IISD
International Institute for Sustainable Development

International Institute for Sustainable Development Response to DESNZ Consultation on Scope 3 Emissions Guidance

January 2025

Summary

The British government has invited input to its new guidance on how environmental impact assessments (EIAs) by offshore oil operators should address the greenhouse gases emitted when ultimately consuming the oil. This is in response to the Supreme Court's landmark ruling in the *Finch* case. IISD welcomes the opportunity to respond to the consultation.

We recommend that the guidance should:

- **specify that the significance of emissions should be assessed in terms of the need for the project, in addition to other already-existing fields, within science-based 1.5°C scenarios.**

  The draft guidance leaves the vital issue of significance undefined, which weakens the opportunity for consistent comparison and informed decision making.

  Noting that existing facilities are subject to carbon lock-in, an EIA should assess the need for the new project on top of existing fields unless it can specify which existing fields will close and by what mechanism.

  The guidance should also make clear that significance should not be measured as a proportion of British, global, or sectoral emissions or carbon budgets, as such comparisons will generally understate the true significance.

- **specify that Scope 3, Category 11 emissions must be reported separately**, i.e., the emissions from ultimately consuming the oil.

  By giving companies flexibility about how they categorise Scope 3 (which also includes other emissions elsewhere in the supply chain), the draft guidance risks allowing this most important element to be subsumed under larger headings and, therefore, not clearly stated as the *Finch* ruling requires.

- **clarify that baselines for assessing emissions should usually be zero** (as there are no emissions in the absence of a project), except in cases where an EIA is for an adaptation of an existing extraction facility.

  The draft guidance risks being misinterpreted as allowing a company to claim that its project is cleaner than some other alternative that the project will supposedly displace. Such claims are usually unsupported by the science and have been rejected by the courts.

- **require assessment of cumulative effects at a global level** because it is at the global level that carbon dioxide emissions have a cumulative effect.

  The draft guidance highlights only locally cumulative effects, such as those related to other projects in the area. This approach is appropriate for local environmental impacts but not for climate change.

Introduction

In a landmark decision, the British Supreme Court ruled in *Finch v Surrey County Council* that planning authorities must assess "downstream" greenhouse gas (GHG) emissions as part of the Environmental Impact Assessment (EIA) process for fossil fuel projects. The case specifically concerned oil extraction at Surrey's Horse Hill site, where planning permission was granted without considering emissions from burning the extracted oil (Scope 3 emissions).

The British government announced on 29 August 2024 that it would be developing updated EIA guidance to help offshore operators understand the practical implications of the judgment. The government is now consulting on this draft guidance.

IISD welcomes the opportunity to respond to the consultation. We are pleased that the government is taking steps to integrate the *Finch* decision into regulation. Doing this in a robust way will meaningfully increase the British government's climate ambition.

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

No, as it is open to misinterpretation.

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

The approach to baselines in the draft guidance is somewhat ambiguous. It could be read as allowing developers to build substitution effects into their assessment by considering a business-as-usual baseline scenario and arguing that the new project somehow reduces emissions compared to this baseline. Such claims have often been made in EIAs, commonly without evidence or analytical backing, leading to approvals being overturned by courts (Hasselman & Erickson, 2023). Reporting Scope 3 (and Scopes 1 and 2) emissions is a straightforward accounting/inventory exercise (World Business Council for Sustainable Development & World Resources Institute, 2004). The issue of how those emissions interact with the wider system may be added for interpretive purposes but is not a part of the reported emissions.

The draft guidance makes things more complicated than they need to be by too closely following the Institute of Environmental Management & Assessment (IEMA) guidance on the baseline issue. The IEMA guidance was not written with fossil fuel extraction projects in mind but rather industrial projects that may occur on the site of a previous activity. Thus, IEMA states that the baseline "may include emissions from existing projects (e.g., energy consumption from a building which is scheduled for refurbishment, demolition or replacement) and infrastructure (e.g., current operational and end-user emissions of a road due to be upgraded)." In contrast, the majority of oil and gas fields (and all of the new oil and gas fields) will be "situated in areas with no physical development or activity. In this instance, there would be zero [baseline] GHG emissions to report at a site level" (IEMA, 2022: p. 17).

To avoid confusion, we recommend that the DESNZ guidance should specify that in most cases, the baseline will be zero (i.e., there will be no Scope 3 emissions if the field does not go ahead); a non-zero baseline may need to be assessed only where a project involves a change to or adaptation of an existing extraction facility.

Further to this, it should be clarified that the "selected extent of assessment" is the physical project site.

In addition, we recommend that the guidance's introductory comment on substitution should be amended from

> Even if developers consider this to be the case for their project, any substitution is not considered to be a relevant factor in determining whether Scope 3 emissions from a project's downstream activities are an effect that needs to be assessed in the ES.

to

> Even if developers consider this to be the case for their project, any substitution is not considered to be a relevant factor in determining the Scope 3 emissions from a project's downstream activities, though it may be added by way of interpreting the implications of the Scope 3 emissions.

Furthermore, we recommend the deletion of the sentence "If alternative development options were considered for a project, then alternative baseline scenarios can be used to address uncertainty in the overall assessment." Regardless of alternative development options, the baseline will be zero in most cases (except where the project involves a change to or adaptation of an existing extraction facility, in which case the baseline would still be constant across alternative development options).

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

No, as it may make it harder for developers to show whether they are complying with the *Finch* ruling.

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

While it is true that Scope 3 is not limited to Category 11, Category 11 is by far the largest element for oil and gas fields, and it is the element that relates to the *Finch* ruling. It is also the most straightforward to assess, simply by multiplying the expected production by the appropriate emissions factor. By contrast, other elements of Scope 3 depend on assumptions about how the supply chain will operate, sometimes related to activities on which the reporting company may not have traceability.

There is a danger that in highlighting the broader range of Scope 3, the guidance leads to excess complexity and uncertainty in the reporting of Category 11 emissions. It is reasonable to ask companies to report all elements of Scope 3, but we recommend that Category 11 should be reported separately. The relevant sentence in the draft guidance is somewhat ambiguous as to whether this separation is required or optional. In addition (and less substantively), that sentence mixes the question of how to assume the hydrocarbons are used with how to categorise them.

We recommend amending the sentence as follows:

> Developers can choose to break down Scope 3 emissions into the relevant downstream GHG Protocol categories; or break them down into downstream refining process, transportation of produced product and end use of the product; or assume that all produced hydrocarbons are combusted.

to read

> Developers must report Scope 3, Category 11 emissions separately. They can choose either to break down Scope 3 emissions into the relevant downstream GHG Protocol categories or to break them down into downstream refining process, transportation of produced product and end use of the product. They can either assume that all produced hydrocarbons are combusted, or consider the average proportions of uses of the relevant hydrocarbons in their respective markets, or present evidence of traceability if different proportions are expected in their project's case.

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

The lack of definition of what makes impacts "significant" is our largest concern about the draft guidance. This is one of the most important issues in the Scope 3 assessment. The draft guidance is right to say that EIAs should include an assessment of significance, but without an explanation of what this means, developers will be left to interpret the term in their own way. This will undermine the prospect of consistent comparison and informed decision making.

We recommend that the draft guidance should adopt IEMA's definition of significance, adapted to the specific circumstances of oil and gas fields. It should echo IEMA in stating that the impacts of a project are considered significant if the project is not consistent with credible 1.5°C scenarios or carbon budgets. It should add that this assessment should be made in relation to the appropriate market for the oil (global) or gas (a combination of regional piped gas and global LNG), and that it should take into account the committed emissions of existing projects serving that market. Unless an EIA has a specific and well-evidenced explanation for which existing fields are expected to close before the end of their economic life (and how this is expected to happen), the assessment of consistency should be based on the demand for oil and gas in credible 1.5°C scenarios (or space for emissions in carbon budgets), minus the supply from existing fields.

Credible 1.5°C scenarios that could be used for these purposes include the International Energy Agency's Net Zero Emissions by 2050 scenario (International Energy Agency, 2023) and the Intergovernmental Panel on Climate Change (2023) IMP-LD scenario.

In addition, we recommend that the guidance make clear that where the emissions are released is not a relevant factor in determining significance. As the court clarified at paragraph 97 of *Finch*, "Climate change is a global problem precisely because there is no correlation between where GHGs are released and where climate change is felt."

Finally, we recommend that the guidance state that significance should not be assessed by calculating project emissions as a proportion of British, sectoral, or global emissions. Such proportions are sometimes estimated in EIAs but are not an appropriate way to assess significance, as they will always sound misleadingly small. Since the United Kingdom has many oilfields, each individually will be a small proportion of the total, but their effect on climate change is cumulative.

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

No.

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

The assessment of cumulative effects in the draft guidance focuses only on the local aspects of other projects (such as tiebacks). Whilst the extent to which a project facilitates other

projects is correctly a part of the assessment of its impact, there is also a global dimension. We recommend that the draft guidance should follow IEMA in noting explicitly (IEMA 2022: p. 21):

> As GHG emission impacts and resulting effects are global rather than affecting one localised area, the approach to cumulative effects assessment for GHGs differs from that for many EIA topics where only projects within a geographically bounded study area of, for example, 10km would be included. … All global cumulative GHG sources are relevant to the effect on climate change, and this should be taken into account in defining the receptor (the atmospheric concentration of GHGs) as being of "high" sensitivity to further emissions.

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

No.

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?

Whilst it is generally appropriate to consider mitigation measures in an EIA, there is little that can be done to mitigate Scope 3, Category 11 emissions from fossil fuel extraction projects other than compensating with carbon dioxide removals. There is strong scientific evidence that removals cannot be considered equivalent to reductions in actual emissions (e.g., Carton et al., 2021; Dooley et al., 2022), and thus estimates of net emissions can be misleading. Therefore, the guidance should require that mitigation measures are accounted for separately and that EIAs do not attempt to combine emissions and removals in a single net figure (Lebling et al., 2024; McLaren et al., 2019).

Furthermore, we recommend that the guidance should specifically rule out the purchase of offsets in voluntary carbon markets, given the now extensive evidence of the lack of integrity of such offsets (Greenfield, 2023; Trencher et al., 2024).

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

No.

6. Are the expectations on environmental protection objectives clear?

Yes.

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

No.

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