



Department for
Energy Security
& Net Zero

Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate

Consultation on draft supplementary
guidance for assessing the effects of scope 3
emissions on climate from offshore oil and
gas projects

Closing date: 8 January 2025



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Any enquiries regarding this publication should be sent to us at: finch.qanda@energysecurity.gov.uk

Introduction

On 20 June 2024, the Supreme Court handed down a judgment ("the judgment") in the Finch case, that the decision to grant planning permission for an onshore oil development project ("the Horse Hill Development") at a site in Surrey was unlawful, because end-use atmospheric emissions from burning the oil produced were not assessed as part of the planning decision (Finch Judgment, 2024). In Finch, it had been agreed by the parties, including the developer and the local planning authority, that it was inevitable that the oil extracted will be sent to refineries and the refined oil would eventually undergo combustion, producing greenhouse gas (GHG) emissions which would have an effect on the climate.

The Environmental Impact Assessment ("EIA") for the Horse Hill Development was carried out under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571). These Regulations are one of a number of UK instruments brought into force to implement the European Directive 2011/92/EU as amended by Directive 2014/52/EU (collectively referred to as "the EIA Directive"). The judgment was based on the Supreme Court's interpretation of the requirement in Article 3 of the EIA Directive to identify, describe and assess the direct and indirect significant effects of a project.

Offshore oil and gas production projects are subject to the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (SI 2020/1497) ("the Offshore EIA Regulations"), rather than the regulations in dispute in the Finch case. However, the Offshore EIA Regulations were similarly enacted (during the implementation period following the UK's departure from the European Union) to transpose the EIA Directive, so the Supreme Court's legal interpretation is relevant for offshore oil and gas production projects. The Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), part of the Department for Energy Security and Net Zero (DESNZ) are responsible for administering the Offshore EIA Regulations.

In light of the judgment, OPRED has decided to develop and consult on the draft supplementary EIA guidance to provide clarity on EIA expectations when assessing the effects of scope 3 emissions on climate from proposed offshore oil and gas projects seeking development and production consent.

The draft supplementary EIA guidance aims to support the UK's climate obligations and provide clarity to industry and other interested parties as the North Sea transitions to its clean energy future.

On 29 August 2024, OPRED published a statement on the implications of the Supreme Court judgment, which essentially conveyed that until the supplementary EIA guidance has been published, certain EIA decisions will be deferred. Given the nature of the proposals and the public interest, it is expected that the draft supplementary draft guidance will be of interest to the following stakeholders:

- Oil and gas developers, given their obligations under the Offshore EIA Regulations in preparing Environmental Statements for applicable projects;
- Industry trade associations;
- Non-Government Organisations, given their environmental interests;
- Nature conservation bodies, given their involvement in the EIA process as a consultee;

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- The public;
 - Public bodies, such as the Office for Environmental Protection;
 - Academia; and
 - The Legal profession.

The intention is to publish finalised supplementary EIA guidance in Spring 2025 alongside a government response to this consultation. Publication of the supplementary EIA guidance will mark an end of the deferral of EIA decisions and allow the EIA process to function as normal for offshore oil and gas development and production projects.

This consultation on the draft supplementary EIA guidance on the effects of scope 3 emissions on climate is only the first step towards a fair, orderly and prosperous transition in the North Sea, in line with our climate and legal obligations. Further consultation is planned on oil and gas licensing later this year.

Contents

Introduction	3
General information	6
Why we are consulting	6
Consultation details	6
How to respond	7
Confidentiality and data protection	7
Quality assurance	7
Background	8
The proposals	9
Defining baseline scenario for assessing scope 3 emissions	9
Relevant scope 3 emissions	9
Assessing significant effects	10
Consideration of cumulative effects	10
Mitigation measures	10
Environmental Protection Objectives	11
Consultation questions	12
Next steps	13

General information

Why we are consulting

This consultation invites stakeholders' comments on the draft supplementary EIA guidance for offshore oil and gas projects seeking development and production consents, in light of the judgment.

The Government is providing supplementary EIA guidance as a means of providing clarity on expectations to interested parties, particularly those who prepare environmental statements under the Offshore EIA Regulations. However, given the wider public interest, the draft guidance will also be of interest to a much wider audience.

Consultation details

Issued: 30 October 2024

Respond by: 8 January 2025

Enquiries to: finch.qanda@energysecurity.gov.uk

Consultation reference: Consultation on draft supplementary guidance for assessing the effect of scope 3 emissions on climate from offshore oil and gas projects

Audiences:

Seeking views from all interested persons including the offshore oil and gas sector; industry trade associations; nature conservation bodies; environmental NGOs; other Government Departments / Agencies; Public bodies; the public; academia; and the legal profession.

Territorial extent:

The Offshore EIA Regulations, and thus the proposed supplementary EIA guidance, extend to UK waters - including UK territorial waters and the Continental Shelf.

How to respond

<https://www.gov.uk/government/consultations/consultation-on-draft-supplementary-eia-guidance>

Email to: finch.qanda@energysecurity.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: bru@energysecurity.gov.uk.

Background

The Offshore EIA Regulations were enacted to transpose Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU (collectively referred to as "the EIA Directive").

A Seaward Production Licence issued by the North Sea Transition Authority (NSTA) grants exclusive rights to the licence holders "to search and bore for, and get, petroleum" in the area covered by the licence. The grant of a licence does not, on its own, allow the licence holder to undertake offshore activities in the area.

The licence holder must obtain the consent of the NSTA before carrying out development and production activities in the licensed area. The NSTA has operational independence from the Department and undertakes its activities in accordance with all applicable laws and regulations and its statutory Strategy.

Under the Offshore EIA Regulations, the NSTA cannot grant consent for such activities without the agreement of the Secretary of State (the SoS). The SoS cannot give that agreement unless an EIA has been carried out. Before doing so, the SoS must reach a conclusion on any significant effects of the project on the environment, including whether any conditions should be attached to the NSTA consent. Offshore Gas Storage and Carbon Dioxide Storage projects are also subject to the same regulatory process.

An EIA aims to provide a high level of protection to the environment and to help integrate environmental considerations into proposed projects to reduce their impact on the environment. It seeks to ensure that proposed projects which are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location, are subject to a requirement for an assessment of those effects before they are allowed to proceed.

Whilst scope 1 and scope 2 emissions are already assessed by a developer within an environmental statement (ES) submitted under the existing EIA process, the effects of scope 3 emissions from the downstream activities have not previously been assessed under the Offshore EIA Regulations. In light of the judgment, scope 3 emissions from downstream activities needs to be assessed as part of an EIA in relation to offshore oil and gas production activities. It would not be appropriate to continue to assess ES affected by the judgment while supplementary EIA guidance is prepared.

This draft supplementary EIA guidance is complementary to the existing Offshore EIA Regulations' guidance¹. The draft supplementary EIA guidance has been designed in keeping with the existing Offshore EIA Regulations' guidance. The draft supplementary EIA guidance makes reference to the existing Offshore EIA Regulations guidance throughout, and the two documents are expected to be used in tandem to aid the preparation of submissions under the Offshore EIA Regulations in the future.

¹ OPRED (2021). The offshore oil and gas exploration, production, unloading and storage (Environmental Impact Assessment) Regulations 2020 - A guide. Retrieved from GOV.UK: <https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation#offshore-oil-and-gas-exploration-production-unloading-and-storage-environmental-impact-assessment-regulations-2020>

The proposals

Defining baseline scenario for assessing scope 3 emissions

The purpose of defining a baseline scenario is to provide a description of the relevant aspects of the current state of the environment and how it is likely to evolve without the development of a proposed project. In the Finch case, the parties had all accepted that it was inevitable that oil extracted would be sent to refineries and the refined oil would eventually undergo combustion. It was also noted that climate change is a global problem because there is no correlation between where GHG emissions are released and where climate change is felt.

An ES should quantify the difference between GHG emissions from a proposed project and the baseline scenario. A realistic and reasonable baseline description should be presented. The baseline scenario should be representative of the existing GHG emissions, which includes emissions from existing oil and gas projects within the selected extent of assessment. Current and historical emissions data may be used to establish a baseline scenario. If alternative development options were considered for a project, then alternative baseline scenarios can be used to address uncertainty in the overall assessment. A qualitative assessment of the GHG impact of alternative development options considered at the scoping stage would be acceptable as part of the overall assessment.

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

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

Relevant scope 3 emissions

The judgment focussed on the effects of emissions borne from the combustion of the refined product at the point of consumer use. The draft supplementary EIA guidance highlights that scope 3 emissions are also expected from other downstream activities, namely through the transport of the produced oil or gas, and the refining process. OPRED is not proposing to prescribe a particular methodology to estimate scope 3 emissions but highlighting that whatever method is chosen the expectation is that the relevant scope 3 categories are included in the assessment. An ES should explain the methodology adopted, and conversion factors used to estimate the scope 3 emissions including the assumptions and associated uncertainties.

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

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

Assessing significant effects

The judgment noted that “all likely significant effects of the project must be assessed, irrespective of where (or when) those effects will likely be generated or felt”. Schedule 6(4) of the Offshore EIA Regulations confirms that an assessment of the likely significant effects from the impact of a project on climate should be considered. Furthermore, the judgment highlights that comprehensive and high-quality information about the likely significant effects of a project is important for any assessment of effects on climate. Further advice is provided in the section on "Evaluating significance of the likely effects of scope 3 emissions on climate" in the draft supplementary EIA guidance.

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

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

Consideration of cumulative effects

Cumulative effects are an important consideration in the EIA process and in the preparation of an ES. It may be that a project in isolation may not have a significant effect on the environment, but in combination with or in cumulation with other relevant existing or planned projects in the area, the effect could become significant. The assessment of the effect of scope 3 emissions on climate, from relevant downstream activities must form part of the environmental considerations, as it does for other types of impact and receptor. Further advice is provided in the section on "Consideration of cumulative effects" in the draft supplementary EIA guidance.

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

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

Mitigation measures

Where an assessment of scope 3 emissions identifies significant adverse effects from a proposed project, consideration must be given to identifying suitable mitigation measures. An ES must present a comprehensive description of the features of a proposed project or measures to avoid, prevent, reduce or offset likely significant adverse effects of the proposed project on the environment. If any mitigation measures are identified in an ES, then a delivery plan should be provided for those measures to be considered in the assessment of the proposed project. Further advice is provided in the section on "Mitigation measures" within the draft supplementary EIA guidance.

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

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

Environmental Protection Objectives

The assessment of the likely significant effects of a project on the environment must, as per Schedule 6(5)(d) of the Offshore EIA Regulations, “take into account environmental protection objectives established in retained EU law or at national level”.

Environmental effects from scope 3 emissions from downstream activities largely relate to the climate impacts of the release of GHGs. In the UK, the basis for reducing territorial GHG emissions is through the Climate Change Act 2008². Scope 3 emissions will impact the UK’s carbon budgets to the extent that any resulting emissions take place in the UK. However, understanding a proposed project’s scope 3 emissions is important to understanding its potential contribution to global carbon emissions.

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

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

² To meet emissions reduction targets, the Government is required to set legally-binding carbon budgets every five years, which act as stepping stones to the 2050 target.

Consultation questions

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

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

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

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

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

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

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

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

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

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

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

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

Next steps

We will review the consultation responses to the key questions on the draft supplementary EIA guidance. These will be used to update the supplementary EIA guidance which we expect to publish in Spring 2025.

This consultation is available from: <https://www.gov.uk/government/consultations/consultation-on-draft-supplementary-eia-guidance>

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