



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

The Sizewell C Project

**Natural England's Response to The Examining Authority's Request
for Written Responses from Issue Specific Hearing 10**

Planning Inspectorate Reference: EN010012

17th September 2021

Natural England's Response to The Examining Authority's Request for Written Responses from Issue Specific Hearing 10 [EV-188]

1. Habitats Regulations Assessment (HRA) – Agenda Item 5a & 5b

Examining Authority question(s)

- 1.1. *'The ExA has produced a table which was issued during the hearing as an action point, listing the relevant European sites, qualifying features and potential impacts under dispute. 1) Please will the Applicant, Natural England, Environment Agency and other IPs who wish to do so complete the table, confirming their position.'*
- 1.2. *'Please will Natural England set out in writing those European sites, and specifically which qualifying features, they still have concerns about with regards to the ability to conclude no adverse effects on integrity (AEoI). I've read the submission in lieu of attendance. A site by site list is needed.'*

Natural England response

- 1.3. At the request of the Examining Authority, we have answered questions on Agenda item 5a and 5b in an earlier response which we refer you to in this section (Natural England's Response to The Examining Authority's note on agenda item 5a of Issue Specific Hearing 10 on Biodiversity and Ecology and item 5b, our ref: 366560, dated 7th September 2021) [REP7-287].

2. Recreational Disturbance – Agenda Item 5c.

HRA and recreational pressure on European sites - to understand the position of the Applicant and IPs, including Natural England, with regards to the proposed mitigation to avoid adverse effects on the integrity of European sites arising from recreational pressure, including progress on the two Management and Monitoring Plans and the securing of such measures.

Examining Authority question(s)

- 2.1. *"The two Management and Monitoring Plans in question are:*

- *"Monitoring and Mitigation Plan for Minsmere-Walberswick European Sites and Sandlings (North) European Site" (draft version at Deadline 2) [REP2-118], Revision 2 at Deadline 5 [REP5-105]; and*
- *"Monitoring and Mitigation Plan for Sandlings (Central) and Alde, Ore and Butley Estuaries European sites" Version 1 submitted at Deadline 5 [REP5-122].*

At Deadline 6, Natural England [REP6-042] reiterated that they do not believe that the Minsmere Monitoring and Mitigation Plan and associated recreational

disturbance mitigation strategies currently have the capacity to exclude AEoI beyond reasonable scientific doubt. NE confirmed that further work is required to the MMMP and identified a number of points for further consideration in the MMMP, including: the inclusion of verbal communications to workers (such as in inductions or as a toolbox talk) in addition to printed literature, to ensure these vulnerable features are properly highlighted to workers; clarification with regards to the proposed creation and maintenance of firebreaks that have been proposed as a contingency measure at Westleton Heath, whether these are in addition to existing; and the provision of additional wardening resource for monitoring measures.

Please will the Applicant set out the oral response it made at ISH10

Please will Natural England respond in writing; and the MMO so far as within their remit.”

Natural England response

- 2.2. In the Applicant's Written Summaries of Oral Submissions at ISH10 [REP07-069] it outlines two points under the heading: 'HRA and recreational pressure on European sites – to understand the position of the Applicant and IPs, including Natural England, with regards to the proposed mitigation to avoid adverse effects on the integrity of European sites arising from recreational pressure, including progress on the two Management and Monitoring Plans and the securing of such measures'.
- 2.3. Firstly *“Mr Tromans confirmed that discussions are being had with Natural England and other Interested Parties and SZC Co. will address issues raised by other parties (at Deadline 6) in its Deadline 7 submissions. This included reporting on current discussions relating to some limited detailed feedback on the draft monitoring plans.”*
- 2.4. And secondly *“There are differences about whether a further SANG should be provided. The Applicant is apart from NE on that.”*
- 2.5. To address these points, Natural England's advice remains that recreational disturbance continues to be an issue where the potential for adverse effects on internationally and nationally protected sites in proximity to the development need to be considered in greater detail and therefore remain unresolved at this time.
- 2.6. We do not consider that either Monitoring and Mitigation Plan for Minsmere to Walberswick or Sandlings (Central) and Alde, Ore and Butley Estuaries European Sites and associated recreational disturbance mitigation strategies are sufficient to exclude adverse effects on integrity (AEoI) beyond reasonable scientific doubt.
- 2.7. As we have outlined in previous responses we advise that while the aforementioned Monitoring and Mitigation Plans go some way towards addressing the impacts of increased recreational disturbance, the measures proposed within them are not sufficient to address the potential scale of impact (see NE's Written Representations (WR's) (our ref: 35822) [REP2-153] - Comments on Terrestrial Ecology Documents (our ref: 362979) [REP6-042] & NNB Generation Company (SZC) Limited, Deadline 7 Submission - 9.94 Statement on Recreational Disturbance Numbers - Revision 1.0 [REP7-087]). We therefore reiterate our previous advice that a Suitable Alternative

Natural Greenspace (SANG) is required in addition to the mitigation outlined in the Monitoring and Mitigation Plans.

- 2.8. We therefore disagree with the conclusion of no AEoI as reached by the Applicant in the Shadow HRA (Doc Ref. 5.10. [APP-145 to APP-149]). As we have outlined in our previous response in the Joint Statement on Recreational Disturbance Numbers (NNB Generation Company (SZC) Limited, Deadline 7 Submission - 9.94 Statement on Recreational Disturbance Numbers - Revision 1.0 [REP7-087]), we advise that the evidence basis for this conclusion is very limited and consequently the mitigation proposed is insufficient and lacking precaution given the considerable evidential uncertainty.
- 2.9. Regarding the two Monitoring and Mitigation Plans referenced above our primary concern is that the wardening resource proposed is not sufficient given the scope of the duties and the spatial extent of their roles.
- 2.10. Evidence from Thames Basin Heaths SPA recreational disturbance mitigation strategy utilises 7 full time wardens and 6 seasonal wardens to resource similar measures outlined by the applicant in their monitoring and mitigation plans. This is at a similar spatial extent to the three European sites being impacted by recreational disturbance from the Sizewell C development. While we acknowledge that the Thames Basin Heath SPA has a different context, we believe it contributes to a better understanding of how such schemes are resourced.
- 2.11. We understand that the Applicant is not envisaging impacting and mitigating recreational disturbance across the entirety of each site. However, we advise that the resource allocation for wardening currently proposed (one warden from the outset with contingency for one or two more) falls some way short.
- 2.12. On this basis and in the absence of alternative evidence provided by the Applicant we advise that as a minimum the Applicant should consider two full time wardens and one seasonal wardens to cover the responsibilities outlined in their plans with contingency for further resourcing if the Environment Review Group deem it necessary.

3. Red Throated Diver – Agenda Item 5d.

Outer Thames Estuary SPA and red throated divers – to explore the assumptions made by the Applicant in their assessment and the Outline Vessel Management Plan with regards to the timings of vessel movements and how timing restrictions are secured. To seek comments from Natural England, the MMO, RSPB/SWT and IPs on the Outline Vessel Management Plan

Examining Authority question(s)

- 3.1. "The Applicant submitted an Outline Vessel Management Plan at Deadline 6 [REP6-

027]. Do Natural England, the MMO or RSPB/SWT have any comments on the content of the plan? Does the plan alleviate concerns in relation to AEol on RTD of the Outer Thames Estuary SPA?”

Natural England response

- 3.2. Natural England provided our comments on Revision 1.0 of the Applicant’s Outline Vessel Management Plan at Examination Deadline 7 (dated 3rd September 2021, our ref: 366560) [REP7-141] which highlighted concerns around the routes put forward in the plan, and the inadequacy of the proposed monitoring. In light of this, we still cannot rule out an AEol based on the information provided
- 3.3. We are currently reviewing Revision 2.0 of the Outline Vessel Management Plan, submitted by the Applicant at Deadline 7 [REP7-046&047], and will provide our comment on this version to the examination at Deadline 8.

4. Marine Mammals – Agenda Item 5e

Mitigation - to explore whether the draft Marine Mammal Monitoring Plan (MMMP) should be a certified document that the final MMMP should be based upon and therefore referred to in Condition 40 of the DML and certified. To seek the views of NE and MMO on the contents of the draft MMMP and the Applicant’s ‘Underwater noise effect assessment for the Sizewell C revised marine freight options’ submitted at Deadline 5

Examining Authority question(s)

- 4.1. “To Natural England and MMO – do you have any specific comments on the contents of the MMMP?”

Natural England response

- 4.2. Natural England advise that we are satisfied with the Applicant’s draft Marine Mammal Monitoring plan and have set out our comments in Issue 27 of our Written Representations [REP2-053]. We do not have any further detailed comment to provide on this document.

Examining Authority question(s)

- 4.3. “The MMO, Natural England and the Applicant provide an update on these discussions and confirm whether this relates to seals of the Humber Estuary SAC and The Wash and North Norfolk SAC? Could Natural England and the MMO confirm their position in relation to AEol of these sites?”

Natural England response

- 4.4. Natural England advised the Applicant that there existed a credible impact pathway to Likely Significant Effect (LSE) from noise, light and visual disturbance of grey seal

from The Humber Estuary SAC and common seal from The Wash and North Norfolk Coast SAC, and should therefore be taken forward to the Appropriate Assessment (AA) stage of the Applicant's shadow HRA.

- 4.5. Upon reviewing the Applicant's AA for these species and sites in their shadow HRA, we are satisfied and agree with their conclusion of no AEol to these sites for these features.

Examining Authority question(s)

- 4.6. *"NE [RR-0878] identified noise, light and visual disturbance of grey seals, harbour porpoise and common seal of the Humber Estuary SAC, SNS SAC and The Wash and North Norfolk Coast SAC which utilise the MDS as functionally linked land as a potential impact pathway where further information/assessment is required. Could Natural England confirm whether any of these matters are resolved, and whether any remain outstanding?"*

Natural England response

- 4.7. See responses 4.2 & 4.3 above.

Examining Authority question(s)

- 4.8. *"In its RR [RR-0878], NE advised that the long term/permanent loss of foraging area within the SNS SAC would constitute an AEol and that compensation for this loss of area should be proposed. The Applicant has subsequently provided an updated assessment of prey species impingement [AS-173], [AS-238], [RE6-016] and concluded there would be no food-web effects to any qualifying features of European site. Could Natural England provide an update on their position in relation to this issue?"*

Natural England response

- 4.9. In light of the updated assessments of prey species impingement provided by the Applicant, Natural England do not have concerns about loss of foraging area for harbour porpoise in the Southern North Sea SAC, and agree with the Applicant's conclusion of no AEol from this impact pathway for this species.

Examining Authority question(s)

- 4.10. *"Do you have any specific comments on the contents of the SIP? NE – please provide an update of your position in relation to AEol of the SNS SAC"*

Natural England response

- 4.11. Natural England advise that we submitted comments on the Applicant's Southern North Sea Site Integrity Plan at Deadline 7 [REP7-142] which highlighted that there are issues with the SIP in its current form, which must be addressed

before we can agree with the Applicant's conclusion of no AEoI.

- 4.12. We require the Applicant to address the comments raised before we can agree with their conclusion of no AEoI.

5. Marsh Harrier

Marsh harrier compensatory measures – to explore the proposed compensatory measures, including the additional habitat proposed at Westleton and how these are secured through the DCO with reference to the certification of documents, and to explore Natural England's reasons leading to Westleton being proposed

Examining Authority question(s)

- 5.1. *"The ExA would summarise the Natural England position as follows. Please will the Applicant and Natural England confirm (or otherwise) the accuracy of the summary. (A) the Applicant cannot demonstrate no AEI of breeding harriers as a result of foraging concerns".*

Natural England response

- 5.2. Natural England advise that the Applicant cannot demonstrate no AEoI to breeding marsh harriers due to foraging concerns.
- 5.3. Without some form of habitat creation, the Applicant could not exclude AEoI at the HRA Stage II (Appropriate Assessment), in part, as a result of marsh harrier foraging concerns:
- Originally, the Applicant proposed the use of mitigation (i.e. habitat creation for marsh harriers) to prevent impact occurring and exclude AEoI at HRA Stage II. In January 2021, however, the Applicant updated their position, stating that AEoI could not be excluded. We understand that this was following legal advice in relation to HRA case law judgement C-164/17 Edel Grace and Peter Sweetman v An Bord Pleanala (25 July 2018).
 - The same marsh harrier habitat creation, originally described as mitigation to prevent impact, was subsequently proposed as compensation to secure coherence of the network, following the completion of HRA Stage III (alternative solutions) and Stage IV (IROPI and compensatory measures) in the Applicant's shadow HRA.

Examining Authority question(s)

- 5.4. *"(B) As the precautionary principle / approach requires impact to be excluded and considering the problematic nature of the highly technical work that would be necessary for this assessment to be even attempted it was decided to look at the need for offsetting, i.e. compensation".*

Natural England response

- 5.5. If potential impact can be accurately quantified (e.g. mapping an area of direct

habitat loss), it is relatively simple to derive the amount of habitat creation required to offset impact. Assessing the potential displacement of foraging marsh harriers, however, is more complicated. The reference to the problematic nature of the highly technical assessment work is not a criticism of the Applicant, but a recognition of the inherent complexity and uncertainty involved:

- 5.5.1. Firstly, potential impact is due to indirect loss (i.e. displacement). We cannot be certain to what degree marsh harriers will be displaced by the disturbing effects of construction.
 - 5.5.2. Not only do behavioural responses to disturbance stimuli differ between bird species, they also differ between individual birds of the same species and in different locations.
 - 5.5.3. If impact cannot be excluded, the area of habitat required for compensation is not the same as the mapped area of overlap within which both foraging harriers have been recorded and development effects are predicted to occur.
 - 5.5.4. The frequency with which harriers were recorded / harrier foraging density must also be considered i.e. how important are these areas to foraging birds?
 - 5.5.5. In addition, as effects are indirect and typically affect non-SPA habitat, it is not unreasonable to consider what the ultimate effect of this displacement might be on SPA marsh harriers.
 - 5.5.6. Might SPA marsh harriers simply forage elsewhere or for longer? Can we exclude the potential for predicted displacement to result in a loss of SPA pairs or reduced productivity?
 - 5.5.7. If impact cannot be excluded, what area of habitat might then be required to offset the loss in foraging resource and support prey populations capable of sustainably supporting losses due to marsh harrier predation (in addition to other forms of mortality)?
 - 5.5.8. How available will these prey items be to foraging displaced SPA birds, as marsh harriers will only ever be capable of capturing a proportion of the total prey biomass?
 - 5.5.9. Finally, and arguably most importantly, what is the effect of creating sub-optimal terrestrial habitat, rather than the species' favoured wetland habitat, when attempting to offset the effects of marsh harrier displacement?
- 5.6. As a result of these issues, it was not feasible for the Applicant to exclude adverse effect on site integrity beyond reasonable scientific doubt in the absence of habitat creation. Expert judgement is then required to estimate the resultant area of habitat creation required to prevent impact occurring.

Examining Authority question(s)

- 5.7. *“(C) The applicant was unwilling to consider that if a Stage II Appropriate Assessment failed to exclude adverse effect on site integrity in the absence of sub-optimal terrestrial mitigation, following the successful completion of Stages III (no alternatives) and Stages IV (imperative reasons of overriding public interest) of an HRA, opportunities might then be sought elsewhere in order to create an optimal area of wetland habitat creation to secure the coherence of the network.” The ExA is*

not clear what is meant here. In fact the Stage II AA did fail to exclude AEI. Please will Natural England clarify”.

Natural England response

- 5.8. The primary consideration when attempting to create habitat for foraging marsh harriers is to identify a location where it is feasible to create the type of wetland habitat the species favours. The Applicant disregarded the potential to create optimal wetland habitat as they stated this was not feasible close to the SPA:
 - 5.8.1. Natural England has engaged with the Applicant to address effects on marsh harriers since 2014. Over six years, Natural England has provided advice to the Applicant to assist with their experimental approach to create sub-optimal terrestrial habitat for marsh harriers, rather than optimal wetland habitat, on an in principle basis i.e. the Applicant’s assurance that creation of wetland habitat was not possible.
 - 5.8.2. The Applicant introduced this terrestrial non-wetland constraint as they confirmed they could not complete a Stage III & IV HRA. Therefore, habitat creation could only be deemed mitigation and not compensation (compensation is only lawful after the successful completion of the No Alternatives and IROPI tests).
 - 5.8.3. This distinction as mitigation, rather than compensation, indirectly prevented the Applicant creating wetland habitat. Whereas compensation offsets impact where the potential for adverse effect on site integrity cannot be excluded, mitigation excludes adverse effect on site integrity by preventing impact occurring.
 - 5.8.4. This constraint narrowed the Applicant’s area of search for habitat creation, as moving too far away from the SPA to find a location where the hydrology was suitable for wetland creation, might also be too far away from foraging SPA birds. Moving further away would make it increasingly difficult to exclude the potential for adverse effect on site integrity beyond reasonable scientific doubt.
 - 5.8.5. The applicant confirmed there was nowhere close enough to the SPA where habitat creation could be deemed mitigation that had suitable hydrological conditions to create wetland.
 - 5.8.6. Until the final stages of the planning process and submission of revised marsh harrier plans in 2021, the Applicant’s draft shadow HRA passed Stage II and excluded Adverse Effect on Site Integrity on the basis of terrestrial habitat being provided as mitigation.
 - 5.8.7. After the Applicant had ruled out attempting to complete an HRA stage III & IV (no alternatives and IROPI tests), these tests have subsequently been completed at the very end of a period of engagement lasting several years. Retrospectively, it appears the terrestrial non-wetland constraint was self-imposed.
 - 5.8.8. Finally, at Issue Specific Hearing 10 Session 4 27th August, Natural England was made aware of evidence provided by Roger Buisson (Associate Director at BSG Ecology) in relation to his client’s 53ha land holding close the SPA where wetland habitat for marsh harriers could be created.

Examining Authority question(s)

- 5.9. *“(D) Applicant developed an experimental approach to maximise prey species populations, which the ExA assumes is meant to refer to what has been created at Upper Abbey Farm – the N-S strips of prey habitat – BUT with an option for further habitat if the Marsh Harriers do not use it as predicted”*

Natural England response

- 5.10. During Issue Specific Hearing 10 Session 4, Mr Trowmans, on behalf of the Applicant, stated that Applicant’s proposed compensation is a tried and tested way of creating habitat for foraging species. Whilst the techniques involved have been used to create habitat for small mammals and birds, Natural England is unaware of any previous attempt to create terrestrial non-wetland habitat for foraging marsh harrier. It must, therefore, be viewed as experimental.

Examining Authority question(s)

- 5.11. *“(E) Then when the DCO application was made, the Applicant had reached ‘favourable conclusions on HRA Stages III and IV’ – which the ExA assumes means the Applicant has concluded that (a) there are no alternatives and that (b) there are IROPI”.*

Natural England response

- 5.12. Correct. Whilst at the Appropriate Assessment HRA Stage II, impact must be excluded in relation to the site. If this is not possible, following completion of HRA stages III & IV, compensation is necessary to secure the coherence of the wider network.

Examining Authority question(s)

- 5.13. *“(E) The result of that according to the Natural England RR is to ‘facilitate the creation of optimal wetland habitat with additional biodiversity benefits, not only with potential to support marsh harriers, but also other species of breeding and non-breeding wetland birds. With minimal adaptations to habitat management, the original terrestrial area identified might instead help compensate for potential shortfalls in the approach towards Net Gain and terrestrial species of bird that Natural England has identified”.*

Natural England response

- 5.14. Accepting adverse effect on site integrity cannot be excluded, and assuming compensation following HRA stages III & IV might then be permitted, this would allow a wider area of search within which an option for optimal wetland creation might be identified. Nevertheless, if, despite the Applicant originally confirming creation of wetland habitat at Abbey Farm was not feasible, areas of wetland could indeed be created, not only would this provide optimal habitat for marsh harriers, but it could support other wetland bird species, that could not be supported in non-wetland terrestrial habitat.

Examining Authority question(s)

- 5.15. *“The wetland aspects of the Upper Abbey Farm marsh harrier area were not part of the Application but came in at D2. Natural England should please explain at D7 in writing.”*

Natural England response

- 5.16. As described above, the Applicant’s original hydrological work had excluded the possibility of wetland habitat creation at Abbey Farm. Consequently, the previous iterations of the plan for marsh harrier habitat creation that were shared with Natural England did not include wetland habitat creation.

Examining Authority question(s)

- 5.17. *“Natural England have said in their post-ISH7 written submission [REP5- 160] epage 1, and the Applicant has drawn attention to this, that “The offer of additional compensatory habitat at Westleton will minimise residual concerns that the displacement of marsh harriers could result in an impact”. The ExA seeks clarity on this. Do Natural England mean the concerns are eliminated or do they mean the Applicant has done its best to reduce the problem to the lowest possible level but that there are still residual concerns? “Minimise”, may be being used in a slightly loose way so as to say that Natural England no longer have concerns; the word does not strictly mean that the issue no longer exists. Please will Natural England clarify their position, but in the meantime, it is worth asking the Applicant what they think Natural England mean. Please could the position be included in the final SoCG.”*

Natural England response

- 5.18. The issues that create inherent uncertainty are listed in points 5.5.1 to 5.5.9 of our responses under section B above. As a result, predicting the potential behavioural response of individual marsh harriers, following the loss of access to favoured wetland habitat and the provision of sub-optimal terrestrial habitat, becomes a matter of expert judgement.
- 5.19. One of the key issues is the use of terrestrial non-wetland habitat. If wetland habitat had been offered, the judgement to confirm potential for impact had been excluded would have been far more straightforward. Despite this constraint, the design of terrestrial habitat elements was carefully considered by the Applicant and terrestrial habitats should be capable of supporting populations of marsh harrier prey species. Therefore, whilst potential effects on harriers cannot be eliminated, it would appear unlikely that such effects would be significant to the degree they might constitute an impact.
- 5.20. It is possible that terrestrial habitat compensation might fail to support displaced marsh harriers. Marsh harriers might prefer to forage for longer in preferred areas of optimal wetland habitat that remain unaffected by development. If, however, the potential prey resource in terrestrial compensation areas remained unexploited, it would seem unlikely in this scenario that breeding marsh harriers, or their dependent young, would be energetically stressed. The failure would relate to the relative attractiveness of alternative foraging areas.

Examining Authority question(s)

- 5.21. *“Natural England go on in the same para to say that if the two points they*

have set out are satisfactorily dealt with they advise the risks can be adequately compensated for provided the plans and monitoring are robustly implemented: The ExA wishes to be clear on what those two points are. The ExA suggested at the ISH that they are that (I) Natural England want assurance the wetland creation element is feasible and (II) the wetland element of on-site habitat creation “should be in place prior to construction” with “You must put in place all the necessary legal, technical, financial and monitoring arrangements...Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur”. Is that the Applicant’s understanding? What is Natural England’s intention? In particular are they satisfied with the commencement of wetland creation at Abbey Farm in the first winter as currently proposed by the Applicant at ISH10; and with the legal, technical, financial and monitoring arrangements currently proposed.”

Natural England response

- 5.22. The ExA’s understanding of the two key points is correct. Compensatory habitat should be established and capable of supporting SPA birds before they are displaced. Merely starting the process of habitat creation at, or near, the point of breaking ground and the commencement of disturbing construction would leave displaced birds without alternative habitat.

Examining Authority question(s)

- 5.23. *“If so, (III) will in the opinion of Natural England the current proposals for commencement of wetland creation in the first winter constitute being in place before construction so that in their opinion compensatory measures will be in place and effective before the negative effect is allowed to occur and (IV) please will the Applicant confirm there will be an absolute commitment on that, (in contrast to a “reasonable endeavours” commitment).”*

Natural England response

- 5.24. Compensatory habitats must be established and functioning in order to support displaced SPA birds from the start of the construction period.

Examining Authority question(s)

- 5.25. *“Is the wetland to which they refer the wet woodland which the Applicant proposes in the Upper Abbey Farm area?”*

Natural England response

- 5.26. The habitat must be capable of supporting displaced SPA birds from the start of the construction period. It is likely that areas proposed as wet woodland will be able to support SPA birds whilst the habitat remains open, prior to succession and the establishment of woodland. It is not the longer period taken for woodland to establish that is relevant in this context.

Examining Authority question(s)

5.27. *“Returning to the Natural England RR explanation “As the precautionary principle / approach requires impact to be excluded and considering the problematic nature of the highly technical work that would be necessary for this assessment to be even attempted (emphasis added) it was decided to look at the need for offsetting, i.e. compensation. Has the Westleton proposal been made because “highly technical work” has not been carried out? This question has a bearing on whether there is a compelling case in the public interest for compulsory acquisition.”*

Natural England response

5.28. The reference to compensation in the question was not the wording contained within NE’s relevant representation. The applicant originally described the habitat creation / offsetting as mitigation.

5.29. The work is inherently complicated so uncertainty cannot be eliminated. Potentially, highly technical approaches might have been explored to consider energetic consequences of marsh harrier displacement. It is unlikely, however, that, if such work had been attempted, there would have been a greater level of confidence in the results in comparison to expert judgement. There is no missing piece of assessment work that might have resulted in the offer of compensatory habitat at Westleton.

6 Migratory Fish

Prey species – to seek clarification regarding the relationship between the fish entrapment calculations and indirect impacts of prey availability to SPA and SAC qualifying features; to explore which European sites and qualifying features this applies I am going to ask Natural England, Environment Agency, MMO and the Applicant to deal with the next question in writing.

Examining Authority question(s)

6.1 *“The ExA notes that there have been extensive discussions regarding the fish entrapment calculations. Could Natural England, the Environment Agency, the MMO and the Applicant advise on whether these issues have any bearing on the consideration of indirect impacts of prey availability to SPA and SAC qualifying features?”*

Natural England response

6.2 Natural England advises that while we do not have concerns about prey availability impacts to the Harbour porpoise in the SNS SAC, our concerns around prey availability to marine ornithology features remain and are explained in full in Issue 30 of our Written Representations (our ref: 350822) [REP2-053].

Examining Authority question(s)

6.3 *“The Applicant has submitted a Technical Note on EAV and stock size (Appendix F of [REP6-024]). Could Natural England and the Environment Agency comment on this note and whether they agree with any of the EAVs and stock sizes assessed by the Applicant?”*

Natural England response

6.4 Natural England advise that we provided comment on this technical note at Deadline 7 – NE’s Comments on the Applicant’s Comments at D6 – EAVs and Stock Sizes (our ref: 366560) [REP7-143]

Examining Authority question(s)

6.5 *“In particular, the Applicant has explained that an EAV of 1 has been used for river lamprey and European eel and that this is the maximum theoretical number that could be applied.*

On this basis, could Natural England (and the Environment Agency where appropriate):

- *Comment on whether it still has concerns about the EAV applied to river lamprey and European eel?*
- *Confirm its position in relation to AEols to river lamprey of the Humber Estuary SAC?*
- *Confirm its position in relation to breeding bittern of MinsmereWalberswick SPA and Benacre to Easton Bavents SPA? (prey species matter).*

On this Natural England and the Environment Agency have both noted during the Examination that bittern feed on eels. They have therefore raised concerns that impingement of eels could then indirectly impact on breeding bittern of Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA. So in relation to bittern: Given the clarification received that the Applicant used an EAV of 1 for European eel, can NE and the EA comment on whether this relieves their concerns for breeding bittern; specifically, do they have sufficient information to exclude an AEol on breeding bittern of Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA”.

Natural England response

6.6 Natural England advise that while we do have concerns around eels and lamprey as critically endangered species, we defer to the Environment Agency as the competent authority for the Eel Regulations 2009.

6.7 Natural England also advise that we have no further concern regarding breeding bittern and can conclude no AEol to breeding bittern at Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA due to eel impingement.

Examining Authority question(s)

6.8 *“The EA [REP5-150] requested the Applicant to update the impingement assessment to*

include repeat spawning in the EAV calculations (i.e. follow the SPF model). Could the Applicant indicate the resource implications for this work to be undertaken and whether this could be completed before the end of Examination?"

Natural England response

6.9 This is not a question for Natural England, so we have no comment to make.

Examining Authority question(s)

6.10 *"Do the Environment Agency and Natural England have any comments on the Applicant's report entitled 'Quantifying uncertainty in entrapment predictions for Sizewell C' [REP6-028]. Do you agree with the Applicant that without the LVSE intake heads, effects are below the thresholds that would trigger further investigation for potential population level effects?"*

Natural England response

6.11 Natural England have no comment to provide on the Applicant's 'Quantifying uncertainty in entrapment predictions for Sizewell C [REP6-028]. We continue to support the EA's position regarding LVSE and the various factors that this report refers to.