

Our Ref. No. HRA_Report_V1

Date: April 2025

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Quality control

Issue/revision	First issue	Revision 1	Revision 2
Remarks	Draft for client review	Second draft addressing client comments	Consultation draft
Date	30/01/2024	01/04/2025	04/04/2025
Prepared by	PP	PP	PP
Checked by	OP	CEM	CEM
Authorised by	AP	AP	AP
Project number	70114805	70114805	70114805
Report number	02	02	02
File reference	T0486	T0486	T0486

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Introduction

Introduction

1.1 The Revised Ports National Policy Statement

1.1.1. The revised National Policy Statement (NPS) for Ports:

- Sets out the need for (and UK Government's policies to support delivery of) development of Nationally Significant Infrastructure Projects (NSIPs) in relation to ports.
- Provides planning guidance for promoters of NSIPs, and the basis for their examination by the Examining Authority and decisions by the Secretary of State.

1.1.2. The current NPS for Ports was published in 2012. The Secretary of State for Transport has concluded that the policy should be reviewed to ensure it continues to support decision making effectively[1]. The review of the NPS for Ports currently being undertaken also provides an opportunity to update other aspects of the document, such as the modelling and forecasts that support the statement of need for development, and the environmental, safety, resilience and local community considerations that planning decisions must consider, to ensure that it continues to remain fit for purpose.

1.2 Habitats Regulations Assessment

1.2.1. The main purpose of Habitats Regulations Assessment (HRA) is to consider the potential effects of a plan or project on Habitats Sites[2]. Habitats Sites are defined fully in section 2.1. In general, a HRA must take place prior to the relevant plan or project being authorised to proceed.

1.2.2. As a document that may bear on plans or projects, it is prudent to assess the potential effects of the revised Ports NPS on Habitats sites. This report sets out the findings of the HRA for the Revised Ports NPS.

1.2.3. The need to complete HRA for the revised Ports NPS arises from its status as a strategic document relevant to land use plans or projects and hence the requirements of Regulations 105, 107, 109, and 110 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') in relation to land-use plans. Regulation 110 confirms that HRA is applicable to National Policy Statements. The revised Ports NPS provides a strategic

[1] DfT (2023) SoS for Transport's Written Statement to Parliament 'Review of the national policy statement for ports', 14 March 2023. Available online: https://www.gov.uk/government/speeches/review-of-the-national-policy-statement-for-ports [Accessed November 2023].
[2] Defra (2021) . Changes to the Habitats Regulations 2017. Available online: https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017

framework for assessing individual NSIPs as these come forward, in the same way the current Ports NPS does.

1.2.4. The revised Ports NPS does not have any associated spatial components. It does not identify preferred sites for development of Ports NSIPS, nor does it identify specified locations where Ports NSIPS should be avoided. It could be used to support decision-making for major ports projects anywhere around the coast of England, with specific locations not yet known. The revised Ports NPS could also be the primary planning policy supporting decision-making for 'reserved trust ports[3]' in Wales, of which there is only one at present, at Milford Haven.

1.2.5. Given the above, the HRA for the revised Ports NPS is necessarily at a strategic level. It does not consider potential effects that could arise from projects brought forward under the revised Ports NPS in detail, as the necessary information for such an assessment is not yet available.

1.2.6. This revised Ports NPS HRA Report therefore sets out and assesses the policy elements of the revised Ports NPS to determine which, if any, could lead to likely significant effects (LSE) on Habitats sites. Where LSE are identified, information to inform appropriate assessment and, if necessary, subsequent stages of the HRA process, is provided.

1.3 Report Overview

1.3.1. This HRA Methodology Report follows this structure:

- Chapter 1 provides an introduction to the Ports NPS, why it is being updated, and why HRA is required;
- Chapter 2 provides further background to the HRA process, including the multi-stage approach to assessment that is commonly used;
- Chapter 3 sets out key case law and guidance used to inform the HRA;
- Chapter 4 sets out the methodology;
- Chapter 5 sets out the findings of the information to inform appropriate assessment;
- Chapter 6 sets out the findings of the assessment of alternative solutions;
- Chapter 7 sets out the findings in relation to Imperative Reasons of Overriding Public Interest (IROPI) and compensatory measures; and
- Chapter 8 provides an overall summary of the findings of the HRA of the revised Ports NPS.

[3] Trust ports, as independent statutory bodies without shareholders, have a unique ownership structure which sets them apart from private ports and municipally owned ones. Reserved trust ports are defined in the Wales Act 2017 by reference to a turnover threshold (exceeding £5 million in at least two of the last three accounting years), which is set out in Section 11 of the Ports Act 1991.

2 Habitats Regulations Assessment Background

2.1 Key underpinning legislation and policy

2.1.1. The Habitats Regulations (as amended) transposed the requirements of European Council Directive 92/43/EEC 'the Habitats Directive' into English law. The Habitats Regulations apply to plans and projects that may have significant effects on sites designated under the Habitats Directive and the Wild Birds Directive (Council Directive 2009/147/EC, which codified 79/409/EEC). Sites designated in England and Wales under the Habitats Regulations include Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

2.1.2. There have been changes made to the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Following these changes, SACs and SPAs in the UK no longer form part of the EU's Natura 2000 ecological network and now form part of the 'UK National Site Network'.

2.1.3. It is government policy that Ramsar sites, potential SPAs, possible SACs and sites used to compensate for adverse effects on Habitats Sites are also considered in the HRA process. This is described in paragraph 194(b)of the National Planning Policy Framework. The term 'Habitats Sites' is used to refer collectively to these sites throughout this document.

2.1.4. Prior to authorising any plan or project, 'Competent Authorities' must consider the potential for Likely Significant Effects (LSE) on Habitats Sites. Should LSE be identified it is necessary further to consider the effects by way of an 'appropriate assessment'. The appropriate assessment must consider whether identified LSE could lead to adverse effects on any Habitats Sites. Any plan or project leading to adverse effects on the integrity of Habitats Sites can only be permitted if strict additional tests are met.

2.1.5. Overall, this process of assessment is known as Habitats Regulations Assessment (HRA). The key parts of the Habitats Regulations that inform the HRA process are set out below.

2.1.6. Regulation 105 (1) of the Habitats Regulations states that:

105.—(1) Where a land use plan—

(a) is likely to have a significant effect on a European site or a European offshore marine site (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,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge by the appropriate authority of its obligations under this Chapter.

(6) This regulation does not apply in relation to a site which is—

(a) a European site by reason of regulation 8(1)(c), or

(b) a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

2.1.7. A revised Ports NPS is not directly connected with or otherwise necessary to the management of any Habitats Sites. Therefore, it must be subject to screening for likely significant effects. If likely significant effects cannot be ruled out, appropriate assessment will be required.

2.1.8. Regulation 107 (1) of the Habitats Regulations states that:

"If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be)."

2.1.9. In addition to the above Regulation 109 states that:

"Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected."

2.1.10. Regulation 110 applies specifically to National Policy Statements. Regulation 110 is repeated in full below:

110.—(1) This Chapter applies—

(a) in relation to a national policy statement under Part 2 of the Planning Act 2008 (national policy statements) as it applies in relation to a land use plan, and

(b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority, with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

(a) regulations 105(5), 107(3) to (6) [F1, 108 and 110A] do not apply; and

(b) in regulation 109, the reference to the appropriate authority is taken to be a reference to the Secretary of State.

2.2 The HRA Process

2.2.1. Guidance on the Habitats Regulations sets out the stepwise approach which should be followed to enable Competent Authorities to discharge their duties in respect of HRA. The process is usually summarised in three distinct stages of assessment:

- **Stage 1: Screening:** the process which identifies whether effects upon a Habitats Site(s) of a plan or project are objectively possible. This must consider effects either alone or in combination with other plans or projects and considers whether these effects are likely to be significant. Following the People Over Wind ruling (refer to Section 3.3), mitigation designed to avoid or lessen effects on Habitats Sites should not be considered at this stage;
- **Stage 2: Appropriate Assessment:** the detailed consideration of the effect on the integrity of Habitats Sites of the plan or project, either alone or in combination with other plans or projects. This stage of the process must be carried out with respect to the site's conservation objectives and its structure and function. Mitigation measures designed to avoid or lessen effects on Habitats Sites are considered at this stage; and
- **Stage 3: Derogations**. This includes exploration of alternative solutions, *i.e*. the process which examines alternative ways of achieving the objectives of the plan or project that avoid adverse effects on the integrity of the Habitats Site(s). It also includes assessment where no alternative solutions exist and where adverse effects remain. This includes an assessment of whether the development is necessary for Imperative Reasons of Overriding Public Interest (IROPI). If it is determined the plan or project should proceed (*i.e*. IROPI exist), compensatory measures to maintain the overall coherence of the National Site Network must be identified. If a Habitats Site(s) supports Annex 1 priority habitats or Annex 2 priority species, this affects the reasons that can be used to justify IROPI. This is explored in more detail in Section 7.1.

3 Relevant Policy, Case Law, and Guidance

3.1 Overview

3.1.1. This HRA Report been informed by relevant legislation, policy and guidance other than the Habitats Regulations. Case law that is relevant to the interpretation of the Habitats Regulations will also be considered, as will published guidance relevant to the HRA process.

3.1.2. This section of the HRA Methodology Report sets out key policy, case law, and guidance that has been considered during the HRA of the revised Ports NPS. The list below represents those items of policy, case law, and guidance key to the approach to assessment.

3.2 Policy, Guidance, and Targets

3.2.1. The following policy has been considered as part of the revised Ports NPS HRA:

- The National Planning Policy Framework (2024), which sets out the government's planning policies for England and how these are expected to be applied.
- The Environment Act (2021), which provides a legally binding target to halt the decline in species by 2030 and requires new developments to improve or create habitats for nature.

3.2.2. Relevant guidance has also been referred to in the course of drafting this report. The following references have been key in developing the methodology and approach for this HRA report:

- UK government guidance: Habitats Regulations Assessments: protecting a European site[4]; and
- The Habitats Regulations Assessment Handbook[5].

3.3 Case Law and Legal Opinion

The European Union (Withdrawal) Act 2018

3.3.1. The EU (Withdrawal) Act 2018 set out the framework for transitioning the UK out of the European Union via repealing the European Communities Act 1972. It also set out how UK

[4] Department for Environment, Food & Rural Affairs, Natural England, Welsh Government and Natural Resources Wales (updated 2023) *Habitats regulations assessments: protecting a European site.* Available from Habitats regulations assessments: protecting a European site - GOV.UK (accessed 21/11/2024).
[5] Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook* edition UK: DTA Publications Limited

law would continue to operate in England following the UK leaving the EU, including via domestic adoption of EU law.

3.3.2. Section 6 of the EU (Withdrawal) Act sets out how case-law from the EU should be considered by the UK courts following the UK departure from the EU. This includes provision for the UK Courts to reach decisions that depart from assimilated EU case law, subject to meeting the requirements of Section 6 of the Act.

People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)

3.3.3. The ‘’People over Wind’’ judgment ruled that any measures added to achieve the purpose of avoiding or reducing harmful effects on a Habitats Site(s) should not be considered at the screening stage. The Competent Authority can only consider such mitigation measures as part of an appropriate assessment.

3.3.4. The key part of the judgment is summarised in Paragraph 40 as “*in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site*”.

3.3.5. UK Government guidance (‘Habitats Regulations Assessments: protecting a European Site’, December 2023) clarifies that measures which have been specifically added to achieve the purpose of avoiding or reducing its harmful effects on a habitats site should not be considered at the screening stage. However, features that are integral to the design or physical characteristics of the project that is being assessed, for example, the layout, timing and location of a scheme, may be considered at the screening stage.

3.3.6. In accordance with this UK government guidance on the application of the People over Wind ruling, the revised Ports NPS HRA has, where applicable, only considered avoidance or mitigation measures, specifically added to avoid or reduce harmful effects on a Habitats Site(s), during the appropriate assessment stage.

Grace and Sweetman (Case C-164/17)

3.3.7. The ‘Grace and Sweetman’ ruling clarified the distinction between mitigation and compensation in relation to HRA further from earlier judgments, including Briels v Minister van Infrastructuur en Milieu (C-521/12) and Hilde Orleans & Others v Vlaams Gewest (joined cases C-387/15 and C-388/15). It was concluded in Grace and Sweetman that the provision of new or improved habitat, even within the same Habitats Site, cannot be taken to mitigate for the loss or damage to habitat that is designated. This is because, as per paragraph 52, *"as a general rule, any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future''*.

3.3.8. Published guidance describes three principles in accordance with this relevant case law to support the definitions of mitigation and compensation as used in HRA. These are as follows:

- Any risk of a reduction in, or loss of, habitat within either a SAC, SPA or Ramsar wetland should be judged to be a "likely significant effect'', and the full significance of its impact should be further tested by Appropriate Assessment.
- A proposal to create new habitat (including habitat translocation, habitat conversion and/or habitat banking) within a Habitats Site's boundary specifically to mitigate for a predicted loss of SAC or SPA habitat should (with regard to HRA) normally be treated as a compensatory measure, and not mitigation, that should only be taken into account following an Appropriate Assessment and the passing of the no alternatives and IROPI tests.
- The use of habitat creation/ conversion outside of a site's boundary to avoid a loss of "functionally-linked land" that lies outside of a site's designated boundary is still a legitimate mitigation measure.

3.3.9. The distinction between mitigation and compensation in the revised NPS HRA has therefore been informed by this case law and the corresponding principles set out in the referenced guidance from DTA Publications.

Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland (Cases C-293/17 and C-294/17)

3.3.10. The ''Dutch Nitrogen'' cases established that: (Paragraph 126) *"…it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm to the integrity of the site concerned, by guaranteeing beyond all reasonable doubt that the plan or project at issue will not adversely affect the integrity of that site, that such a measure may be taken into consideration in the 'appropriate assessment…"* and (Paragraph 130) *"The appropriate assessment of the implications of a plan or project for the sites concerned is not to take into account the future benefits of such 'measures' if those benefits are uncertain, inter alia because the procedures needed to accomplish them have not yet been carried out or because the level of scientific knowledge does not allow them to be identified or quantified with certainty"*.

Compton Parish Council, Julian Cranwell and Ockham Parish Council v Guildford Borough Council, SoS for Housing, Communities and Local Government (2019), High Court of Justice, EWHC 3242 (Admin) CO/2173,2174,2175/2019

3.3.11. In the Compton case, the Court ruled in relation to exceedances of nitrogen deposition critical loads and NOx emissions, that, in arriving at a conclusion during appropriate assessment, that this: "*could not be answered, one way or the other, by simply considering whether there were exceedances of critical loads or levels, albeit rather lower than currently.*

*What was required was an assessment of the significance of the exceedances for the SPA birds and their habitats…".*The HRA for the revised Ports NPS has, in accordance with the Compton ruling, considered the effects of likely impacts to the extent that the Competent Authority is able to be certain that there would be no adverse impacts on the integrity of Habitats Sites rather than relying on threshold values as a determinant.

Holohan v An Bord Pleanala (Case C-461/17)

3.3.12. The Holohan judgment ruled that an Appropriate Assessment must detail the entirety of the habitats and species for which a Habitats Site is designated. In addition, it established that the Appropriate Assessment must examine the implications of the plan or project for habitats and species outside of a Habitats Site(s) boundaries where there may be negative effects on the conservation objectives of a Habitats Site(s).

3.3.13. The judgment also clarified that should a competent authority reject the findings of a scientific expert opinion, which recommended that additional information was necessary, the Appropriate Assessment must include a detailed statement as to the reasons, which are capable of dispelling all reasonable scientific doubt.

3.3.14. In accordance with the ruling, the HRA Report has considered the potential for impacts on the functioning of Habitats Sites as a result of the policy. This has included consideration of offsite impacts to functionally-linked habitats and species.

4 HRA Stage 1 - Screening

4.1 HRA Screening Methodology

4.1.1. Guidance from the UK Government (Defra, 2023) recommends that screening should include the following steps:

- Step 1: Determine whether the plan or project is directly connected with or necessary to the management of the National Network Site;
- Step 2: Describe the plan or project and any other plans or projects which, in combination, could result in significant effects on the National Network Site;
- Step 3: Identify the potential effects on the National Network Site both alone and in combination with other plans and projects; and
- Step 4: Assess the significance of any effects on Habitats Sites and record the decision.

4.1.2. The Habitats Regulations Assessment Handbook (hereafter 'the Handbook') (DTA, 2024) provides practical guidance on the assessment of plans and projects under the Habitats Regulations. This includes specific guidance and advice on screening plans for LSE, which is set out in Sections F.1 to F.8 of the Handbook. This guidance has also informed the methodology set out below.

4.2 Confirming the need for Habitats Regulations Assessment

4.2.1. Plans and projects do not require assessment if they are required solely for the purpose of, or in connection with, the management of a Habitats Site(s). The purpose of the revised Ports NPS is to support decision-making in relation to strategic port development (or redevelopment) which is not necessary for the management of any Habitats Sites.

4.2.2. It is then necessary to confirm that the revised Ports NPS meets the criteria to be considered as a 'plan' under the Habitats Regulations. Regulation 110 of the Habitats Regulations identifies the HRA process is relevant to National Policy Statements. Furthermore, once adopted, projects could be brought forward to which the revised Ports NPS applies, that trigger LSE on Habitats Sites.

4.2.3. On this basis, we determine that a revised Ports NPS (even though it is not a "plan or project" in its own right) should be subject to the Habitats Regulations Assessment process.

4.3 Identifying National Networks Sites for HRA Screening

4.3.1. As the revised Ports NPS should be subject to Habitats Regulations Assessment it is necessary to consider how the plan could affect a Habitats Site(s). A useful approach here is to consider the 'impact-pathway' model. An 'impact' in this context could be removal of intertidal habitats to facilitate expansion of an existing port. The 'pathway' in this case would be physical removal and disturbance of habitats. Should these habitats be within a Habitats Site or support the qualifying interests of a Habitats Site(s), this could result in changes in

the extent and condition of qualifying interest habitats over time. Those changes would be considered the 'effect' in the context of the Habitats Regulations.

4.3.2. The revised Ports NPS does not contain any spatial proposals or any nominated sites for strategic ports projects. It does not promote any particular site or project. Nor does it seek to direct development away from any location, other than in a general sense in terms of the development control policies it contains. This being so, it is impossible to determine which, or indeed if, Habitats Sites may or may not be affected by projects brought forward following adoption of the revised Ports NPS.

4.3.3. On balance, effects are most likely to be experienced at Habitats Sites adjacent or close to existing major ports in England or to Milford Haven in Wales. Depending on the scale and nature of any individual project brought forward under the revised Ports NPS, it is possible that effects on Habitats Sites could be relevant further afield, for example in relation to mobile species such as marine mammals and seabirds, where these are qualifying interests of more distant Habitats Sites.

4.3.4. It is also possible that Habitats Sites in Scotland could be relevant. Projects brought forward under the revised Ports NPS could be near enough to the Scottish Borders, that their effects could be relevant to Habitats Sites in Scotland. In addition, mobile species such as birds and migratory fish associated with Habitats Sites in Scotland could use habitats outside those Habitats Sites, in England. These could then be subject to effects from NSIPs being delivered under the revised Ports NPS in England.

4.3.5. Transboundary effects on Habitats Sites in Northern Ireland and EU Member States could potentially occur given the revised Ports NPS will cover coastal projects, with potentially substantial interfaces with intertidal and marine habitats. Impacts on European Sites outside the National Site Network could therefore occur, although are less likely to occur than impacts on Habitats Sites in the UK.

Step 2: Describe the plan and any other plans or projects which, in combination, could result in significant effects

Overview of the revised Ports National Policy Statement

4.3.6. The revised Ports NPS sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand and the options for meeting future needs. It also sets out proposed national policy for strategic ports projects that meet, or could meet, the criteria to be delivered via the NSIP consenting regime. The revised Ports NPS provides planning guidance for applicants for port NSIPs. It provides the framework for decisions on proposals for new port development promoted through development consent order (DCO) applications, including advice to the Examining Authority and Secretary of State.

4.3.7. The thresholds for NSIPs in the ports sector are defined in Part 3 of the Planning Act 2008. Under s.24, applications for development consent will require development consent as NSIPs if the estimated incremental annual capacity exceeds:

- 500,000 teu[6] for a container terminal;
- 250,000 movements for roll-on roll off (ro-ro);
- 5 million tonnes for other (bulk and general) traffic; or
- a weighted sum equivalent to these figures taken together.

4.3.8. The geographic scope of the revised NPS is limited to England and in the case of Wales to Reserved Trust Ports only (currently confined to Milford Haven in South-West Wales). In Scotland and Northern Ireland, the planning consent requirements of all national network projects is devolved respectively. As set out previously, projects brought forward under the revised Ports NPS could, however, lead to transboundary effects on Habitats Sites beyond England and Wales. Notwithstanding that the revised NPS covers projects in England and (in relation to Reserved Trust Ports) Wales only, the potential for effects in Scotland and Northern Ireland and for transboundary effects is therefore considered.

4.3.9. The revised Ports NPS includes provision to support the following broad policy objectives:

- to encourage sustainable port development to enable long-term growth in volumes of imports and exports by sea;
- to contribute to local employment, regeneration and development;
- to preserve, protect and improve marine and terrestrial biodiversity;
- to minimise emissions of greenhouse gases from port related development;
- to support climate resilience and adaptation to climate change;
- to minimise use of greenfield land;
- to support access to and the condition of heritage assets;
- to support the needs of freight and logistics supply chains;
- to enhance connectivity and access to ports and to the jobs, services and social networks they create;
- to support sustainable transport networks; and
- to support sustainable development by providing additional capacity for the development of renewable energy.

4.3.10. The revised NPS therefore provides a policy foundation that enables the delivery of largescale development, redevelopment and expansion of major port facilities. By virtue of the criteria for ports projects to be considered NSIPs under section 24 of the Planning Act (2008), these will in almost all cases involve land use change, with the potential for large areas to be affected. In addition, many of the locations suitable for major port infrastructure (including existing ports) are located partly within or in proximity to Habitats Sites.

4.3.11. With the potential for land use change, comes the potential for changes to the physical environment that could affect Habitats Sites.

[6] teu = twenty-foot equivalent unit

Potential for in-combination effects

4.3.12. In-combination effects may contribute to increased impacts and hence effects on qualifying features. For example, loss of salt marsh habitat for a new major port development could occur in parallel with loss of salt marsh habitat arising from a coastal flood defence scheme. Specific assessment of other plans and projects cannot be completed, due to the lack of a spatial component to a revised NPS. The ways in which other plans and projects could exacerbate the effects of major port NSIP schemes can, however, be predicted in broad terms.

Step 3: Identify the potential effects both alone and in combination with other plans and projects

4.3.13. Port NSIPs could lead to a variety of potential effects on Habitats Sites. The nature of these developments means they could cause relevant effects during both construction and operation. Strategic ports infrastructure is rarely decommissioned, although it may be subject to future upgrades, modifications, and major maintenance work. As such, decommissioning effects are relatively unlikely to occur. Should strategic port infrastructure be subject to decommissioning works, impact pathways and effects are likely to be similar, albeit potentially less substantial, to those arising from construction.

4.3.14. Given the England-wide coverage of the revised Ports NPS and the potential for it to cover development at Milford Haven in Wales, it will not be possible to determine which impact pathways will be relevant to which National Network Site(s). It is therefore also not possible to determine which Habitats Sites could experience LSE from projects brought forward under a revised Ports NPS, other than that impacts and effects are likely to be greatest in relation to coastal Habitats Sites in proximity to existing ports. Detailed information on the location, construction and operational characteristics of individual projects would be needed for such an assessment.

4.3.15. The revised Ports NPS does not contain specific measures that can be assessed for LSE. The non-spatial nature of a revised Ports NPS means it cannot generate impact pathways leading to potential effects on Habitats Sites. Experience of previous major ports projects allows the broad ‘impact-pathways’ likely to arise from Port NSIPs brought forward following adoption of the revised NPS to be identified.

4.3.1. It is therefore possible to use the ‘impact-pathway’ approach to identify types of Habitats Sites and their qualifying features that could experience LSE. Such an assessment cannot be completed on a spatial basis but does provide a useful way to identify potential risks to Habitats Sites. Identification of these impact pathways can help to inform the scope and focus of future project-specific HRAs.

4.3.2. There may be impact pathways and corresponding effects on Habitats Sites that have not been identified during HRA of the revised NPS, that only become evident during detailed assessment of specific NSIP projects. Therefore, whilst all impact pathways and effects that

can be identified at this stage have been included (see **Table 5.1**), detailed consideration of LSE can only be completed during HRA screening at the project level.

4.3.3. This approach is consistent with the Opinion of Advocate General Kokott (Judgment of The Court (Second Chamber), 2005). This identifies that an assessment of strategic plans cannot consider all possible effects arising from their implementation because "*Many details are regularly not settled until the time of the final permission*' and, '*it would also hardly be proper to require a greater level of detail in preceding plans or the abolition of multi-stage planning and approval procedures so that the assessment of implications can be concentrated on one point in the procedure. Rather, adverse effects on areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure*".

4.3.4. The following impact pathways have been identified that could arise from implementation of ports NSIP projects:

- habitat loss, disturbance and fragmentation within Habitats Sites, e.g. from capital or maintenance dredging;
- loss, disturbance, or fragmentation of habitats outside Habitats Sites, but that supports qualifying interests of those sites;
- changes to water quality within Habitats Sites or within areas of land supporting qualifying interests;
- changes to surface and subsurface water flows, e.g. construction of new port infrastructure disrupts drainage patterns from adjacent land;
- changes to coastal geomorphology - (including tidal regime, dynamics, turbidity etc);
- changes to air quality and hence habitats arising from construction activities and operational use, e.g. dust and vehicle/shipping emissions;
- species disturbance (visual, lighting, noise & vibration), e.g. arising from increased shipping movements;
- creation of barriers to the movement of migratory species;
- risks of incidental mortality of species, *e.g.* risk of construction activities triggering mortality or injury of fish, invertebrates, and marine mammals;
- introduction or other incidental spreading of Invasive Non-Native Species; and
- exacerbating coastal squeeze effects arising from climate change.

4.3.5. The potential for LSE to arise as a result of the identified impact pathways is explored below.

Step 4: Assess the significance of any effects on Habitats Sites

4.3.6. Potential LSEs are assessed in relation to two main criteria:

- Information on the qualifying interests of Habitats Sites in England (and Scotland/Wales as needed) and their sensitivity to the identified impact pathways; and
- The conservation objectives for each qualifying interest, which if compromised would result in LSE to the qualifying interest(s).

4.3.7. The revised Ports NPS has no spatial component and does not direct development to specific locations, other than to support the promotion of infrastructure delivery (generally) in the locations it is needed and to promote avoidance of sensitive features including Habitats Sites. It is therefore not possible to identify which of the Habitats Sites within England, Wales, or Scotland (or further afield) could be relevant to NSIPs brought forward under the revised NPS. Qualifying interests have therefore been grouped together based on broad taxonomic groupings with similar sensitivities to the impacts identified under Step 3 above, and that could reasonably be at risk of LSE from Ports NSIPs.

4.3.8. Conservation Objectives for Habitats Site qualifying interests are usually set out as follows:

- maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species;
- maintain or restore the structure and function (including typical species) of qualifying natural habitats;
- maintain or restore the structure and function of the habitats of qualifying species;
- maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- maintain or restore the populations of qualifying species; and
- maintain or restore the distribution of qualifying species within the site.

4.3.9. In England, the Conservation Objectives should be read in conjunction with the Supplementary Advice on Conservation Objectives ('SACO') published by Natural England. The supplementary advice sets out how the Conservation Objective for each qualifying interest can be met, in relation to various different criteria. For example, SACO may set out the population size a qualifying interest species needs to reach in order to meet the Conservation Objective 'maintain or restore the populations of qualifying interest species'.

4.3.10. Where a Conservation Objective is being met, the SACO provides advice on how the Conservation Objective can be 'maintained'. Where a Conservation Objective is not being met, SACO provide advice on the steps needed to 'restore' the qualifying interest concerned.

4.3.11. As the revised Ports NPS is a strategic policy document with no spatial component, the SACO are of limited applicability to it. This is because it is not possible to identify which Habitats Sites, and hence which qualifying interests may be affected by NSIP schemes brought forward under a revised NPS. SACO are likely to be of greater relevance to

assessments of individual ports projects. Where HRA of NSIP port projects is required, SACO for relevant Habitats Sites should be taken into account.

4.3.12. Table 4.2 identifies the taxon groups of Habitats Site qualifying interests and how these could be affected through the identified impact pathways (see Section 4.2). Where one or more of the broad Conservation Objectives could be compromised by an impact pathway, this is also set out in Table 4.2, overleaf.

Table 4.2 - Likely Significant Effects that may Arise from NSIPs Brought Forward under the Revised NPS

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
Habitat loss, disturbance, and fragmentation within Habitats Sites	• Terrestrial habitats • Intertidal habitats • Marine Habitats	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; and • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely.	Y
Loss, disturbance, or fragmentation of habitats outside Habitats Sites, but that supports qualifying interests of those sites	• Terrestrial habitats • Intertidal habitats • Marine Habitats • Plants • Terrestrial, freshwater and intertidal invertebrates • Fish, particularly migratory species that move between marine and freshwater	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; and • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely.	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	environments such as lamprey and shad • Amphibians • Birds, particularly those using intertidal and marine habitats • Mammals, particularly those using intertidal and marine waters such as cetaceans and seals		
Changes to water quality within Habitats Sites or within areas of land supporting qualifying interests of Habitats Sites	• Intertidal habitats • Marine Habitats • Plants • Terrestrial, freshwater and intertidal habitat invertebrates • Fish, particularly migratory species that move between marine	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species;	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	and freshwater environments such as lamprey and shad • Amphibians • Birds, particularly those using intertidal and marine habitats • Mammals, particularly those using intertidal and marine waters such as cetaceans and seals	• Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	
Changes to surface and subsurface water flows	• Terrestrial habitats • Intertidal habitats • Marine Habitats • Plants • Terrestrial, freshwater and intertidal habitat invertebrates	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species;	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	• Fish, particularly migratory species that move between marine and freshwater environments such as lamprey and shad • Amphibians • Birds, particularly those using intertidal and marine habitats	• Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	
changes to coastal geomorphology	• Terrestrial habitats • Intertidal habitats • Marine Habitats • Plants • Terrestrial, freshwater and intertidal habitat invertebrates • Fish, particularly migratory species that move between marine	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species; • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	and freshwater environments such as lamprey and shad • Birds, particularly those using intertidal and marine habitats	• Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	
Changes to air quality	• Terrestrial habitats • Intertidal habitats • Plants • Terrestrial and intertidal habitat invertebrates	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species; • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
Species disturbance (visual, lighting, noise & vibration)	• Terrestrial, freshwater and intertidal habitat invertebrates • Fish, particularly migratory species that move between marine and freshwater environments such as lamprey and shad • Birds, particularly those using intertidal and marine habitats • Mammals, particularly those using intertidal and marine waters such as cetaceans and seals	• Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
Creation of barriers to the movement of migratory species	• Fish, particularly migratory species that move between marine and freshwater environments such as lamprey and shad	• Maintain or restore the structure and function of the habitats of qualifying species; • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	Y
Risk of incidental mortality of species	• Terrestrial, freshwater and intertidal invertebrates • Fish, particularly migratory species that move between marine and freshwater environments such as lamprey and shad • Amphibians	• Maintain or restore the structure and function of the habitats of qualifying species; • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	• Birds, particularly those using intertidal and marine habitats • Mammals, particularly those using intertidal and marine waters such as cetaceans and seals		
Introduction or other incidental spreading of Invasive Non-Native Species	• Terrestrial habitats • Intertidal habitats • Marine Habitats • Plants • Terrestrial, freshwater and intertidal invertebrates • Fish, particularly migratory species that move between marine and freshwater	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species; • Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	environments such as lamprey and shad • Amphibians • Birds, particularly those using intertidal and marine habitats • Mammals, particularly those using intertidal and marine waters such as cetaceans and seals	• Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	
Exacerbating coastal squeeze effects arising from climate change	• Terrestrial habitats • Intertidal habitats • Plants • Terrestrial, freshwater and intertidal invertebrates • Amphibians	• Maintain or restore the extent and distribution of qualifying habitats and habitats of qualifying species; • Maintain or restore the structure and function (including typical species) of qualifying natural habitats; • Maintain or restore the structure and function of the habitats of qualifying species;	Y

Impact Pathway that could Trigger LSE	Relevant Qualifying Features	Conservation Objectives that could be Compromised	Potential for LSE? (Y/N)
	• Birds, particularly those using intertidal and marine habitats	• Maintain or restore the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely; • Maintain or restore the populations of qualifying species; and • Maintain or restore the distribution of qualifying species within the site.	

4.4 In-combination assessment

4.4.1. During screening, potential LSE on Habitats Sites need to be considered either ‘alone’ or ‘in-combination’. Where LSEs may arise from the revised Ports NPS alone, assessment of in-combination effects can be completed at the appropriate assessment stage. No in-combination assessment is technically required at the screening stage.

4.4.2. If an effect is identified that is not predicted to lead to LSE on any Habitats Sites alone, it is necessary to undertake an in-combination assessment at the screening stage. This considers whether the non-significant effect from a revised NPS, may, in-combination with effects from other plans or projects, result in LSE on the Habitats Sites concerned.

4.4.3. All of the impact pathways that have been identified are considered to have potential to trigger LSE ‘alone’, as set out in section 4.5. It is nevertheless considered useful to refer to other types of plans and projects which could contribute to in-combination LSE with Ports NSIP projects. This is because this HRA Report may be used as a sign-posting document during assessment of individual NSIPs in future.

4.4.4. The broad way in which effects from the revised Ports NPS and other plans and projects could increase the risk of LSE to Habitats Sites have been considered in this HRA Report. In-combination effects may contribute to increased impacts and hence effects on qualifying features. For example, disturbance to SPA bird species from construction of a port NSIP project could be exacerbated by further disturbance from construction of an offshore windfarm.

4.4.5. Specific assessment of other plans and projects cannot be completed, due to the lack of a spatial component to the revised Ports NPS. The ways in which other plans and projects could exacerbate the effects of port development NSIP schemes have therefore been predicted in broad terms. This is set out in Table 4.3, below.

Table 4.3 - Other Plans or Projects

Other Plans or Projects	Overview of how other Plan or Projects could contribute to effects in-combination with Adopted NPS
National & Regional Marine Plans / Coastline Management Plans	Provides framework for the management of marine areas, with potential to facilitate development and management strategies with effects on Habitats Sites.
NPS for National Networks (2024)	Provides framework for design, construction, and operation of major road, rail, and strategic rail freight interchanges, with potential for effects on inland, marine and coastal environments. This could include projects adjacent or within major port sites.

Other Plans or Projects	Overview of how other Plan or Projects could contribute to effects in-combination with Adopted NPS
The Wales Transport Strategy, 2021	Provides a framework for the construction and operation of transport infrastructure across Wales with potential for associated construction and operation effects on Habitats Sites.
National Transport Strategy (Scotland) (2020)	Provides a framework for the construction and operation of transport infrastructure across Scotland with potential for associated construction and operation effects on Habitats Sites.
UK Transport Decarbonisation Plan (2021)	Government's commitments and the actions needed to decarbonise the entire transport system in the UK. Whilst this may have beneficial effects through reducing climate change effects on Habitats Sites, it also promotes infrastructure interventions for some transport sectors; these could have construction and operation effects on Habitats Sites also affected by major ports projects.
Integrated Rail Plan for the North and Midlands (2021)	Includes some policy elements which promote infrastructure interventions across central parts of the UK rail network with potential for associated construction and operation effects on Habitats Sites, potentially including those in a coastal setting.
Local Transport/Highways Plans	May promote the delivery of infrastructure interventions on local road, and potentially rail networks with potential for associated construction and operation effects on Habitats Sites.
Energy NPS (EN 1 – 6) (2023)	Provides a framework for design, construction, and operation of energy infrastructure in England and Wales, including provision for coastal and offshore infrastructure provision. Potential for associated construction and operation effects on Habitats Sites, including adjacent to or within areas used for major ports projects.
National Planning Policy Framework	Provides an overarching framework in support of the delivery of sustainable development in England, principally in relation to Town and Country Planning Act applications and excluding NSIPs. Includes policy controls in relation to managing potential effects on Habitats Sites, but nonetheless may facilitate development with potential for effects on Habitats Sites.
Planning policy Wales	Provides an overarching framework in support of the delivery of sustainable development in Wales,

Other Plans or Projects	Overview of how other Plan or Projects could contribute to effects in-combination with Adopted NPS
	principally in relation to Town and Country Planning Act applications and excluding NSIPs. Includes policy controls in relation to managing potential effects on Habitats Sites but nonetheless may facilitate development with potential for effects on Habitats Sites.
Fourth National Planning Framework (NPF4), Scotland	Provides an overarching framework in support of the delivery of sustainable development in Scotland, principally in relation to Town and Country Planning Act applications and excluding NSIPs. Includes policy controls in relation to managing potential effects on Habitats Sites but nonetheless may facilitate development with potential for effects on Habitats Sites, including those located close to the border with England.
Local Development Plans including land use allocations	May include proposals (for example site allocations) which could lead to effects on Habitats Sites, including in proximity to major ports sites.
NPS for Water Resources (2023)	Provides framework for design, construction, and operation of water resources and management infrastructure, with potential to facilitate development with effects on Habitats Sites.
NPS for Waste Water (2012)	Provides framework for design, construction, and operation of waste water treatment infrastructure, with potential to facilitate development with effects on Habitats Sites.
River Basin Management Plans	Provides framework for the management of river basins, with potential to facilitate projects and management strategies with effects on Habitats Sites, including in proximity or with hydrological linkages to major ports sites.
Catchment Abstraction Management Strategies (CAMS)	Set out the approach for sustainable management of water resources across water company areas. May include abstraction proposals with potential for effects on Habitats Sites.
NPS for Geological Disposal Infrastructure (2019)	Provides framework for design, construction, and operation of Geological Disposal Infrastructure, with potential to facilitate development with effects on Habitats Sites.
NPS for Hazardous Waste (2013)	Provides framework for design, construction, and operation of Hazardous Waste facilities, with potential to facilitate development with effects on Habitats Sites.

Other Plans or Projects	Overview of how other Plan or Projects could contribute to effects in-combination with Adopted NPS
Individual NSIP projects	Individual NSIPs may lead to effects on Habitats Sites during their construction and operation.
Other infrastructure and development projects outside the NSIP regime.	Other infrastructure and development projects may lead to effects on Habitats Sites during their construction and operation.
National Infrastructure Strategy (2020)	Provides the Government's strategy for the UK's infrastructure networks, which includes support for infrastructure interventions that could have effects on Habitats Sites.

4.5 Summary of HRA Screening

4.5.1. The revised NPS provides a strategic planning policy framework for the development of major ports infrastructure in England and, in relation to Reserved Trust Ports only, also in Wales. It also provides a framework for decision-making and consenting of port development NSIPs. It is therefore clear that the revised Ports NPS is neither directly connected with nor required for the management of Habitats Sites. It is therefore a relevant 'Plan' subject to the requirements of the Habitats Regulations in relation to Habitats Regulations Assessment.

4.5.2. The individual policy wording within the draft revised Ports NPS does not in and of itself trigger LSE to any Habitats Sites. This is because the policies are generic and do not trigger identifiable impacts on any particular Habitats Site.

4.5.3. This HRA Screening has though confirmed that projects brought forward under it in future could lead to impacts on Habitats Sites, and that these could lead to LSE. As the revised NPS applies to projects within England and to a more limited extent Wales, potential LSE could most commonly occur in relation to Habitats Sites in these geographies. Given the coastal nature of major port developments and that such developments can affect far-ranging mobile species such as marine mammals, fish and birds, there is also some potential for transboundary effects on Habitats Sites beyond England and Wales.

4.5.4. As the revised Ports NPS itself is a non-spatial strategic planning policy, it is not possible to identify those Habitats Sites or qualifying interests which could be subject to LSE. The broad impact pathways and an indication of the types of qualifying features that could be affected have been identified. Detailed assessment of potential LSE would however only be possible during HRA of individual projects, as these are brought forward under the revised Ports NPS.

4.5.5. On a precautionary basis the revised Ports NPS could therefore lead to LSE on Habitats Sites, both alone and in combination with other plans and projects. Information is therefore

presented to support Appropriate Assessment, the next stage of the HRA process, in Section 5 overleaf.

5 HRA Stage 2 – Appropriate Assessment

5.1 Appropriate Assessment Overview

5.1.1. Where the potential for likely significant effects (LSE) cannot be excluded, it is necessary as part of the HRA process to complete an 'appropriate assessment'. The purpose of this is to identify if the identified LSE could lead to adverse effects on the integrity of Habitats Sites. As per the HRA screening stage, the potential for adverse effects on integrity must be considered for the revised Ports NPS both alone and in-combination with other plans and projects.

5.1.2. For most plans and projects subject to appropriate assessment[7], this would involve a more detailed consideration of how the identified LSE could affect Habitats Sites qualifying interests and their conservation objectives. This could include (for example) more detailed consideration of the spatial extent, magnitude, duration, reversibility etc of an identified LSE, to better understand and assess how the qualifying interest(s) being assessed would respond. It could also involve gathering more detailed baseline information on relevant Habitats Sites qualifying interests and supporting features, including consideration of advice from the relevant Statutory Nature Conservation Body(ies) (SNCB).

5.1.3. In England this should include use of any Supplementary Advice on Conservation Objectives (SACO) published by Natural England for relevant Habitats Sites. Targeted ecological and other surveys might be appropriate. In addition, the identification of targeted mitigation that seeks to address the specific effects of a plan or project on Habitats Sites, are considered at the appropriate assessment stage.

5.1.4. For the Revised Ports NPS, limited additional assessment can be completed at the appropriate assessment stage. This remains due to, as for the HRA screening stage, the revised NPS not containing specific spatial proposals with identifiable impacts on any Habitats Site(s). This appropriate assessment for the revised Ports NPS therefore includes:

- A high-level overview of the potential for adverse effects on integrity from future projects brought forward under the revised Ports NPS, in the absence of mitigation measures;
- Identification of policy wording within the revised Ports NPS that supports avoidance, lessening, and mitigation of effects on Habitats Sites; and
- Identification of the types of mitigation measures that could be applied by individual port developments brought forward under the revised NPS; and

[7] i.e. projects and plans with sufficiently detailed spatial and other parameters such that LSE on individual Habitats Sites can be identified.

- A conclusion as to whether adverse effects on the integrity of Habitats Sites can or cannot be ruled out.

5.2 Assessing Adverse Effects on Integrity

5.2.1. The following impact pathways were identified at the HRA screening stage, that could lead to LSE on the integrity of Habitats Sites:

- Habitat loss, disturbance and fragmentation within Habitats Sites, e.g. from capital or maintenance dredging;
- Loss, disturbance, or fragmentation of habitats outside Habitats Sites, but that supports qualifying interests of those sites;
- Changes to water quality within Habitats Sites or within areas of land supporting qualifying interests;
- Changes to surface and subsurface water flows, e.g. construction of new port infrastructure disrupts drainage patterns from adjacent land;
- changes to coastal geomorphology - (including tidal regime, dynamics, turbidity etc);
- Changes to air quality and hence habitats arising from construction activities and operational use, e.g. dust and vehicle/shipping emissions;
- Species disturbance (visual, lighting, noise & vibration), e.g. arising from increased shipping movements;
- Creation of barriers to the movement of migratory species;
- Risks of incidental mortality of species, *e.g.* risk of construction activities triggering mortality or injury of fish, invertebrates, and marine mammals;
- Introduction or other incidental spreading of Invasive Non-Native Species; and
- Exacerbating coastal squeeze effects arising from climate change.

5.2.2. At this strategic level, it is not possible to exclude the potential for such impacts and resultant effects to be experienced at Habitats Sites. As previously described Habitats Sites located away from the coast in England and South-west Wales and with limited hydrological connectivity to potential and current major ports sites would be at lower risk of significant effects than coastal Habitats Sites. The potential for effects also extends to Habitats Sites in Scotland, with (on balance) Habitats Sites closer to the border with England likely to be at increased risk relative to those further away. The risk of significant effects further afield, including transboundary effects on Natura 2000 Sites, can also not be discounted.

5.2.3. It is therefore not possible to discount the potential for adverse effects on integrity to Habitats Sites as a result of infrastructure brought forward in line with the revised Ports NPS in future. Due to the non-spatial and strategic nature of the NPS and as per the HRA screening, it is also not possible to identify which Habitats Sites and qualifying interests could be subject to adverse effects on integrity.

5.2.4. It is, however, possible to consider mitigation measures that individual NSIPs could bring forward to avoid or lessen their effects on Habitats Sites. It is also possible to consider

mitigation measures provided through policy provisions in the revised Ports NPS itself. Mitigation measures are considered in Section 5.4.

5.3 In-combination Effects

5.3.1. Given the non-spatial and strategic nature of the revised NPS, it is not possible to know where or when individual NSIPs will come forward and be subject to decision-making on the basis of it. It is therefore also not possible to predict which other plans and projects would need to be considered in detail during project level HRA of NSIPs.

5.3.2. Given this lack of detail and with recourse to the precautionary principle, there is potential for individual NSIPs to come forwards that would not have adverse effects on the integrity of Habitats Sites alone, but which could have adverse effects on the integrity of Habitats Sites in combination. Relevant national-level plans and the types of plans and projects likely to be relevant to in-combination assessment of NSIPs have been identified in Table 4.3. All NSIPs will require a project-level HRA, within which in-combination effects will be assessed on a case-by-case basis.

5.4 Mitigation for Adverse Effects

Policy provisions in the Revised Ports NPS

5.4.1. The Revised Ports NPS includes a number of policy provisions which support avoidance, reduction, or otherwise mitigating the potential effects of future major ports projects on Habitats Sites. Table 5.1 summarises these policy provisions, with relevant extracts of the revised NPS text included. It should be noted that the policy provisions referred to are not all specifically or entirely targeted at mitigating effects on Habitats Sites, although some are. Also included are policy provisions that would support environmental mitigation for Habitats Sites as well as other ecological and/or human receptors.

Table 5.1 – Policy Provisions that support mitigation of effects on Habitats Sites

NPS Section	Relevant Policy Wording and/or Summary
2.2.1	*'…ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, as set out in national regulations including those implementing the UK's international treaty obligations.*
2.2.2	*'It is Government's policy in order to ensure sustainable development, that new port infrastructure should:…* *• preserve, protect and improve marine and terrestrial biodiversity, in situ where possible;* *• minimise emissions of greenhouse gases from port related development and contribute to wider emissions policy in the transport network…*

NPS Section	Relevant Policy Wording and/or Summary
	• minimise use of greenfield land; *• provide high standards of protection for the natural environment…'.*
3.1.2	*In making decisions on proposals for individual port developments, the planning decision-maker should take account of the following key considerations:...* *… the assessment should also be informed, as to the material points for consideration, by the points raised by the statutory consultees, as defined in section 42 of the Planning Act 2008;*
3.5.3	*Sufficient relevant information is crucial to good decision-taking, particularly where formal assessments are required (such as Environmental Impact Assessment/Environmental Outcomes Assessment, Habitats Regulation Assessment and Flood Risk Assessment). To avoid delay, applicants should discuss what information is needed with statutory environmental bodies as early as possible at the pre-application stage.*
3.5.4	*The Government has set legally binding long-term targets for England under the Environment Act 2021, covering the areas of: air quality, water, biodiversity, resource efficiency and waste reduction, tree and woodland cover, and Marine Protected Areas. Meeting the legally binding targets will be a shared endeavour that will require a whole-of-government approach to delivery. The delivery of these long-term targets is supported by stretching interim targets. The Secretary of State must consider duties under the Environment Act 2021 in relation to environmental targets and the framework for delivering those targets set out in the Government's Environmental Improvement Plan for improving the natural environment.*
3.5.5	*The Secretary of State must consider the statutory Marine Protected Area (MPA) target (Environmental targets (Marine Protected Areas) Regulations 2023). The MPA target requires that at least 70% of MPA features be in favourable condition by 2042 with the remainder in recovering condition. Recovering condition is defined as 'the measures necessary to remove or manage all relevant impacts on that feature have been implemented'*
3.5.6	*Applicants should look for opportunities to take a holistic approach to avoiding, reducing or mitigating multiple impacts on the natural or built environment, on landscapes and on people by using nature-based solutions. Nature-based solutions can deliver multiple benefits for climate, biodiversity, and people, and can therefore play a critical role in tackling these interrelated impacts in an integrated way. Carefully designed and implemented nature-based solutions are beneficial because they may be able to deliver a range of benefits to society*

NPS Section	Relevant Policy Wording and/or Summary
	beyond their primary purpose. For example, trees planted to sequester carbon could offer benefits for flood management, soil stability, biodiversity and recreation. The relevant local nature recovery strategy will be a useful source of information for nature-based solutions, including 'green infrastructure'. A Green Infrastructure approach can be used to plan multifunctional networks of natural features to integrate the various benefits and solutions. Well-designed nature-based solutions could also contribute to achieving Biodiversity Net Gain requirements.
3.5.13	*To help the decision-maker consider thoroughly the potential effects of a proposed project in cases where the EIA (or in due course, EOR) Regulations do not apply to a project, and an ES is not therefore required, the applicant should instead provide information proportionate to the project on the likely significant environmental, social and economic effects.*
3.9.3 – 3.9.6	*'Good design can minimise emissions, and new developments should be designed with a view to fuel efficiency in the operation of buildings and of outdoor plant and machinery, as well as with the maximum use of renewable energy sources…* *The provision of shore-side fixed electrical power to replace the use of ships' generators in port ('cold ironing') can reduce local pollution, and may also reduce carbon emissions depending on generation sources, although the effects will be small relative to global emissions. Paragraph 4.10.18 offer more detail on cold ironing…'*
3.10.18	*'Where adaptation measures are necessary to deal with the impact of climate change and that measure would have an adverse effect on other aspects of the application and/or surrounding environment (e.g. coastal processes), the decision-maker may consider requiring the applicant to ensure that the adaptation measure could be implemented should the need arise, rather than at the outset of the development (e.g. increasing height of an existing, or requiring a new, sea wall)…'*
4.1.7	*The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests, as well as consider how its proposal will deliver Biodiversity Net Gain in line with the policy set out in section 3.7 above and requirements in a relevant Biodiversity Gain Statement.*
4.1.21 – 4.1.23	*The applicant should include appropriate mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:* • *during construction, it will seek to ensure that activities will be confined to the minimum areas required for the works;*

NPS Section	Relevant Policy Wording and/or Summary
	• *during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;* • *habitats will, where practicable, be restored after construction works have finished; and* • *opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.* *Where the applicant cannot demonstrate that appropriate mitigation measures will be put in place, the decision-maker should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into.* *The decision-maker will need to take account of what mitigation measures may have been agreed between the applicant and Natural England (or Natural Resources Wales) or the Marine Management Organisation (MMO), and whether Natural England (or Natural Resources Wales) or the MMO has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.*
4.1.26	*As a general principle, and subject to the specific policies below, development should, at first avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives. If avoidance is not possible, mitigation needs to be considered (as set out in paragraphs above). Where significant harm cannot be avoided or mitigated it should be compensated for as a last resort, with on-site mitigation being considered ahead of off-site. The Secretary of State will give significant weight to any residual harm.*
4.1.30	*In taking decisions, the Secretary of State should ensure that appropriate weight is attached to: designated sites of international, national, and local importance; irreplaceable habitats ; protected species and habitats; other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment, including areas prioritised for nature's recovery in the relevant local nature recovery strategies.*
4.2.1 – 4.2.6	*Where a plan or project is likely adversely to affect a habitats site, either alone or in combination with other plans or projects, the competent authority (in the case of a development consent order, the Secretary of State) must undertake a Habitats Regulations Assessment*

NPS Section	Relevant Policy Wording and/or Summary
	(HRA/appropriate assessment) of these likely effects in view of the site's conservation objectives. The applicant should provide a 'shadow' HRA. *The applicant is advised to seek the early advice of the appropriate Statutory Nature Conservation Body and provide such information as the Secretary of State may reasonably require, to determine whether or not the plan or project should proceed to the Appropriate Assessment stage of Habitats Regulation Assessment.* *The HRA may consider the effect of any mitigation measures, and the Statutory Nature Conservation Body must be formally consulted on the assessment and its advice considered. The applicant should also consider agreeing an Evidence Plan with the Statutory Nature Conservation Body to help determine the information required .* *Such plans or projects may only proceed if the assessment concludes they will not adversely affect the integrity of the site or, notwithstanding a negative assessment, there are no alternative solutions, and they must proceed for imperative reasons of overriding public interest. The applicant must demonstrate that it has sought advice from the Statutory Nature Conservation Body on whether any proposed compensation is appropriate to maintain the overall coherence of the National Sites Network.* *The applicant must also show that the compensation is secured or provide an indication as to how it can be secured to maintain the overall coherence of the National Sites Network. Provision of such information will not be taken as an acceptance of adverse effects on integrity and if an applicant disputes the likelihood of adverse effects, it can provide this information without prejudice to the Secretary of State's final decision on the effects of the potential development on the habitats site. If, in these circumstances, an applicant does not supply information required for the assessment of a potential derogation, there will be no expectation that the Secretary of State will allow the applicant the opportunity to provide such information following the examination.* *During the pre-application stage, and without prejudice to the formal Habitats Regulation Assessment of the submitted plan or project, if the Statutory Nature Conservation Body gives an early indication that, irrespective of any anticipated mitigation measures, the proposed development is highly likely to lead to adverse effects on the integrity of one or more habitats sites, the applicant must include with their application such information required to assess a potential derogation under the Habitats Regulations.*

NPS Section	Relevant Policy Wording and/or Summary
4.2.7 – 4.2.9	*Refer to section 4.1 on biodiversity and geological conservation. In the event that Appropriate Assessment is required, the applicant must provide the decision-maker with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.* *The Secretary of State must ensure that for projects deemed to have a likely significant effect on protected habitats / species, that the project only proceeds if the assessment concludes they will not adversely affect the integrity of the site or, notwithstanding a negative assessment, there are no alternative solutions, and they must proceed for imperative reasons of overriding public interest.* *If the alternatives and IROPI tests are met, the Secretary of State must then also be satisfied that any requisite compensatory measures have been secured.*
4.3.2	*As with land-side works, the development should, at first, avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives. If avoidance is not possible, mitigation needs to be considered, and where significant harm cannot be avoided or mitigated it should be compensated for as a last resort. It will always be important to demonstrate that this hierarchy has been followed so that the environmental impacts of dredging and of deposition are minimised and managed appropriately.*
4.3.4	*Capital dredging: where capital dredging (i.e. new dredging, or dredging after an interval of more than 10 years, beyond the depths or geographical range of prior maintenance dredges, for berth-pockets and/or channels) is required as part of the development, this will need to be subject to environmental assessment, including likely effects on protected European sites or species, and will almost certainly require a [deemed] MMO marine licence .*
4.3.7	*The applicant should indicate what effect (if any) the development will have on maintenance dredging requirements, and where necessary should ensure that a draft appropriate assessment under the Habitats Regulations for the development as a whole incorporates consequential maintenance dredging.*
	4.4.8 The decision-maker should be satisfied that development consent can be granted, taking full account of environmental impacts and are satisfied all other necessary consent (including Environmental Permits and marine licences) can be obtained. This will require close co-operation with the Environment Agency and/or the pollution control

NPS Section	Relevant Policy Wording and/or Summary
	authority, the Welsh Government and other relevant bodies, such as the MMO, Natural England or Natural Resources Wales, Drainage Boards and water and sewerage undertakers, to ensure that, in the case of potentially polluting developments: • *the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and* • *the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits and targets.*
4.5.31	*The Exception Test is only appropriate for use where the Sequential Test alone cannot deliver an acceptable site, considering the need for essential infrastructure to remain operational during floods. It may also be appropriate to use it where, as a result of the alternative site(s) at lower risk of flooding being subject to national designations such as landscape, heritage and nature conservation designations, e.g. Areas of Outstanding Natural Beauty (AONBs), Sites of Special Scientific Interest (SSSIs) and World Heritage Sites (WHS), it would not be appropriate to require the development to be located on the alternative site(s).*
4.6.8	*Applicants should propose appropriate mitigation measures to address adverse physical changes to the coast, in consultation with the MMO, the Welsh Government or the Environment Agency, Local Planning Authorities, other statutory consultees, Coastal Partnerships and other coastal groups, as it considers appropriate*
4.9.4	*Where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of, the proposed project on water quality, water resources and physical characteristics of the water environment as part of the Environmental Statement (ES) or equivalent. When necessary an Environmental Impact Assessment, WFD Assessment and/or HRA should be done in accordance with current planning guidance.*
4.10.19	*All proposals should either include reasonable advance provisions (such as ducting and spaces for sub-stations) to allow the possibility of future provision of cold-ironing infrastructure, or give reasons as to why it would not be economically and environmentally worthwhile to make such provision.*

NPS Section	Relevant Policy Wording and/or Summary
4.10.22	*Electric vessel charging for maritime should reduce emissions for those vessels that have battery electric engines, and uses similar infrastructure to that used for shore-side power. Advance provision for electric vessel charging should accordingly be made wherever there is a realistic possibility of usage, and especially in conjunction with shore-side power.*
4.10.25	*The decision-maker should generally give air quality considerations substantial weight where a project, after taking into account mitigation, would lead to deterioration in air quality in an area, or lead to a breach or delay in meeting national air quality limits. However, air quality considerations will also be important where substantial changes in air quality are expected, even if this does not lead to any breaches of any national air quality limits.*
4.12.8	*The decision-maker should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. In doing so, the decision-maker may wish to impose requirements. Any such requirements should take account of the guidance set out in para 55ff of the National Planning Policy Framework, or any successor to it, and where applicable in Planning Practice Guidance.*
4.12.13	*When preparing the development consent order, the decision-maker should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that actual noise levels from the project do not exceed those described in the assessment or any other estimates on which the decision-maker's decision was based.*
4.13.5	*The assessment should include… …This should include any noise and/or light pollution effects, including on local amenity, dark skies, tranquillity, and nature conservation. The assessment should also demonstrate how noise and/or light pollution from construction and operational activities on residential amenity, sensitive locations, and other receptors will be minimised.*

5.4.2. The measures in the revised Ports NPS provide a policy framework that supports avoidance or mitigation of potential adverse effects on the integrity of Habitats Sites. However, the overall framework of the revised Ports NPS also recognises the potential for individual NSIP projects to lead to adverse effects on the integrity of Habitats Sites. Without detailed information on individual NSIPs that may come forward under the revised NPS, it is not possible to conclude that adverse effects on integrity can be avoided through the revised NPS policy provisions. It is therefore necessary to consider the broad mitigation measures

that individual NSIPs may need to deliver as part of detailed project-specific measures. These are considered in the following section.

Broad mitigation measures that may be applicable to individual NSIP projects

5.4.3. This section of the HRA Report considers the broad types of mitigation measures that may be appropriate to address any adverse effects on integrity arising from individual NSIPs taken forward under the revised Ports NPS. Mitigation measures have been identified in relation to the impact pathways and potential LSE identified during the HRA screening. As set out in sections 5.2 and 5.3, it is not possible to fully assess the potential for LSE to also trigger adverse effects on the integrity of Habitats Sites. As such, it is appropriate to consider mitigation measures that may avoid, lessen, or otherwise mitigate effects on Habitats Site's qualifying features for all of the impact pathways identified.

5.4.4. These measures can only be considered generically during assessment of the revised Ports NPS. Again, this is because the precise impacts and effects, and hence the precise requirements for mitigation for any individual NSIP can only be determined through detailed assessment at the project level. Table 5.2 overleaf, sets out the broad mitigation measures that are likely to be applicable to each of the identified LSE in Table 4.2. It should be noted that other impact pathways and hence other mitigation requirements could be identified during HRA of individual NSIPs, that are not identified in Table 4.2. The provisions within the revised ports NPS for HRA and the wider legal framework for HRA means that any such effects would not escape assessment during Examination and decision-making for individual NSIP ports projects.

Table 5.2 – Potential Mitigation Measures for Individual NSIPs

Impact Pathway Triggering Adverse Effects	**Potential Mitigation Measures**
Habitat loss, disturbance, and fragmentation within Habitats Sites	Design scheme to avoid or minimise loss, disturbance, and fragmentation of qualifying interest habitats. Incorporate habitat corridors into scheme design that address habitat fragmentation risks. Remove existing infrastructure/features that contributes to existing fragmentation as part of scheme design[8].

[8] Depending on context this may be appropriate as mitigation or may need to be considered compensation and hence not suitable for the appropriate assessment stage of the HRA process.

Impact Pathway Triggering Adverse Effects	Potential Mitigation Measures
Loss, disturbance, or fragmentation of habitats outside Habitats Sites, but that supports qualifying interests of those sites	Design scheme to avoid or minimise loss, disturbance, and fragmentation of relevant habitats. Incorporate habitat corridors into scheme design that address habitat fragmentation risks. Consider provision of replacement habitat, where this can mitigate the risk to qualifying interests arising from the identified loss, disturbance, or fragmentation of relevant habitats. Remove existing infrastructure/features that contributes to existing fragmentation as part of scheme design.
Changes to water quality within Habitats Sites or within areas of land supporting qualifying interests of Habitats Sites	Design scheme to avoid works in locations where there is a risk of encountering/releasing existing pollutants in the environment as far as practicable. Embed and implement pollution prevention and control measures as part of scheme design. This is likely to be relevant to both construction and operation phases.
Changes to surface and subsurface water flows	Design scheme to minimise earthworks and other intrusive activities with potential to alter hydrological functioning. Complete assessment of potential hydrological/hydrogeological change arising from individual scheme and incorporate mitigation to address risk as required. Design drainage features to support continued favourable hydrological functioning of affected Habitats Sites.
Changes to air quality	Locate new ports infrastructure which may trigger air quality impacts as far from any Habitats Sites (and functionally-linked land and marine habitats) as practicable. Appropriate distances would need to be considered and identified through project-specific assessment. Consider restrictions/requirements for particular technology types/supporting infrastructure to avoid or lessen impacts, e.g., ‘cold-ironing’ as referred to in the revised Ports NPS (see Table 5.1). Prioritise and incorporate low or zero-emission modes of transport into scheme design and incorporate or demonstrate sufficient supporting infrastructure required to run these.

Impact Pathway Triggering Adverse Effects	Potential Mitigation Measures
	Consider use of barriers and shelter belts to reduce transmission of air pollutants to sensitive habitats. Consider reducing other (existing) sources of air pollution, to negate increases arising from the project being assessed.
Species disturbance (visual, lighting, noise & vibration)	Design scheme to incorporate suitable buffer zones between disturbing activities and habitats used by qualifying interest species. Seek to locate works that generate greatest levels of noise and vibration, e.g. piling away from habitats used by qualifying interest species. Consider use of barriers to disrupt transmission of noise/vibration and block sight lines to habitats used by qualifying interest species. Time noise/vibration generating activities to avoid periods when qualifying interest species are present, or when they are less sensitive to noise and vibration impacts, e.g., avoid piling works in estuarine channels during fish migrations.
Creation of barriers to the movement of migratory species	Design scheme to avoid or minimise loss, disturbance, and fragmentation of habitats used by qualifying interest species. Provide alternative habitats that provide equivalent or greater ecological functioning than those impacted, where impacts are confined entirely to areas outside the boundary of Habitats Sites[6]. Incorporate habitat corridors e.g., green bridges, fish passes, wildlife underpasses or similar into scheme design that address habitat fragmentation risks. Incorporate joined up ecological networks into scheme design, that contribute to habitat connectivity for Habitats Sites and their qualifying interests.
Risk of incidental mortality of species	Design scheme to avoid or minimise loss, disturbance, and fragmentation of habitats used by qualifying interest species. Design scheme to include intrinsic features e.g., that minimise the risk of incidental mortality. Incorporate habitat corridors e.g., fish passes, or bat/bird flyovers etc. into scheme design.

Impact Pathway Triggering Adverse Effects	Potential Mitigation Measures
	Complete survey and/or modelling work to inform assessments of mortality risk. Incorporate measures such as ecological clerk of works, sensitive site clearance and 'soft-starts' to piling activities into construction.
Introduction or other incidental spreading of Invasive Non-Native Species (INNS)	Design scheme to avoid works in proximity to INNS where practicable. Where the risk of spreading INNS is unavoidable, an appropriate management and treatment plan for managing this risk should be included as part of the Scheme. Such a plan may need to apply during both the construction and operation phases of any individual NSIP. Shipping can transport invasive non-native species, with several species of crustaceans and other invertebrates considered to be problematic in UK waters[9]. Measures to manage risks associated with such species are likely to be relevant to INNS strategies for major ports project.
Exacerbating coastal squeeze effects arising from climate change	Design scheme to minimise earthworks and other intrusive activities with potential to alter hydrological functioning. Complete assessment of potential hydrological change arising from individual scheme and incorporate mitigation to address hydrological risk as required. Design drainage features to support continued favourable hydrological functioning of affected Habitats Sites.
Exacerbating coastal squeeze effects arising from climate change	Consider restrictions/requirements for particular technology types to avoid or lessen impacts of individual projects on climate change. Consider infrastructure locations and designs that support coastal realignment, where this does not conflict with other schemes for e.g. coastal defence or managed realignment.

[9] In Practice - Bulletin of the Chartered Institute of Ecology and Environmental Management - Issue 112, June 2021 (pp.21-25)Publisher: CIEEM

Impact Pathway Triggering Adverse Effects	Potential Mitigation Measures
	Design habitat provision into projects that supports habitat change anticipated under climate change projections. Incorporate joined up ecological networks into scheme design, that contribute to habitat connectivity for Habitats Sites and their qualifying interests.

5.4.5. Application of project-specific mitigation measures is likely to enable adverse effects on integrity to be avoided when applied to future ports projects. However, there may be instances when projects are unable to avoid adverse effects on integrity, notwithstanding the inclusion of mitigation measures. The possibility of this is evidenced by previous major infrastructure projects in coastal environments having to conclude adverse effects on integrity cannot be ruled out beyond reasonable scientific doubt, with these projects required to progress to the next stages (derogations) of the HRA process.

Appropriate assessment conclusions

5.4.6. It is not possible to rule out the potential for adverse effects on the integrity of Habitats Sites. This is due to the non-spatial and strategic nature of the revised NPS, which means potential effects on Habitats Sites cannot be accurately judged, including the efficacy of mitigation measures to address LSE. Whilst no specific effects can be attributed to the NPS itself, individual NSIP projects could be brought forward under it in future which trigger adverse effects on integrity.

5.4.7. The potential for adverse effects on integrity has been identified in relation to Habitats Sites primarily in England and to a lesser extent Wales. There is also the potential for adverse effects on the integrity of Habitats Sites in Scotland and Northern Ireland, with some potential for transboundary effects on Habitats Sites further afield.

5.4.8. As there is a risk of adverse effects on the integrity of Habitats Sites, the revised NPS needs to be subject to the subsequent derogation stages of the HRA process; these are set out in Sections 6 and 7 below.

6 HRA Derogations – Alternative Solutions

6.1 Requirements for Assessing Alternative Solutions

6.1.1. Regulation 107(1) of the Habitats Regulations states that:

'If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).'

6.1.2. Regulation 107(2) goes on to state:

'Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a)reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

(b)any other reasons which the plan-making authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.'

6.1.3. Guidance from The Department for Environment, Food and Rural Affairs (DEFRA) and Natural England (NE) (gov.uk, 2021) provides guidance on assessing alternative solutions. DEFRA, NE, Welsh Government, and NRW. 2021). This confirms that alternatives must be able to meet the needs of the original proposal. In this case, any alternatives would need to meet the policy objectives of the revised Ports NPS, to be considered suitable alternatives. The DEFRA and NE guidance further clarifies that:

6.1.4. 'An alternative solution is acceptable if it:

- achieves the same overall objective as the original proposal
- is financially, legally and technically feasible
- is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site.'

6.1.5. The approach to assessing alternatives has been informed by the process set out in The Habitats Regulations Assessment Handbook, as described below:

- Step 1: what are the objectives of the plan and what is the nature of and need for the plan?
- Step 2: how may a revised Ports NPS negatively affect Habitats Sites (*i.e.* the impact pathways identified by HRA screening and identified as having an adverse effect on integrity alone or in-combination at appropriate assessment);
- Step 3: are there financially, legally, and technically feasible alternative solutions, that meet the need a revised Ports NPS is seeking to address;
- Step 4: would any of these financially, legally, and technically feasible alternative solutions have no or a lesser effect on the European Site(s)?

6.2 Step 1: What are the objectives of the Revised Ports NPS and what is the nature of and need for the plan?

6.2.1. The revised Ports NPS sets out the need for, and Government's policies for appropriate decision-making in relation to nationally significant infrastructure projects (NSIPs) in the ports sector. It sets out how government has identified that there is a need for additional port capacity to be delivered across the UK, in light of long-term forecast growth in the volume of imports and exports by sea, as referenced in the revised Ports NPS. The revised Ports NPS also provides planning guidance for promoters of NSIPs in the ports sector. It forms the basis for examination of individual NSIPs by the Examining Authority and decisions by the Secretary of State.

6.2.2. The revised Ports NPS explains to planning decision-makers the approach they should take to proposals, including the main issues which, in the Government's view, will need to be addressed to ensure that future development is fully sustainable and resilient, as well as the weight to be given to the need for new port infrastructure and to the positive and negative impacts it may bring.

6.2.3. The revised Ports NPS is also required to provide an update to the extant ports NPS, which was published in 2012. There have been a series of changes to policy and legislation relevant to ports development since the 2012 Ports NPS was published, as referenced in the revised Ports NPS.

6.2.4. The revised Ports NPS is therefore required to provide an up to date policy framework for the development of individual ports NSIPs. This will support effective decision-making on future ports NSIPs.

6.3 Step 2: How may a revised Ports NPS negatively affect Habitats Sites?

6.3.1. Sections 4 and 5 of this HRA report identify that development of individual ports NSIPs could lead to Likely Significant Effects (LSE) and adverse effects on integrity of Habitats Sites. As set out in Tables 5.1 and 5.2, a range of impact and effects could be triggered by delivery of NSIPs under the revised NPS. Due to the non-spatial and strategic nature of the revised NPS it is not possible to determine which, if any, Habitats Sites may be affected. It is also not possible to identify the specific effects which may be experienced by any particular qualifying interests.

6.4 Step 3: Are there financially, legally, and technically feasible alternative solutions?

6.4.1. Five alternatives to the revised Ports NPS have been considered in this HRA Report. These were also assessed in the Appraisal of Sustainability that accompanies the revised Ports NPS.

Alternative 1 – No revised NPS

6.4.2. The first alternative considered was the 'no revised NPS' option. Under this alternative, the current NPS would continue to act as the framework for decisions regarding port development proposals.

6.4.3. The Government's view is that a revised NPS is needed to take account of changes to the policy context and evidence (including future forecasts) base underpinning it. It announced a review of the NPS for Ports in March 2023 to ensure that it remains fit for purpose. "The review will include a thorough examination of the modelling and forecasts that support the need for development, and the environmental, safety, resilience, and local community considerations that planning decisions must take into account".

6.4.4. Under a 'no revised NPS' alternative, the current NPS would not reflect updated Government policy and would also not reflect changes to the evidence base, in particular, updated modelling and forecasts, that support the need for development. As a result, Ministers have decided that the NPS should be amended and a 'no revised NPS' is not considered a reasonable or realistic alternative. It is not considered to be a suitable alternative solution to the revised Ports NPS.

Alternative 2 – quantum of growth-led NPS

6.4.5. The second alternative considered was a revised NPS that is more explicit in terms of the quantum of growth required to meet forecasted demand.

6.4.6. The main role of the revised Ports NPS will be to provide a framework for decisions on proposals for new port development promoted through a development consent order (DCO) application. It sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand and the options for meeting future needs. It will also constitute an important and relevant consideration for ports development below the DCO threshold.

6.4.7. While the revised Ports NPS does not identify a quantum of growth that is required to meet forecasted demand, a revised NPS could theoretically provide this based on the updated forecasts, as part of the 'needs' case. This would provide port authorities and developers with greater clarity on the scale of development required to meet the upper limits of projected demand. Without an understanding of the scale of infrastructure required, there is the potential for the port sector not to deliver sufficient growth to meet demand, including the scale of infrastructure to meet the government's ambitious targets for the expansion of offshore wind generation.

6.4.8. This approach would require the DfT to determine the scale of infrastructure needed to meet future demand based on the updated forecasting data. The challenges associated with this approach are that the forecasts provide a snapshot of predicted demand based on available evidence at that point in time and the market can be difficult to predict. Providing a quantum of growth based on forecasts might not reflect the reality of market demands in the future.

As a result, this approach could reduce the flexibility and resilience of the port sector to respond to demand as it changes.

6.4.9. This alternative could however feasibly be adopted instead of the revised Ports NPS. It is therefore considered to be a potentially suitable alternative solution to the revised Ports NPS. This alternative is subject to more detailed appraisal in Table 6.1, below.

Alternative 3 – amended environmental requirements

6.4.10. The third alternative considered was a revised NPS that sets more ambitious or relaxed environmental requirements for development.

6.4.11. Government policy and priorities for the natural environment are set out in the Government's Environmental Improvement Plan. The publication of the Environmental Improvement Plan is a requirement of the Environment Act 2021, which also includes legally binding long-term environmental targets, an enhanced biodiversity duty for public authorities, biodiversity net gain and Local Nature Recovery Strategies.

6.4.12. A revised NPS might propose alternative environmental requirements for nationally significant port infrastructure. For example it could contain more (or less) stringent policy provisions for managing the risk of flooding. It would not in and of itself alter the fundamental approach to HRA required for assessment of individual projects, as these stem from legal requirements in addition to being supported through the policy wording in the revised Ports NPS. It is therefore considered that having less stringent policy provisions in the revised NPS could not substantially reduce the protection of Habitats Sites through the HRA process for individual NSIPs.

6.4.13. A revised NPS could propose more stringent protection for Habitats Sites, over and above those contained in the revised Ports NPS. For example, a policy could be included stating that NSIPs causing adverse effects to the integrity of Habitats Sites should not be granted development consent. This would provide an enhanced level of protection compared to the revised Ports NPS.

6.4.14. Whilst conceptually viable in the short term, this approach would ultimately not align with the requirements set out in the Environment Act 2021 and further to this would result in different requirements for nationally significant port infrastructure compared to other scales and types of infrastructure. The revised Ports NPS already includes and emphasises the high degree of protection afforded to Habitats Sites and the requirement for individual ports NSIP projects to robustly assess potential effects upon them. Introducing additional and more stringent protective provisions for Habitats Sites into a revised NPS could also undermine delivery of the objectives for sustainable port development identified by Government. This could occur in the event otherwise optimal locations for individual port NSIPs were constrained by such a policy.

6.4.15. As a result, an alternative where the revised NPS sets enhanced or relaxed environmental requirements for development is not considered to provide an alternative solution to the revised Ports NPS.

Alternative 4 – A criteria-based revised NPS

6.4.16. The fourth alternative considered was a criteria-based revised NPS. This would exclude development in, or restrict development to, areas meeting certain criteria (be they 'exclusionary' or 'inclusionary' criteria).

6.4.17. For the purposes of considering alternatives for the revised NPS, exclusionary criteria are those criteria which, when applied, would ensure that any nationally significant port infrastructure development could not take place within an area. Such criteria could be for the purpose of protecting the environment and may include, for example, excluding development at or adjacent to Habitats Sites, Marine Conservation Zones, World Heritage Sites, National Parks, or National Landscapes. Such exclusionary criteria would seek to avoid adverse effects from future port infrastructure development at locations possessing certain characteristics.

6.4.18. With regard to the adoption of exclusionary criteria, the sensitivity of designated areas varies considerably and many of the potential effects of infrastructure development can be mitigated by good design and planning such that it may be possible to develop infrastructure in areas without an unacceptable environmental impact (as is the case in respect of a large number of existing port schemes). Indeed, the planning process already provides protection for designated areas, with a high level of protection afforded to Habitats Sites as set out in the revised NPS itself. These issues will be examined at the project stage in detail when both the potential impacts and the effectiveness of their mitigation can best be judged. In consequence, the adoption of exclusionary criteria could unnecessarily preclude projects from coming forward in areas where there is demand and significant potential for commercial growth with associated benefits, and where alternative suitable sites with lesser effects on Habitats Sites may not exist.

6.4.19. The converse to exclusionary areas for the development of nationally significant port infrastructure would be to apply 'inclusionary criteria' to the revised NPS, whereby certain criteria are prescribed in the draft Revised NPS which a location must satisfy for it to be considered suitable for new port infrastructure. Inclusionary criteria may include, for example, the absence of (or a particular distance from) the designations referred to above. It could also include a particular level of growth (this might be growth related to imports/ exports or renewable energy) forecasted in a particular area based on updated evidence.

6.4.20. The adoption of inclusionary criteria such as those illustrated would require the need for a revised NPS to identify thresholds for distances to designated sites and for levels of commercial growth. Distance in itself is not a definitive guide to the likelihood or significance of effects of infrastructure on a designated site, impacts can travel along pathways (for example hydrologically along and between water bodies) with effects beyond the boundary of a development. Functionally-linked land and marine habitats outside the boundary of Habitats Sites can also be of importance for qualifying interest habitats and species. As a result, it would not be appropriate to set what would ultimately be arbitrary and likely precautionary distances for protected sites, as the nature and significance of

effects will depend on the precise scale, type, design and location of infrastructure. Such an approach may also preclude development of otherwise suitable sites for sustainable port development, through restricting any prospect of development in certain locations.

6.4.21. The inclusion of thresholds for a particular level of commercial growth could restrict the ability for certain areas/ ports to capitalise on future opportunities for growth. A criteria-based approach would not provide the port industry/ developers the flexibility to respond to a changing market, updated evidence and potential opportunities where they may arise.

6.4.22. For the reasons set out above, a criteria-based revised NPS is not considered to provide an alternative solution to the revised Ports NPS and is therefore not taken forward for appraisal through the AoS.

Alternative 5 – A site-specific revised NPS

6.4.23. The fifth alternative considered was a site-specific revised NPS.

6.4.24. A site-specific draft Revised NPS would identify candidate sites for nationally significant port 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 Airports NPS identifies Heathrow as the preferred location for new runway capacity and infrastructure in south-east England.

6.4.25. Currently the decision on whether to progress an expansion of port infrastructure is a business/ commercial one made by the ports industry/ developers and then subject to the planning system. This provides the port authority/ developers with the flexibility to respond to demand where it arises and locate infrastructure where required for economically and environmentally efficient logistics.

6.4.26. The implementation of a site-specific approach through the revisions to the NPS would be a departure from the current market-led bottom-up decision-making process. While it would therefore not duplicate an existing top-down statutory planning process/ decision-making, it would require the DfT to determine the location of port infrastructure to meet future demand based on forecasting. Changes in the market are difficult to predict and this approach could result in a revised NPS proposing significant port infrastructure in a location that might not be commercially viable in the future as the level of demand has changed, or restrict the potential for development in other areas where there is change or increased demand.

6.4.27. Further to this, implementation of a site-specific approach would require significant evidence in terms of the level of need and its location. While it could be argued that the location of existing ports and therefore potential sites are known, there would need to be extensive evidence and analysis to underpin the identification of a specific port/ site to deliver a specific scale and type of infrastructure.

6.4.28. On the basis of what is set out above, a site-specific draft Revised NPS does not provide a satisfactory alternative solution to the revised Ports NPS.

6.4.29. Step 4: would any of these financially, legally, and technically feasible alternative solutions have no or a lesser effect on the European Site(s)?

6.4.30. As set out above, Alternative 2 was considered to provide a potentially suitable alternative solution to the revised Ports NPS, with it being theoretically possible for this alternative to be adopted. Further analysis of the financial, technical and legal feasibility of Alternative 2 is provided in Table 6.1, overleaf. This also includes an assessment of the potential effects of Alternative 2 on Habitats Sites relative to the revised Ports NPS.

Table 6-1 – Analysis of Alternative 2

NPS Approach	Alternative Approach	Technical Feasibility	Legal Feasibility	Financial Feasibility	Alignment with NPS Objectives	Potential for effects on Habitats Sites
The revised Ports NPA does not specify or require a specific quantum of growth to be delivered via ports NSIP projects.	Revisions to the NPS include identification of a required quantum of growth in the ports sector, necessary to meet the upper limits of projected demand. This approach would require the DfT to determine the scale of infrastructure needed to meet future demand based on the updated forecasting data.	Technically, it would be feasible to adopt a ports NPS more closely aligned with Alternative 2. There would be technical challenges in translating forecasts (which include inherent uncertainty) into policy provisions, which may subsequently undermine policy provisions in a revised NPS if future demand proved significantly different from projections. This approach could undermine the ability of and resilience of the ports sector to respond to changes in demand, but this is not in and of itself considered to prevent adoption of such an approach.	Legally, it would be feasible to adopt a revised NPS more closely aligned with Alternative 2 as, given its non-spatial nature, it would not cause the Secretary of State nor developers of Ports NSIP schemes to be in breach of their respective legal obligations. Legal obligations would continue to apply to individual schemes.	Ports NSIP projects are frequently funded via significant private investment. Alternative 2 could result in a changed investment environment for ports NSIP projects; with a specified quantum of growth, investment cases that departed from those projects could be weakened. Conversely, projects that could demonstrate they would support delivery of NPS-identified growth, could have strengthened business cases for investment relative to under the revised Ports NPS. Overall, it is considered that there could be reduced financial feasibility in terms of flexibility for Port projects seeking investment, but this does not necessarily mean Alternative 2 is not financially feasible.	Alternative 2 is considered to align comparably to the revised Ports NPS in terms of meeting Government's policy in relation to ports. It is not expected to contain materially different provisions in relation to environmental protection or individual project decision making.	Alternative 2 is not considered to lead to materially different effects on Habitats Sites. This is because it is not expected to contain materially different provisions in relation to environmental protection or individual project decision making. It would also have no identifiable differences to the revised Ports NPS in terms of directing development towards or away from Habitats Sites.

6.4.31. Based on the above assessment set out in Table 2, Alternative 2 is considered to be financially, technically, and legally feasible, although it may perform less well than the revised Ports NPS in relation to some of these aspects. Alternative 2 is not predicted to have lesser effects on Habitats Sites than the revised Ports NPS. It therefore does not provide an alternative solution that should be adopted in preference of the revised Ports NPS.

7 Imperative Reasons of Overriding Public Importance (IROPI)

7.1 Approach to Assessing IROPI

7.1.1. Following appropriate assessment and consideration of alternatives, it has been determined that there are no feasible alternative solutions to the revised NPS. Adverse effects to the integrity of Habitats Sites remain possible. It is therefore necessary to consider IROPI and compensatory measures.

7.1.2. This section of the HRA report considers whether the NPS is required for reasons that:

- Are Imperative: i.e. it is essential that a revised NPS be adopted;
- Have a clear and defined public interest, i.e. a revised NPS will facilitate and control development in a way that provides a public benefit;
- Are overriding, i.e. the benefits delivered by a revised NPS outweigh the potential adverse effects to the integrity of Habitats Sites arising from a revised NPS; and
- Provide a long-term public benefit, i.e. short-term benefits would not be acceptable.

7.1.3. When determining the IROPI test for a plan or project, it is necessary to consider whether priority habitats or species are qualifying interests of affected Habitats Sites. This is because the reasons that can be IROPI are more restricted for priority habitats and species.

7.1.4. Where a priority habitat or species is a qualifying feature of an affected Habitats Site, IROPI must be either:

- Relating to human health, public safety, or beneficial consequences of primary importance to the environment; or
- Other reasons, which may be of an economic or social nature, subject to the competent authority having requested and given due consideration to an opinion from the Secretary of State for Environment, Food and Rural Affairs.

7.2 Assessment of IROPI

7.2.1. The functioning of society in England, Wales and the wider UK is facilitated in part by the effective functioning of major ports, in particular their role in facilitating UK imports and exports.

7.2.2. The ports sector is fundamental to the UK's success as a trading nation, moving 95% of the UK's trade in goods by weight. In 2019, UK ports were estimated to contribute 30,000 direct jobs and £2.2bn to the economy (Gross Value Added – GVA).

7.2.3. For an island economy, there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities. Air freight is often used for high-value items and express deliveries, and the Channel Tunnel has a significant role in freight. But these alternatives are constrained by the volumes that can viably be carried by air, by the capacity of the rail links through the Tunnel and, in the case of aviation, by cost and

environmental disadvantages. Consequently, shipping will continue to provide the only effective way to move most freight in and out of the UK, and the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy.

7.2.4. Ports have a vital role in the import and export of energy supplies, including oil, liquefied natural gas, biomass and innovative energy commodities such as ammonia and hydrogen, in the construction and servicing of offshore energy installations and in supporting terminals for oil and gas pipelines. Port handling needs for energy have changed as the mix of the UK's energy supplies changes and particularly as renewables play an increasingly important part as an energy source. Ports will continue to play a critical role in support of increasing the UK's renewable energy capacity. Ensuring security of energy supplies through our ports will be an important essential consideration, and ports will need to be responsive both to changes in different types of energy supplies needed (and to the need for facilities flexibly to support the development and maintenance of offshore renewable sites) and to possible changes in the geographical pattern of demand for energy mixes.

7.2.5. Sea ports play an important role in the tourism and leisure industries, supporting many different forms of economic and social activity, including passenger cruise liners, Channel ferries, sea-going yachts and dinghies. International sea passengers continue to represent a significant proportion of arrivals and departures from the UK, with 23 million people travelling to and from UK ports in 2023.

7.2.6. Ports continue to play an important part in local and regional economies, further supporting the prosperity of the UK and the wider functioning of the UK economy. In addition to some 30,000 people estimated in 2019 to be working directly for ports and some 61,000 in shipping in the UK, employment in the UK maritime sector as a whole was estimated to be 227,000. UK ports' role is absolutely central to the smooth flow of international trade on which the nation relies.

7.2.7. The effective functioning and, where required, sustainable development of UK ports, including in England and Wales, is therefore essential to the socio-economic functioning of the UK. It is essential that the extant ports NPS be updated and adopted, as proposed via the revised Ports NPS, to deliver an up to date framework for decision-making on individual ports NSIPs that come forwards in the future. The need to have an up to date consenting framework as would be delivered by the revised Ports NPS in support of this overrides the potential adverse effects on integrity that may arise. This is particularly the case given that no specific adverse effects can be identified that would arise from the revised Ports NPS, given its strategic and non-spatial nature.

7.2.8. It is not possible to rule out the potential for adverse effects on the integrity of Habitats Sites supporting priority habitats and species, as these could arise from individual ports NSIP projects brought forwards under the revised Ports NPS in the future. In the absence of alternative solutions it has been determined that the adopted NPS is required.

7.2.9. An opinion will therefore be sought from the Secretary of State for Environment, Food and Rural Affairs, as per Regulation 107 of the Habitats Regulations.

IROPI for individual projects

7.2.10. Based on precedent from previous port sector and comparable major infrastructure projects, many of the individual NSIPs brought forward under the revised Ports NPS are unlikely to proceed beyond the Appropriate Assessment stage of the HRA process. Where such schemes are not predicted to lead to LSE or adverse effects on the integrity of Habitats Sites (the latter with mitigation in place as needed), then there would be no need to proceed to consideration of alternatives or IROPI.

7.2.11. The consideration of IROPI set out above for the revised Ports NPS is therefore focussed on the strategic policy objectives of the revised NPS and the needs that trigger them. Should individual NSIPs subsequently be brought forward under the revised NPS that require consideration of IROPI, these would need to provide a project-specific justification as appropriate, although such projects may refer to the strategic 'needs case' as presented in the revised Ports NPS as part of their focussed project-specific justification.

7.2.12. Where adverse effects on the integrity of a Habitats Site cannot be excluded there will be a need to fully justify such development by means of IROPI. Where an individual NSIP may negatively affect any priority habitat or species on a SAC for which they are a protected feature, an IROPI case would need to be established solely on one or more of the grounds relating to human health, public safety, or beneficial consequences of primary importance to the environment, or any other reasons which the Competent Authority considers to be imperative reasons of overriding public importance subject to consultation with the Appropriate Authority (under current arrangements in England, this function is delegated to Defra).

7.2.13. IROPI cases may be made for individual NSIP ports projects as follows (this is not an exhaustive list, but demonstrates some possible drivers of need for individual NSIPs that may be appropriate):

- Economic or social benefits, e.g., providing new port infrastructure that supports local and regional employment, and facilitates economic growth and development; and
- Environmental benefits, for example, developing port infrastructure and capacity that supports modal shift from more polluting to less polluting forms of transport and reduces greenhouse gas emissions;

7.2.14. In summary, it may in exceptional circumstances be necessary for individual NSIPs under the revised Ports NPS to be brought forward that unavoidably lead to adverse effects on the integrity of Habitats Site(s). The IROPI which may apply under such circumstances would need to be tested via consultation with Defra where Priority Habitats are affected, in order to obtain their opinion as the Appropriate Authority in line with the Habitats Regulations.

7.3 Compensatory Measures

7.3.1. Regulation 109 of the Habitats Regulations states that:

'Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.'

7.3.2. Compensatory measures can therefore only be considered once the preceding IROPI and alternative solutions tests have been passed. In relation to the underlined information above, references to Natura 2000 in the Habitats Regulations now refer to the UK National Site Network and the Habitats Sites within it. Suitable compensatory measures would need to be identified and secured via the consenting process for individual ports NSIPs at the project level.

7.3.3. Compensatory measures must address the adverse effects predicted to result from the plan or project to which they relate. This ensures that 'the overall coherence' of the National Site Network is protected. For example, if a plan or project was permitted that resulted in the loss of Annex 1 coastal mudflat habitats, it would not be appropriate for compensatory measures to create Annex 1 terrestrial woodland habitats. Compensatory measures in that instance should be focussed on creating replacement Annex 1 mudflat (or ecologically comparable) habitats. As set out in the revised Ports NPS, applicants for individual NSIP projects should engage with the relevant SNCBs to seek agreement to proposed compensatory measures, as soon as practicable after the need for such measures is identified.

7.3.4. Compensatory measures may include interventions such as:

- Purchase and management of land adjacent to a Habitats Site, such that it provides new or enhanced habitat for qualifying interest features and can be incorporated into the site;
- Removal or reduction of other pressures on Habitats Sites which are demonstrably negatively affecting the achievement of their conservation objectives. For example, removing a source of sediment generation or including measures to control it, that is undermining water quality in a coastal SAC; or
- Provision of enhanced habitats, habitat connectivity, and/or measures to increase populations of qualifying interest animal species, such that the favourable conservation status of their populations is maintained or increased.

7.3.5. As set out in UK government guidance for Competent Authorities (Department for Environment, Food & Rural Affairs, Natural England, Welsh Government, and Natural Resources Wales, 2021) there would need to be a high degree of confidence that compensatory measures for an individual NSIP could be delivered and would be effective. This is also emphasised in the revised Ports NPS. The UK Government guidance goes on to identify that the following should be considered:

- How technically feasible and effective compensatory measures will be - based on scientific evidence and previous examples;
- How financially viable the measures are – applicants for NSIPs must have enough funds to cover costs of compensatory measures;
- How the compensation would be carried out, including how it would be managed and monitored over the time it is needed, and how it has been secured;
- Distance from the affected site - compensation closer to the site is generally preferred, unless measures further away will benefit the National Site Network as a whole; and
- How long the compensatory measures will take to fully address the adverse effects they are designed to compensate for.

7.3.6. The non-spatial and strategic policy-based nature of the revised Ports NPS means the HRA cannot consider compensatory measures in detail. This is because it is uncertain what (if any) projects brought forward under the revised Ports NPS will need to proceed all the way through the HRA process. Any compensatory measures required will be highly specific and need to be tailored to the adverse effects they are meant to address. Compensatory measures would therefore need to be identified and secured during HRA of relevant projects, through the Examination and consenting of each individual project.

8 Conclusions

8.1.1. Given the non-spatial and strategic nature of the revised Ports NPS, it is not possible to know where or when individual NSIPs will come forward and be subject to decision-making on the basis of it. It has therefore not been possible to discount the potential for likely significant effects on Habitats Sites. It has also not been possible to rule out the potential for adverse effects on the integrity of Habitats Sites, again due to the non-spatial and strategic nature of the revised Ports NPS.

8.1.2. As the potential for adverse effects on integrity cannot be discounted at this stage, next stages of the HRA process have been completed, with consideration of alternative solutions, IROPI, and compensatory measures.

8.1.3. The assessment of alternatives considered five possible alternatives to the revised Ports NPS. Of the five alternatives considered, one of these, Alternative 2 was considered to provide a potentially viable alternative solution to the adoption of the revised Ports NPS. Alternative 2 is not predicted to have lesser effects on Habitats Sites relative to the revised Ports NPS. It does not therefore preclude adoption of the revised Ports NPS.

8.1.4. It has been concluded that the revised Ports NPS is necessary for Imperative Reasons of Overriding Public Interest. Relevant NSIPs that are subsequently brought forward following adoption of the revised NPS could be brought forward to deliver environmental improvements and/or socioeconomic benefits (other reasons may be identified by individual ports NSIP projects coming forwards in the future).

8.1.5. The government has therefore concluded that the revised NPS passes the HRA derogation tests and should be designated.

8.1.6. Whilst IROPI are considered to apply to the revised Ports NPS, individual NSIPs must still seek to avoid adverse effects on the integrity of Habitats Sites. It is possible that no NSIPs brought forward under the revised Ports NPS in future would trigger adverse effects on integrity, including after consideration of mitigation. If an individual NSIP cannot avoid adverse effects on integrity of one or more Habitats Sites, project-specific consideration of alternative solutions, IROPI, and compensatory measures would be required.

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