



## **Surface Development Restrictions for Hydraulic Fracturing**

**A response by National Parks England**

**16 December 2016**

### **1. Introduction**

1.1. National Parks England supports the policy-making process by co-ordinating the views of the nine English National Park Authorities and the Broads Authority. It is governed by the Chairs of the ten authorities. Our response represents the collective view of officers who are working within the policies established by the National Park Authorities (NPAs) and Broads Authority and follows internal consultation amongst the officers. We are happy for our response to be made publicly available and would be happy to discuss any of the points we make further if that would be helpful.

### **2. Summary**

2.1. NPE welcomes the opportunity to respond to DECC's consultation and would like to highlight, in particular, the following:

- welcome the principle of the surface development restrictions for hydraulic fracturing in protected areas;
- there are specific concerns relating to the proposed approach including the definition of hydraulic fracturing, the areas included and the proposed methods for applying the restrictions; and
- the draft Onshore Hydraulic Fracturing (Protected Area) Regulations 2015 undermine National Park legislation in that the proposals for surface restrictions will still allow for hydraulic fracturing to take place at depths below 1200m within protected areas.

### **3. Consultation questions**

3.1. The Government's consultation indicates that the purpose of the hydraulic fracturing industry is to act as "a bridge for our transition to a green future" by releasing less carbon emissions than other more polluting fuels. Elsewhere in the document it refers to wanting the industry to "flourish in the long term" (1.12). NPE believes the Government should provide greater consistency in the signals it sends to the public.

potential developers and planning authorities regarding the transitional role of Hydraulic fracturing (HF) for a low carbon future, including clear milestones. This is particularly important in light of agreements reached at the Climate Conference in Paris (COP 21).

3.2. NPE supports and welcomes the principle of restricting surface developments for both new and existing licences within the 'specified protected areas' as a step in the right direction to ensuring that national parks and the Broads, continue to have the highest level of protection from inappropriate development. The proposals will provide additional clarity relating to hydraulic fracturing (HF) in England that will help support the national parks standing, reputation and integrity.

3.3. However, there are specific areas of concern relating to:

- the limits of the restrictions;
- the definition of hydraulic fracturing;
- the method proposed for restricting hydraulic fracturing, particularly for existing Petroleum Exploration and Development Licences (PEDLs);
- the lack of any restrictions at depths below 1200m within national parks or other protected areas; and
- lack of clarity regarding major development at depths below 1200m within national parks.

### **Question 1**

Do you agree with the proposed approach to restricting surface developments in specified protected areas (National Parks, the Broads, Areas of Outstanding Natural Beauty (AONBs), World Heritage Sites, Source Protection Zones 1, Sites of Special Scientific Interest, Natura 2000 areas and Ramsar sites) through licence conditions? Do you agree with the scope of the restrictions to be applied in England?

Please give reasons. Please specify whether your response relates to new or existing licences or both.

### **Lack of consideration of European legislation for Natura 2000 sites**

3.4. European designations are an inherent part of national parks and the Broads. They contribute to national parks and the Broads special qualities and ecosystem services, which rely on the integrity of the land in its entirety.

- 3.5. The consultation document notes that a Habitats Regulations Assessment has been carried out for the 14th Licensing Round and it proposed that conditions should be attached to some licences to prohibit certain activities at or near the surface within the areas of that block that are European sites. However, the government response to this consultation is not yet available and therefore there is uncertainty about whether issues raised by national parks and conservation bodies will be addressed.
- 3.6. These issues included concerns relating to activities outside a European site negatively affecting the protected species within the European site. This is of particular concern with migratory species such as some birds and for others that require large scale habitats over a landscape scale, such as bats.
- 3.7. The restriction on new licences will help by reducing the likelihood of impacts within European sites but it will not address the need for buffer zones. There has been no strategic HRA carried out for existing PEDLs, which means that they are unlikely to have conditions attached which place restrictions on activities within or effecting European sites.
- 3.8. To address these issues NPE recommend that the surface restrictions include an additional 15km buffer zone around European sites, and that this is applied to both existing and new licences.

### **Source Protection Zones**

- 3.9. NPE welcomes the restrictions within Source Protection Zone 1. These areas are already well protected through the Environment Agency. However, the Environmental Audit Committee Report (26 January 2015) recommended that HF should be prohibited in all source protection zones. The Infrastructure Act 2015 refers to '*associated hydraulic fracturing will not take place within protected groundwater source areas*'. The draft Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015 ('the draft Regulations) further define groundwater source areas as being limited to Source Protection Zone 1. Whilst it is acknowledged that the risks associated with groundwater contamination are highest within SPZI, consideration should be given to including SPZ 2 and 3 within the restricted areas, to ensure that a precautionary approach is taken.

### **Areas not included within the restrictions**

- 3.10. The House of Commons Environmental Audit Committee Report, referred to above, also recommended that '*fracking must be prohibited outright in protected areas including National Parks, the Broads, Areas of outstanding Natural Beauty, Sites of Special Scientific interest and ancient woodland, and any land functionally linked to these areas*'. The current consultation does not seem to restrict operations in ancient woodland or land functionally linked to protected areas. Ancient woodland covers only 2% of the UK

but is an irreplaceable habitat. Ancient woodland forms an important part of the landscape character and cultural heritage of many national parks and the Broads, as well as habitats for important species, and can be lost as a result of inappropriate development. Oil and gas operators will often favour sites within woodlands due to the natural screening they provide, which means that they are particularly vulnerable.

3.11. Therefore, NPE recommends that the surface restrictions include ancient woodland and other areas functionally linked to 'protected areas'.

### **Limitations in Relation to “Associated Hydraulic Fracturing”**

3.12. Paragraph 1.18 of the consultation confirms that the proposals would apply only to surface activity that is required for the carrying out of “associated hydraulic fracturing” which is defined in the Infrastructure Act as: “*hydraulic fracturing of shale or strata encased in shale which is carried out in connection with the use of the relevant well to search or bore or get petroleum and involves the injection of more than 1000 cubic metres of fluid at each stage of the hydraulic fracturing, or more than 10,000 cubic metres of fluid in total*”.

3.13. The consultation does not explain the implications of this technical limit and the assumption is that HF at levels below these limits could occur and therefore in effect HF from surface wells within National Parks would not be restricted by these proposed restrictions. Again, it is considered that this is contrary to the aims and objectives of the proposals in terms of providing confidence to the public that certain areas will be protected from HF.

3.14. It would also seem that other activities related to HF would not be restricted by the current proposals. For example exploratory drilling and related infrastructure. National Parks England recommends that no surface activities should be allowed within Protected Areas given their environmental impact in sensitive environments.

### **Question 2**

What would the impact(s) be on new and existing licensees if the proposals were adopted?

*Please provide evidence where possible, and specify whether your response relates to new and/or existing PEDLs.*

### **Restrictions on Existing Petroleum Exploration and Development Licence**

3.15. Although the Proposals would prevent HF operations from taking place from new wells that are drilled from the surface of protected areas through a condition on all new PEDLs, this does not apply to existing PEDLs areas. The proposed approach to existing PEDLs is to issue a policy statement that the Secretary of State is minded not to approve proposed HF from new or existing wells drilled at the surface of the protected areas.

- 3.16. This is not considered to provide adequate safeguarding and runs contrary to the aims of the consultation to reassure public confidence in the industry. A policy statement is not binding and the wording “not minded to” is not a strong commitment and far from the definitive prohibition as is being proposed for new PEDLs.
- 3.17. As there are a number of existing licences within protected areas already, including the North York Moors National Park and the South Downs National Park, this results in uncertainty about whether HF could take place from surface developments (subject to other consents being forthcoming) and is therefore contrary to the aims and objectives of the proposals.
- 3.18. Therefore, a stronger, clearer and more robust mechanism needs to be put in place to place restrictions on existing licences to prevent HF from taking place within the protected areas.
- 3.19. Reassurance is sought that the restrictions for licences will be applied to all future licences and not just those within the 14<sup>th</sup> Licencing Round.

### **Question 3:**

Does existing regulation provide sufficient protection for the areas in which we are proposing to restrict surface developments? If not, what would be the additional benefit if the proposals were adopted (e.g. in terms of environment, heritage, landscape value, economic impacts)?

*Please provide evidence where possible.*

### **Limitations on the Depth of HF below “Protected Areas”**

- 3.20. As well as public concerns about surface infrastructure associated with HF, which have been recognised in the consultation document, evidence from recent oil and gas planning applications (for example the application for oil and gas exploration at Fernhurst in the South Downs National Park ref: SDNP/13/05896/CM) suggests that there is much public concern in relation to the difference between conventional and unconventional extraction i.e. the activity below ground of the HF process itself. The proposals which only seek to exclude HF in protected areas from surface infrastructure do not address this public concern.
- 3.21. The draft Regulations which allow HF to take place at depths below 1200m in the protected areas mean that HF can actually take place in areas where the Government is seeking to ban it, through lateral drilling from surface infrastructure located outside the surface boundaries of the protected areas. The difference between the 1000m depth limit on HF on all land and the 1200m depth limit below protected areas is not understood and this difference should be explained to help public understanding.

## **Current Approach to “Surface Development” (major development) in National Parks**

- 3.22. Paragraph 1.7 of the consultation outlines national planning policy (NPPF paragraph 116) which presumes against unconventional hydrocarbon development such as shale gas in National Parks and the Broads where it is considered to be major development. This is considered to imply that below surface unconventional development is not major development. This is important in terms of the extent of the regulatory planning system in relation to sub-surface elements of unconventional hydrocarbon development – i.e. the drilling and hydraulic fracturing process itself. Legally the definition of development (s55 of the 1990 Act) requiring planning permission is *"the carrying out of building, mining, engineering and other operations, in, on, over or under land, or the making of any material change in the use of buildings or other land"*.
- 3.23. On this basis, lateral drilling and hydraulic fracturing below a “protected area” would constitute development and in the case of a development crossing a National Park or the Broads boundary would become a county matters straddling application requiring the submission of a planning application to both the National Park Authority or Broads Authority and the adjoining mineral planning authority. As with conventional hydrocarbon extraction, this development would be considered as major development and the presumption of refusal would apply unless there are exceptional circumstances and public interest (paragraph 116 NPPF).
- 3.24. There is also concern that the definition of the extent of national parks have been altered by the draft Regulations. The draft statutory instrument appears to conflict with and undermines primary legislation in that it limits the statutory protections for land within the National Park to a depth of 1,200m; the draft SI changes in the process the intent of two pieces of primary legislation (the National Parks and Access to the Countryside Act 1949 (as amended) and the Infrastructure Act 2015).
- 3.25. There is also a duty<sup>1</sup> under Section 11A(2) of the National Parks and Access to the Countryside Act 1949 (as amended) and for the Broads: Section 17A of the Norfolk and Suffolk Broads Act 1988 (as inserted by Section 97 of the Countryside and Rights of Way Act 2000) for relevant authorities including Ministers to have regard to National Park purposes *‘in exercising or performing any function in relation to or so as to affect land in a National Park’*. Section 11A(2) does not limit that regard to land above 1,200m and it expects impacts from outside the National Park also to be considered.
- 3.26. NPE recommend that the NPPF and Planning Practice Guidance are updated to make it clear that HF is not permissible in National Parks and the Broads to help inform plan making and decisions on applications. Without this clarity there will be a disconnect

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<sup>1</sup> Also known as the Section 62 ‘duty of regard’

between the restrictions applied to the licence and planning policy; as licence holders would still be able to apply for planning permission for HF from within the protected areas and the major development test would have to be applied (rather than an outright ban). This is of particular concern where there are existing licences, as the proposals for restricting HF for the existing licences are weak.

National Parks England  
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