



**DOGGER BANK
TEESSIDE A & B**




**March
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Environmental Statement Chapter 3 Legislation and Policy

Application Reference: 6.3

Cover photograph: Indicative image showing installation of meteorological mast within the Dogger Bank Zone

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1 Introduction

1.1 Background

- 1.1.1 This chapter summarises the legislative context for consenting Dogger Bank Teesside A & B. It includes a summary of the key legislation and associated consents that will be required for the construction, operation and decommissioning of Dogger Bank Teesside A & B.
- 1.1.2 This chapter also provides an overview of the national, regional and local planning policies which are relevant to Dogger Bank Teesside A & B.
- 1.1.3 Further consideration of the planning context is provided within the Planning and Design Statement, application reference 8.1, which is a separate document provided as part of the Development Consent Order (DCO) application and is not part of this Environmental Statement (ES).

2 The Planning Act 2008 (as amended by the Localism Act 2011)

2.1 The Planning Act 2008 (as amended by the Localism Act 2011)

- 2.1.1 The Planning Act 2008 created a new consenting regime for major infrastructure projects, known in the legislation as Nationally Significant Infrastructure Projects (NSIPs) and replaced the regime under the Electricity Act 1989 for electricity generation projects, above certain generation thresholds. In accordance with Section 15(3) of the Planning Act 2008 offshore wind farms with a generating capacity above 100MW are classified as NSIPs, and therefore require development consent in the form of a DCO. As the development is in excess of 100MW it requires consent under Part 5 of the Planning Act 2008.
- 2.1.2 The Planning Act 2008 led to the creation of the Infrastructure Planning Commission (IPC) to determine development consent applications for NSIPs. Through the Localism Act 2011 the Government abolished the IPC and transferred decision making powers to the Secretary of State. These powers were transferred to the Secretary of State under schedule 13 of the Planning Act 2008. The Planning Inspectorate makes recommendations to the relevant Secretary of State, but it is not responsible for making decisions.
- 2.1.3 The Planning Act 2008 also provided that the Secretary of State would issue new National Policy Statements (NPSs) in relation to NSIPs, in order to assist with the determination of such projects.
- 2.1.4 In accordance with Section 104(2) of the Planning Act 2008, the examining authority must have regard to the following in determining applications for consent:
- Any national policy statement which has effect in relation to development of the description to which the application relates (a 'relevant national policy statement');
 - Any local impact report (within the meaning given by Section 60(3)) submitted to the Commission before the deadline specified in a notice under Section 60(2);
 - Any matters prescribed in relation to development of the description to which the application relates; and
 - Any other matters which the Panel or Council thinks are both important and relevant to its decision.
- 2.1.5 Section 104(3) highlights the primacy of NPSs in relation to decision making, requiring applications to be decided "*in accordance with any relevant national policy statement, except to the extent that one or more subsections (4) to (8) applies*". Subsections 104(4) to 104(8) only apply where on positively deciding the application in accordance with National Policy Statements:

- The decision would lead to breaching of international obligations or statutory duty;
- The decision would be unlawful;
- The adverse impact of the development is considered to outweigh its benefits; and
- A condition prescribed for deciding an application otherwise than in accordance with a national policy statement would be met.

2.1.6 The new regime requires extensive pre-application consultation and a mandatory system of examining applications, principally by way of written representations and topic-specific hearings where considered necessary following a statutory nine month timetable from the start of the examination.

2.1.7 The Planning Inspectorate will be required to complete its examination and make its recommendation within a nine month statutory period from the start of the examination. The Government has made a public commitment that the Secretary of State will take no more than a further three months to issue a decision.

Development Consent Orders

2.1.8 The application exceeds 100MW and is therefore classified as an NSIP and requires a DCO. The project area is mostly outside UK territorial waters, although within the UK's continental shelf and within a Renewable Energy Zone (REZ) designated under the Energy Act 2004. The Planning Act 2008 regime extends across both territorial waters and the REZ.

2.1.9 Under the Planning Act 2008, where a development is wholly outside Wales and its territorial waters, it is also possible to include development associated with the generating station within the scope of the DCO; such development is termed 'associated development'. The inclusion of the onshore works (including onshore underground cables, cable landfall, onshore converter stations and connection into the existing National Grid Electricity Transmission (NGET) substation at Lackenby) within the DCO means that the whole of the proposed development as far as the proposed grid connection point is within the DCO, so that separate onshore planning permission is not required.

2.1.10 The Planning Act 2008 enables powers of compulsory purchase to be included within a DCO. Such powers have been included in this case so as to allow promoters to acquire the necessary land and rights for the construction and operation of the onshore works if these matters cannot be resolved by agreement.

2.1.11 The Planning Act 2008 also enables a DCO to grant a deemed Marine Licence under the Marine and Coastal Access Act 2009. Therefore there is no need to make a separate application for a Marine licence. This point is discussed in paragraph 3.1.4.

3 The Marine and Coastal Access Act 2009

3.1 The Marine and Coastal Access Act 2009

- 3.1.1 The Marine and Coastal Access Act 2009 (MCAA) introduced a new framework for delivering sustainable development of the marine and coastal environment.
- 3.1.2 The Act introduced a system of marine planning through the Marine Policy Statement (MPS), which is in force, and the on-going development of regional marine plans.
- 3.1.3 In relation to the consenting of offshore wind farms, the most important aspect of the MCAA is the introduction of a new system of marine licensing for deposits and works below mean high water. This regime, when read with the Planning Act 2008 replaces the long standing requirement for a licence under Section 5 of the Food and Environment Protection Act 1985 (FEPA) for the deposit of articles and substances in the sea, and the requirement for consent under Section 49 of the Coastal Protection Act 1989 (CPA) for work which may interfere with navigation.
- 3.1.4 The need for a Marine Licence arises under Section 55 of the MCAA. The DCO includes a deemed Marine Licence, which covers all the proposed works and deposits below mean high water.
- 3.1.5 The Marine Management Organisation (MMO) was established and given powers under the MCAA. It has a duty to take decisions on proposed developments in English inshore and offshore waters in accordance with the Marine Policy Statement (MPS) and marine plans, unless relevant considerations indicate otherwise. In the case of NSIPs, consent is given by way of deemed Marine Licence with the DCO. The Planning Inspectorate will consider the evidence and provide the Secretary of State with a summary of the evidence, along with a recommendation as to whether to approve the application. The Secretary of State will make the final decision. However, the MMO remains a statutory consultee wherever an application for a DCO may affect the marine environment.
- 3.1.6 The MCAA also allows for the creation of a network of marine protected areas, including Marine Conservation Zones (MCZs) and European Marine Sites (EMSs). The MMO has powers under the MCAA to make bylaws for the protection of features of MCZs (and potential MCZs) and EMSs, and will consult stakeholders who could be affected by a proposed bylaw. The MMO may issue permits to allow certain levels of activity which a bylaw would normally prohibit. On 21st November 2013 the first 27 MCZs were designated in English waters, with a further two phases of designations being planned over the next three years (Defra 2013). Details of any sites relevant to Dogger Bank Teesside A & B are given in **Chapter 8 Designated Sites**.

4 National Policy Framework

4.1 National Policy Statements

- 4.1.1 The Planning Act 2008 makes provision for the Government to produce NPSs. These establish the national need for a particular type of major infrastructure, together with a series of criteria relating to the benefits and impacts of a development, which the Planning Inspectorate will consider when making recommendations in relation to a NSIP application. The aims of the NPSs are to:
- Set out the national need for infrastructure development and set the policy framework for decisions;
 - Integrate environmental, social and economic objectives, including climate change commitments, for the delivery of sustainable development; and
 - Provide a major step towards the overall goal of speeding up the process of delivering nationally significant infrastructure.
- 4.1.2 The overarching NPS (EN-1) sets out the Government's policy for delivery of major energy infrastructure and is part of a suite of Energy NPSs that were formally designated by the Secretary of State for Energy and Climate Change in July 2011. EN-1 is applied with a further five technology-specific NPSs by the Planning Inspectorate when it makes recommendations on applications, for development consent for nationally significant energy infrastructure, to the decision maker. The decision maker (the Secretary of State) must then determine the application in accordance with the NPSs. The five technology-specific NPSs are: fossil fuel electricity generation (EN-2); renewable electricity generation (both onshore and offshore) (EN-3); gas supply infrastructure and gas and oil pipelines (EN-4); the electricity transmission and distribution network (EN-5); and nuclear electricity generation (EN-6).
- 4.1.3 The three NPSs that hold particular relevance for offshore wind and its associated onshore development are:
- Overarching NPS for Energy (EN-1, July 2011) (DECC 2011a);
 - NPS for Renewable Energy Infrastructure (EN-3, July 2011) (DECC 2011b); and
 - NPS for Electricity Networks Infrastructure (EN-5, July 2011) (DECC 2011c).
- 4.1.4 It is noted that NPS must be designated by the Secretary of State and as such the Planning Act requires NPSs to undergo both Parliamentary scrutiny and public consultation before they can be designated. This added level of scrutiny affirms the significant weight to which the determining authority should place on the NPS when considering a DCO.

Overarching National Policy Statement for Energy (EN-1)

- 4.1.5 This NPS sets out the Government's Energy and Climate Change Objectives for the Power Sector. These are summarised as follows:
- To help deliver the UK's climate change commitments;
 - To ensure that investment provides security of energy supply through a diverse and reliable mix of fuels and low carbon technologies;
 - To further ensure that investment delivers an electricity grid with greater capacity and the ability to manage larger fluctuations in supply and demand;
 - To ensure cost effective energy generation to help eliminate fuel poverty; and
 - To contribute to sustainable development by seeking energy infrastructure development that helps reduce climate change while also minimising negative impacts on the local environment (DECC 2011a).
- 4.1.6 It is identified within EN-1 that the Government recognises there is a significant need for new major energy infrastructure which will have to be met by projects progressing quickly (DECC 2011a). Furthermore, it is recognised that around 30% of electricity generation will be from renewable sources by 2020, with a significant proportion of this sourced from onshore and offshore wind generation (DECC 2011a).
- 4.1.7 EN-1 makes it clear that there is a presumption in favour of granting consent for projects as long as the project is in accordance with EN-1 and the relevant technology specific NPSs, subject to certain exceptions, including where the adverse effects of a project outweigh its benefits (paragraph 1.1.2, EN-1).
- 4.1.8 EN-1 gives specific advice in relation to the environmental assessment of the following issues which are relevant to all energy NSIPs:
- Air quality and emissions (**Chapter 30 Air Quality**);
 - Biodiversity and geological conservation (**Chapter 25 Terrestrial Ecology and Chapter 24 Geology, Water Resources and Land Quality**);
 - Civil and military aviation and defence interests (**Chapter 19 Military Activities and Civil Aviation**);
 - Coastal change (**Chapter 9 Marine Physical Processes**);
 - Dust, odour, artificial light, smoke, steam and insect infestation (**Chapter 30**);
 - Flood risk (**Chapter 24**);
 - Historic environment (**Chapter 27 Terrestrial Archaeology**);
 - Landscape and visual (**Chapter 21 Landscape and Visual Impact**);
 - Land use including open space, green infrastructure and Green Belt (**Chapter 26 Land Use and Agriculture**);
 - Noise and vibration (**Chapter 29 Noise**);

- Socio-economic (**Chapter 22 Socio-economics**);
- Traffic and transport (**Chapter 28 Traffic and Access**);
- Waste management (**Chapter 24**); and
- Water quality and resources (**Chapter 24**).

4.1.9 This advice has been taken into account in the preparation of this ES and is considered in each relevant ES chapter, given in brackets after each issue.

National Policy Statement for Renewable Energy Infrastructure (EN-3)

4.1.10 EN-3, taken together with EN-1, provides the primary basis for recommendations by the Planning Inspectorate, and the determination of the application by the decision maker, on applications it receives for renewable energy generation infrastructure. This covers any energy infrastructure for biomass and / or waste which has capacity exceeding 50MW, any offshore wind farm which has capacity exceeding 100MW, and any onshore wind farm which has capacity exceeding 50MW. EN-3 is principally applied to the offshore elements of Dogger Bank Teesside A & B.

4.1.11 EN-3 gives specific advice in relation to the environmental assessment of the following issues which are specific to offshore wind projects:

- Biodiversity (various technical chapters, including **Chapter 11 Marine and Coastal Ornithology, Chapter 14 Marine Mammals, Chapter 25**);
- Fish (**Chapter 13 Fish and Shellfish, Chapter 15 Commercial Fisheries**);
- Intertidal (**Chapter 12 Marine and Intertidal Ecology**);
- Marine mammals (**Chapter 14**);
- Birds (**Chapter 11, Chapter 25**);
- Subtidal (**Chapter 12**);
- Commercial fisheries and fishing (**Chapter 15**);
- Historic environment (**Chapter 18 Marine Archaeology, Chapter 27**);
- Navigation and shipping (**Chapter 16 Shipping and Navigation**);
- Oil, gas and other offshore infrastructure and activities (**Chapter 17 Other Marine Users**);
- Physical environment (**Chapter 9**); and
- Seascape and visual effects (**Chapter 20 Seascape and Visual Character**).

4.1.12 The advice has been taken into account in the preparation of this ES and is considered in each relevant ES chapter, given in brackets after each issue.

National Policy Statement for Electricity Networks Infrastructure (EN-5)

4.1.13 EN-5, together with EN-1, provide the primary basis for recommendations by the Planning Inspectorate, and the determination of the application by the decision maker, on applications it receives for onshore nationally significant electricity

network infrastructure in England and Wales. EN-5 is principally applied to onshore elements of Dogger Bank Teesside A & B.

4.1.14 The following types of nationally significant infrastructure are covered by EN-5:

- Above ground electricity lines of 132kV and above; and
- Other infrastructure for electricity networks that is associated with a NSIP.

4.1.15 EN-5 states that:

“When considering impacts for electricity networks infrastructure, all of the generic impacts covered in EN-1 are likely to be relevant, even if they only apply during one phase of the development (such as construction) or only apply to one part of the development (such as a substation).”

4.1.16 However, the NPS also sets out additional technology-specific considerations on the following generic impacts considered in EN-1:

- Biodiversity and geological conservation (**Chapter 25** and **Chapter 24**);
- Landscape and visual (**Chapter 21**); and
- Noise and vibration (**Chapter 29**).

4.1.17 The advice has been taken into account in the preparation of this ES and is considered in each relevant ES chapter.

4.2 UK Marine Policy

4.2.1 The UK Marine Policy Statement (MPS) applies to all UK waters and has been adopted by the UK Government, the Scottish Government, the Welsh Assembly Government and the Northern Ireland Executive. It will provide direction for new marine licensing and other authorisation systems in each UK Administration. The UK Government and Devolved Administrations jointly published the MPS on 18th March 2011. The MPS sets out the framework for the MMO’s decisions affecting the marine environment, although this excludes NSIPs. However, the Planning Inspectorate and the decision maker must have regard to the MPS and relevant Marine Plan in determining the NSIP application.

4.2.2 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It will contribute to the achievement of sustainable development in the United Kingdom marine area and has been prepared and adopted for the purposes of Section 44 of the MCAA.

4.2.3 The MPS will, as part of the new marine management system:

- Promote sustainable economic development;
- Enable the UK’s move towards a low-carbon economy, in order to mitigate the causes of climate change and ocean acidification and adapt to their effects;
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and

- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

4.2.4 With regard to larger offshore renewable projects, the MPS states that:

“...where a relevant NPS has been designated, nationally significant infrastructure project applications must be decided in accordance with the NPS, subject to certain exceptions, and having regard to the MPS.”

4.2.5 However, NPS EN-1 states that:

“In the event of a conflict between any of these marine planning documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure.”

4.2.6 The MPS also emphasises the importance of renewable energy and recognises the importance of considering these projects in marine planning, stating that:

“Contributing to securing the UK’s energy objectives, while protecting the environment, will be a priority for marine planning.”

4.2.7 In October 2013 consultation closed on the first draft Marine Plans: the North East inshore, North East offshore, East inshore and East offshore areas. Dogger Bank Teesside A & B lies within the East Offshore area, with the cable route bisecting both the North East offshore and North East inshore areas. These areas stretch from the Scottish boarder near Berwick-upon-Tweed down to Felixstowe in Suffolk and 200km (124 miles) out to sea.

4.2.8 Consultation has commenced for the Southern Inshore and Southern Offshore Plans which are next in the process. In all 10 marine plans will be created by the MMO who aim to deliver two plans every two years (MMO 2013b).

4.3 National Planning Policy Framework

4.3.1 In March 2012, the Government published its National Planning Policy Framework (NPPF), which applies to all development within the jurisdiction of local planning authorities. This document supersedes the former Planning Policy Statements and Planning Policy Guidance notes and provides guidance on a range of topic areas. Paragraph 3 of the NPPF states that:

“This Framework does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework).”

4.3.2 Where relevant, NPPF policies and guidance are considered within the topic chapters of this ES.

4.4 Local planning context

4.4.1 In addition to the new NPSs, consideration within each of the ES chapters is also given to the Development Plan which covers the onshore aspects of the project. Throughout this ES relevant policies are identified (within each chapter

entitled 'Guidance and Consultation') to ensure that the issues they address are adequately considered in the environmental assessment of the project proposals. Paragraph 4.1.5 of EN-1 makes it clear that Development Plan policies may be regarded as relevant and important in its decision making, but that where its policies conflict with an NPS, the NPS is to prevail. The performance of the project against the NPSs, MPS and the Development Plan policies is outside the scope of the ES. This is addressed in a separate Planning Statement.

- 4.4.2 The project is located within the jurisdiction of the Redcar & Cleveland Borough Council (RCBC). Currently the statutory development plan for the borough is the Local Development Framework, adopted from 2007.
- 4.4.3 The Local Development Framework is a series of Development Plan Documents (DPDs). These documents set out the Council's adopted policies and proposals and together they form the statutory development plan for Redcar and Cleveland. The following documents are included within the Framework:
- Core Strategy DPD;
 - Development Policies DPD;
 - Communities DPD;
 - Tees Valley Joint Minerals and Waste DPD; and
 - LDF Proposals Map.
- 4.4.4 RCBC are currently undertaking consultations after publishing a Scoping Report for the new Local Plan. A Draft Local Plan was placed on consultation between October and December 2013. The Draft Local Plan supports the development of renewable energy and associated infrastructure (in particular at Wilton International (Paragraph 1.45), the focus it provides to securing inward investment (Paragraph 1.57), the important role of critical infrastructure (Paragraph 1.106) and Council's presumption in favour of sustainable development (Policy SD 1). In the interim, a Local Development Scheme document has been produced, which sets out a programme for the preparation of the new local planning documents from 2012 – 2015.
- 4.4.5 The document sets out the aim of the local plan, which will be a single document which sets out the '*vision, objectives, spatial strategy and policies for the development of the plan area for 15 years*'. The programme gives August 2014 as the proposed date of adoption following submission and approval by the Secretary of State. Once produced, the new Local Plan will replace the Local Development Framework as the statutory development plan for the borough.

5 Environmental Impact Assessment Legislation

5.1 The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2009 (as amended)

- 5.1.1 The Environmental Impact Assessment (EIA) Regulations relating to NSIPs came into force in October 2009 and implemented the European Council Directive 85/337/EEC of the 27 June 1985 (as amended by Directive 97/11/EC (the EIA Directive)). NSIPs that fall within the description of developments in Schedule 1 of the EIA Regulations automatically require an EIA to be undertaken. NSIPs that fall within Schedule 2 of the Regulations may require an EIA.
- 5.1.2 Offshore wind farm developments fall under Schedule 2 of the EIA Regulations as “*Industrial (energy) installations for the production of electricity, steam and hot water (projects not included in Schedule 1)*” and Annex II of the EIA Directive, as “*installations for the harnessing of wind power for energy production (wind farms)*”. Schedule 2 NSIPs require an EIA where they are likely to have significant effects on the environment by virtue of factors such as their nature, size or location.
- 5.1.3 Forewind is carrying out a multi-stage, iterative consultation on Dogger Bank Teesside A & B. The process is described in the Consultation Report which will accompany the DCO application.
- 5.1.4 At the start of the development process, in March 2012, Forewind notified the Secretary of State of its intention to undertake an EIA and provide an ES in respect of Dogger Bank Teesside.
- 5.1.5 In May 2012, Forewind submitted a Scoping Report to the Secretary of State. The description of the proposed development provided for in the Scoping Report comprised up to four projects, each with a generating capacity of up to 1.2GW, by way of the submission of one or a number of DCO applications. In parallel, Forewind consulted on the Preliminary Environmental Information, and issued a Statement of Community Consultation encompassing all four Dogger Bank Teesside projects. In June 2012, the Secretary of State issued the Dogger Bank Teesside Scoping Opinion.
- 5.1.6 In December 2012 Forewind informed the Planning Inspectorate and all consultees prescribed by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 that the optimum consenting strategy for Dogger Bank Teesside is to split the development into two separate DCO applications. The first DCO application (this application) seeking consent for Dogger Bank Teesside A & B (as provided for in the Scoping Opinion, Preliminary Environmental Information 1 and Statement of Community Consultation).

- 5.1.7 On 13 December 2011 a consolidating Directive of the European Council (2011/92/EU) came into effect. From that date reference to the Directives described in paragraph 5.1.1 could be replaced by reference to the 2011 Directive. It can also be noted that on 26 October 2012 the European Commission proposed a new Directive to amend Directive 2011/92. It is possible that the proposal for a new Directive may result in the issue of a new Directive while the EIA for this application is still continuing. The proposed new Directive contains new provisions requiring particular:
- Assessment of alternatives in certain circumstances (**Chapter 6 Assessment of Alternatives**);
 - The preparation of environmental statements by experts; and
 - Co-operation with consultees and others in order to address anticipated significant effects through mitigation (**Chapter 7 Consultation**, provides an overview of the consultation process, with each ES chapter detailing relevant consultation undertaken).
- 5.1.8 The anticipated requirements of the Directive have in fact been taken into account in substance in this ES and will be further taken into account through the EIA process by the requirements of the Planning Act 2008.

6 Other Legislative Requirements

6.1 Habitats and Birds Directives

- 6.1.1 EC Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive) is intended to protect biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive at a favourable conservation status. It provides for robust protection for those habitats and species of European importance.
- 6.1.2 EC Directive 2009/147/EC on the conservation of wild birds (known as the Birds Directive) provides a framework for the conservation and management of, and human interactions with, wild birds in Europe. It sets broad objectives for a wide range of activities.
- 6.1.3 In England and Wales, their territorial seas, and within the UK's continental shelf, the Habitats Directive is implemented under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended). The provisions of the Birds Directive are implemented through the Wildlife and Countryside Act 1981 (as amended), the Habitats Regulations and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 and 2010 (as amended), as well as other legislation related to the uses of land and sea.
- 6.1.4 Under this legislation a network of protected areas (the Natura 2000 network) has been established. These are Special Areas of Conservation (SAC), for habitats and species, and Special Protection Areas (SPA), for birds.
- 6.1.5 If there is potential for a plan or project to have a likely significant effect on a Natura 2000 site, there is a requirement for the competent authority to carry out an 'Appropriate Assessment'.
- 6.1.6 Under the Planning Act 2008 the undertaking of the Appropriate Assessment will be the responsibility of the Secretary of State for the Department of Energy and Climate Change (DECC), as the competent authority.
- 6.1.7 The Regulations state that it is the developer's responsibility to provide sufficient information to the competent authority to enable them to assess whether there are likely to be any significant effects and to enable them to carry out the appropriate assessment, where necessary. A standalone Habitats Regulation Assessment (HRA) Report will be submitted alongside this ES as part of the DCO application. This report will provide all the necessary information for the competent authority to carry out the Appropriate Assessment.
- 6.1.8 European Protected Species (EPS) are animals and plants listed in Annex IV of the Habitats Directive and those for whom Great Britain is their natural range are listed in Schedules 2 and 5 of the Habitats Regulations. The Habitats Regulations and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended) make it an offence to kill, injure, capture or

disturb marine EPS. In relation to Dogger Bank Teesside A & B, marine EPS would include any species of cetacean (dolphin, porpoise or whale) present in the study area (see **Chapter 14**). For terrestrial species it would include otters, all bat species and great crested newts (see **Chapter 25**).

- 6.1.9 Good practice guidelines and protocols are being produced for the marine industry by the Joint Nature Conservation Committee (JNCC), covering a range of development activity. Central to this guidance is an approach to the assessment of the likelihood of committing an offence to marine animals and birds, how to avoid it and whether or not a licence to carry out this activity might be required. This has resulted in the production of several sets of detailed guidelines covering seismic surveys (JNCC 2010a), pile driving operations (JNCC 2010b) and the use of explosives (JNCC 2010c). It is considered that adherence to these guidelines constitutes best practice and will minimise the risk of committing an offence to species listed in the Habitats Directive.
- 6.1.10 If it is determined that there is likely to be a requirement for an EPS licence(s), Forewind will liaise with the Marine Management Organisation (MMO) and the JNCC and/or Natural England in order to obtain this/these. EPS are discussed further in **Chapter 14** and **Chapter 25**.

6.2 Water Framework Directive

- 6.2.1 The EU Water Framework Directive 2000/60/EC was transposed into law in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003. The Regulations mean that the requirements of the Water Framework Directive (WFD) need to be considered at all stages of the planning and development process, which may impact on water bodies. The WFD requires that Environmental Objectives are set for all surface waters and ground waters in each EU Member State.
- 6.2.2 The WFD sets a target of aiming to achieve at least ‘good status’ in all water bodies by 2015. However, provided that certain conditions are satisfied, in some cases the achievement of good status may be delayed until 2021 or 2027.
- 6.2.3 Specific mitigation measures are set for water bodies to achieve the Environmental Objectives of the WFD. These are listed within the Programme of Measures for each River Basin Management Plan (RBMP). RBMPs have been drawn up for each River Basin District across England and Wales, and propose measures to protect and improve the water environment. These measures have been developed in consultation with organisations and individuals, and are intended to mitigate impacts that have been or are being caused by human activity, such as flood and coastal defence works, with the aim of restoring and enhancing the quality of the existing environment.
- 6.2.4 The onshore development is located within the river catchments covered by the Northumbria River Basin District Management Plan.

6.3 The Energy Act 2004

- 6.3.5 The Energy Act 2004 introduced a new regime for the decommissioning of offshore wind farms. Dogger Bank Teesside A & B will be required to submit a decommissioning plan under these arrangements to DECC ahead of

construction, as far as is possible decommissioning has been considered within this ES.

- 6.3.6 The Energy Act 2004 also introduced new provisions into the Electricity Act 1989 to enable a developer to obtain a declaration extinguishing public rights of navigation through the water column occupied by the wind turbines and other offshore structures. However, this is not available outside territorial waters and would only be relevant to the installation and maintenance of cables. However, it is not proposed to apply for any extinguishment of the public right of navigation.

Safety zones

- 6.3.7 The Energy Act 2004 makes provision for the establishment of Safety Zones around offshore renewable energy installations. In the case of offshore wind farms, the 2004 Energy Act allows for the establishment of Safety Zones up to a maximum of 500m around each structure from the outer edge at sea level.
- 6.3.8 Safety Zones reduce the potential risk of collision between vessels and offshore installations (see **Chapter 16**). This is achieved by establishing a zone within which it is a criminal offence to enter, although certain vessels, such as those required for construction and / or maintenance activities, are allowed to enter, as is any vessel in an emergency situation.
- 6.3.9 As set out by the Safety Zone application guidance (Department for Business, Enterprise and Regulatory Reform (BERR 2007)), the applicant must make a case for the establishment of Safety Zones based on safety grounds and this is likely to be specific to the particular installation. A Safety Zone application does not need to be made at the same time as the development consent application, although the guidance (BERR 2007) does state that declaration of an intention to do so would be useful, as the Secretary of State must take into account the request for any Safety Zones when deciding to grant consent. The Safety Zones that are applied for may vary in size depending on the phase of development. These Safety Zones can be issued by the Secretary of State under the provisions of the Energy Act 2004.
- 6.3.10 Forewind expects to apply for a 500m safety zone around each offshore structure during construction, during major maintenance (defined under the Energy Act 2004 as “*works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such an installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel*”) and decommissioning. Further details are presented in **Chapter 16**.

6.4 Wildlife and Countryside Act 1981 (as amended)

- 6.4.11 The Wildlife and Countryside Act (1981) (as amended) is the principal mechanism for the legislative protection of wildlife in Great Britain. This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the 'Bern Convention') and the Habitats Directive are implemented in Great Britain. Similar legislation is enacted to fulfil these obligations elsewhere in the United Kingdom. The Wildlife and Countryside Act is divided into four parts:

- Part I which relates to the protection of wildlife;
- Part II which deals with the protection of Sites of Special Scientific Interest (SSSIs) and other designated sites;
- Part III which relates to public rights of way; and
- Part IV which relates to miscellaneous provisions of the Act.

6.4.12 A description of any impacts on flora and fauna is discussed further in **Chapter 25**.

6.5 The Water Resources Act 1991 (as amended)

6.5.13 The Water Resources Act was introduced in December 1991 along with four other pieces of legislation (Water Industry Act 1991, Land Drainage Act 1991, Statutory Water Act 1991 and the Water (Consequential Provisions Act 1991) whose combined purpose was to consolidate existing water legislation, which was previously spread out over 20 separate pieces of legislation. The Act governs the quality and quantity of water by outlining the functions of the Environment Agency. Under the Act and associated byelaws, flood defence consent is required for work in, over, under or next to main rivers.

7 References

Defra (2013) <https://www.gov.uk/government/news/new-network-to-protect-valuable-marine-life>

Department for Business, Enterprise and Regulatory Reform (2007) Applications to the Secretary of State for Business, Enterprise and Regulatory Reform for the establishment of safety zones around offshore renewable energy installations under the Energy Act 2004. Guidance Notes. August 2007

Department of Energy and Climate Change (2011a) Overarching National Policy Statement for Energy (EN-1)

Department of Energy and Climate Change (2011b) National Policy Statement for Renewable Energy Infrastructure (EN-3)

Department of Energy and Climate Change (2011c) National Policy Statement for Electricity Network Infrastructure (EN-5)

Forewind (2010) Dogger Bank Project One: EIA Scoping report

Joint Nature Conservation Committee (2010a). JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from seismic surveys

Joint Nature Conservation Committee (2010b). JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from piling noise

Joint Nature Conservation Committee (2010c). JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from using explosives

Marine Management Organisation (2013a)
<http://www.marinemanagement.org.uk/marineplanning/areas/index.htm>

Marine Management Organisation (2013b) <https://www.gov.uk/government/news/new-network-to-protect-valuable-marine-life>

Redcar and Cleveland Borough Council (2007). Local Development Framework, Core Strategy Adoption

UK Government (2013) <https://www.gov.uk/marine-protected-areas>