



**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Submission of Oral Case

Issue Specific Hearing 3 on 19th January 2021: Biodiversity and Habitats Regulations Assessment

Applicants: East Anglia TWO Limited and East Anglia ONE North Limited
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Applicable to East Anglia ONE North and East Anglia TWO



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Glossary of Acronyms

| | |
|------|-------------------------------------------|
| AEoI | Adverse Effect of Integrity |
| DCO | Development Consent Order |
| EMP | Ecological Management Plan |
| ExA | Examining Authority |
| HRA | Habitats Regulations Assessment |
| MMMP | Marine Mammal Mitigation Plan |
| MMO | Marine Management Organisation |
| RSPB | Royal Society for the Protection of Birds |
| SAC | Special Area of Conservation |
| SIP | Site Integrity Plan |
| SoCG | Statement of Common Ground |
| SPA | Special Protection Area |



Glossary of Terminology

| | |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicants | East Anglia ONE North Limited and East Anglia TWO Limited |
| East Anglia ONE North project | The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure. |
| East Anglia TWO project | The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure. |
| National Grid infrastructure | A National Grid substation, cable sealing end compounds, cable sealing end (with circuit breaker) compound, underground cabling and National Grid overhead line realignment works to facilitate connection to the national electricity grid, all of which will be consented as part of the proposed East Anglia TWO project Development Consent Order but will be National Grid owned assets. |
| National Grid substation | The substation (including all of the electrical equipment within it) necessary to connect the electricity generated by the proposed East Anglia TWO / East Anglia ONE North project to the national electricity grid which will be owned by National Grid but is being consented as part of the proposed East Anglia TWO project Development Consent Order. |
| Projects | The East Anglia ONE North project and the East Anglia TWO project. |



1 Introduction

1. This document is applicable to both the East Anglia ONE North and East Anglia TWO Development Consent Order (DCO) applications (the Applications), and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23 December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again.
2. The Issue Specific Hearing 3 for the Applications were run jointly and took place virtually on 19th January 2021 at 10:00am (Hearings).
3. The Hearings ran through the items listed in the agendas published by the ExA on 8th January 2021. The Applicants gave substantive oral submissions at the Hearings and these submissions are set out within this note.
4. Speaking on behalf of the Applicants were:
 - a. Mr Colin Innes, partner at Shepherd and Wedderburn LLP;
 - b. Miss Stephanie Mill, senior associate at Shepherd and Wedderburn LLP;
 - c. Mr Paolo Pizzolla, project director for EIA and consenting at Royal HaskoningDHV;
 - d. Dr Mark Trinder, principal ornithologist at MacArthur Green;
 - e. Mr Fraser McDermott, principal environmental consultant at Royal HaskoningDHV;
 - f. Mr Brian McGrellis, onshore consents manager for the Projects;
 - g. Mr Gero Vella, offshore consents manager for the Projects; and
 - h. Ms Claire Smith, principal environmental consultant at Royal HaskoningDHV.



2 Agenda Item 2: Effects on Offshore Ornithology (Including HRA Considerations)

2.1 Outer Thames Estuary SPA

2.1.1 Update on the Status of Agreement between the Applicants and Nature Conservation Bodies

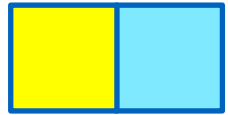
5. The Applicants' **Displacement of Red-Throated Divers in the Outer Thames Estuary SPA** (REP3-049) and commitment to the reduction of the offshore order limits for the East Anglia ONE North project (**Deadline 3 Project Update** Note (REP3-052) have demonstrated displacement effects in the Outer Thames Estuary SPA region extends circa 7km and is at a maximum in offshore wind farms of around 35-50% reduction in density. The effect of the East Anglia ONE North project is therefore very small with circa 9 – 34 individuals at risk of displacement which equates to a very small magnitude of impact. As a consequence, the Applicants consider there would be no Adverse Effect on Integrity (AEol) of the Outer Thames Estuary SPA as a result of either project alone or in-combination effects.
6. Notwithstanding the above, Natural England are still requesting a 10km separation of the Projects from the Outer Thames Estuary SPA.
7. The Applicants have reviewed Natural England's Deadline 4 comments (REP4-087, REP4-089) and have responded to the technical comments in an update to REP3-049 at Deadline 5 and will respond to the legal submission at Deadline 6.

2.1.2 Best Practice Protocol for Minimising Disturbance to Red-Throated Diver

8. The **Best Practice Protocol for Minimising Disturbance to Red-Throated Diver** (REP3-074) submitted at Deadline 3 is very similar to what was submitted for the East Anglia ONE offshore windfarm. The Applicants consider this is a standard document and covers what Natural England have requested. Natural England welcome this document and agree with its adoption. The Applicants note the comments from Natural England in REP4-087 and will address these points in an update to the Protocol at Deadline 6

2.1.3 Offshore In-Principle Monitoring Plan

9. The Applicants recognise that displacement of red-throated divers from operational windfarms is an ongoing concern for stakeholders. Therefore, the Applicants have included provision for pre- and post-construction monitoring of the potential displacement effect on red-throated diver from the East Anglia ONE North project through the **Offshore In-Principle Monitoring Plan** (REP3-040).



This commitment was omitted from the East Anglia TWO **Offshore In-Principle Monitoring Plan** (REP3-040) in error and will be included in the next version.

10. The Applicants updated conditions 20 and 22 of the generation DML and conditions 16 and 18 of the transmission DML in the **draft DCO** (REP3-011) for the Projects at Deadline 3 to make provision for ornithological monitoring.

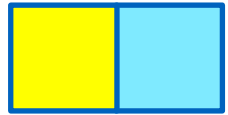
2.2 Flamborough & Filey Coast SPA

2.2.1 Update on the Status of Agreement between the Applicants and Nature Conservation Bodies

11. The Applicants continue to consider there would be no AEoI of the Flamborough and Filey Coast SPA as a result of either project alone or in-combination effects.
12. Natural England's position is unchanged since their Deadline 3 submissions (**Appendix A10 – Comments on Assessment of Flamborough and Filey Coast SPA and Gannet PVA** (REP3-116) and **Appendix A11 – Offshore Ornithology Update** (REP3-117)). The Applicants provided responses and updates to Natural England's Deadline 3 comments at Deadline 4 in **Applicants' Comments on Natural England's Deadline 3 Submissions** (REP4-016).

2.2.2 Implications for the East Anglia ONE North and East Anglia TWO Assessments of the Secretary of State's Decision to Grant Development Consent for the Hornsea Project Three Offshore Wind Farm Project

13. The Applicants consider that the kittiwake collisions at Hornsea Project Three should now be removed from the in-combination assessment as these will be compensated for.
14. The Applicants resubmitted the collision risk modelling estimate at Deadline 4 (**Deadline 4 Offshore Ornithology Cumulative and In-Combination Collision Risk Update** (REP4-042)). This update was to account for density changes in the East Anglia ONE North project (due to the change in the site boundary following application of the 2km buffer to the Outer Thames Estuary SPA), removing the non-material change applications for East Anglia ONE and East Anglia THREE offshore wind farms (i.e. reverting to the currently consented positions), including Hornsea Project Three in the revised totals and providing those totals with Hornsea Project Four included and excluded.
15. The Applicants have presented the figures for Hornsea Project Three using the available figures in line with Natural England advice (i.e. with the updated position on kittiwake, but without changes to other species where there would also be collision mortality reductions as a result of Hornsea Project Three mitigation). Provision of the collision estimates for the other species is being sought by Natural England. The Applicants welcome this noting, for example, that gannet collisions for that project could be reduced by 50-60%.



2.3 Lesser Black-Backed Gull of the Alde-Ore Estuary SPA

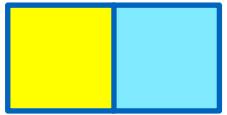
2.3.1 Update on the Status of Agreement between the Applicants and Nature Conservation Bodies

16. There have been no changes in position from either the Applicants or Natural England since Issue Specific Hearing 1.
17. The Applicants continue to consider there would be no AEoI of the Alde-Ore Estuary SPA as a result of either project alone or in-combination effects.
18. Natural England remain concerned about the in-combination effects.

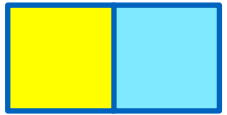
2.4 The Applicants' 'Without Prejudice' HRA Derogation Cases and Compensatory Measures

19. The Applicants submitted their without prejudice **HRA Derogation Case** (REP3-053) at Deadline 3.
20. The Applicants note Natural England's Comments on the compensatory options. Natural England responded to this at Deadline 4 (**Appendix A13 – Interim Comments on Ornithology** Compensation (REP4-088)) and provided further clarification in the Hearings on their comments requesting the Applicants to look to prey availability and prey enhancement as a potential compensation. During the Hearings Natural England clarified that this is not a project specific issue necessarily and they are requesting the Applicants to feed into a wider project to deliver these.
21. The Applicants do not consider such measures to be appropriate. This is in accordance with Ørsted's review of the potential for prey availability and prey enhancement as a compensatory option which concluded that this depended upon fisheries management measures and would therefore not be practical to implement at a project specific level. This review was undertaken in 2020 by the former head of licencing of MMO (Dickon Howell, Howell Marine Consulting) (Response to the Secretary of State's Minded to Approve Letter Appendix 3: Supporting Evidence for Kittiwake Prey Resource¹) and the Applicants consider this work to be robust and comprehensive. The Applicants will provide a commentary on this issue together with the Ørsted report as part of the wider submission on compensation measures at Deadline 6.
22. The Applicants also noted Natural England's comments on other projects in the southern North Sea 'using up' options for compensation and that the Applicants should consider alternate approaches. The Applicants will take this into account

¹ [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010080/EN010080-003239-HOW03_30Sep_Appendix%203%20Supporting%20Evidence%20for%20Kittiwake%20Prey%20Resource%20\(06543668_A\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010080/EN010080-003239-HOW03_30Sep_Appendix%203%20Supporting%20Evidence%20for%20Kittiwake%20Prey%20Resource%20(06543668_A).pdf)

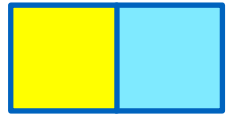


but highlighted that the scale of the requirement for compensation was not equal between projects (for example given the Projects total contribution of 2.4 kittiwakes to the in-combination total).



3 Agenda Item 3: Effects on Subtidal and Intertidal Benthic Ecology

23. The Applicants note that this agenda item was covered only briefly during the Hearings and the ExA will cover this topic area through the ExA's second written questions (ExQ2) instead.
24. However, the Applicants noted and welcomed Natural England's position on ***Effects on Supporting Habitats of Outer Thames Estuary SPA*** (REP3-059), which they are content with and believe closes out this issue.



4 Agenda Item 4: Effects on Marine Mammals (Including HRA Considerations)

4.1 Harbour Porpoise of the Southern North Sea SAC

4.1.1 Underwater Noise Implications of Monopile Foundations for Offshore Platforms

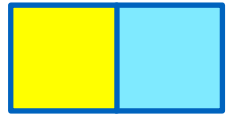
25. Following engagement with the supply chain as part of the procurement of East Anglia Hub, the Applicants have determined that a monopile foundation is an additional viable foundation type for the offshore platforms.
26. Table 4 of the **Deadline 3 Project Update Note** (REP3-052) compares the worst case assumptions used in the Application assessments against the inclusion of the monopile foundation to determine whether their inclusion falls within the envelope assessed. In all cases the monopile foundation worst case lies within the worst case assessed.
27. There are no underwater noise implications of the inclusion of monopile foundations for offshore platforms. Instead, the use of monopile foundations would decrease impacts both spatially (through a reduced physical footprint on the seabed) and temporally (through a shorter construction duration and fewer noisy events).
28. The **draft DCO** (REP3-011) submitted at Deadline 3 has been revised to include the monopile foundation option for offshore platforms.

4.1.2 UXO Clearance

29. The Applicants are content with the inclusion of UXO clearance in the DMLs. The Applicants consider it is efficient to include this in the DMLs and in line with the spirit of the Planning Act 2008 to include multiple consents with the DCO and DMLs.
30. The Applicants understand that the Marine Management Organisation (MMO) is engaged in internal discussions regarding their position and will provide a further update in due course.

4.2 In-Principle Site Integrity Plans and Marine Mammal Mitigation Protocols

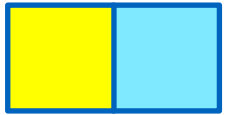
31. The Applicants consider the best way to secure mitigation is through the In-Principle Site Integrity Plan (SIP) for both in-combination effects and project alone effects.



32. There is no reason why a SIP cannot be used to manage project alone, in-combination effects or both. One of the key purposes of the SIP is to enable the MMO to be satisfied that the plan provides such mitigation as is necessary to avoid the projects adversely affecting the integrity of the relevant Special Area of Conservation (SAC). This will need to be considered in the context of the projects alone and in combination with other plans or projects.
33. Overall, the Applicants therefore consider that there are sufficient controls in place to ensure that multiple noisy activities will not be able to be carried out until the relevant plans (SIP and Marine Mammal Mitigation Plan (MMMP)) have been approved by the MMO and in approving the plans, the MMO will need to be satisfied that appropriate mitigation is in place.
34. Notwithstanding the Applicants' position on the SIP, after discussions with MMO and Natural England in January 2021 the Applicants are considering how a DML condition could be drafted to secure the relevant mitigation.

4.3 Cessation of Piling

35. At the request of stakeholders, the Applicants updated the ***draft DCO*** (REP3-011) at Deadline 3 to include a condition on the cessation of piling. The Applicants understand that the MMO is engaged in internal discussions regarding the effectiveness of this condition and will provide a further update in due course.



5 Agenda Item 5: Effects on Fish and Shellfish

36. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area through the ExA's second written questions (ExQ2) instead.

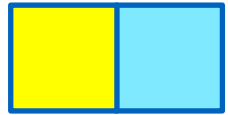


6 Agenda Item 6: Effects on Terrestrial Ecology

6.1 Nightjar and Woodlark of the Sandlings SPA

6.1.1 Background

37. As set out in **Table 4.1** of **Chapter 4** of the ES (APP-052), the Applicants made a strategic decision early in the Projects' pre-application stage, for the onshore cable route to cross the Sandlings Special Protection Area (SPA) and the Leiston – Aldeburgh SSSI (hereafter referred to as the SPA) at its narrowest section of the SPA which is approximately 140m in length.
38. Neither SPA qualifying feature (i.e. nightjar or woodlark) has been recorded within the area of the SPA crossing and the habitat is not supporting habitat for these species, which is confirmed by Natural England in their **Appendix C6 - Comments to Onshore Ecology Documents** (REP4-092).
39. Indeed, none of the last 10 years of the Royal Society for the Protection of Birds (RSPB) survey records show nightjar or woodlark observations within the SPA crossing or the SPA crossing buffer and the closest habitat suitable for nesting nightjar and woodlark is located 276m from Work No. 12. As such, a conclusion of no adverse effects on the integrity of the SPA was reached in the **Information to Support Appropriate Assessment Report** (APP-043). Therefore, the Applicants consider that there is no requirement to mitigate habitat loss for nightjar or woodlark.
40. The existing land use within the SPA at the crossing is shown on **Figure 2** of the **Outline SPA Crossing Method Statement** (REP1-043) and comprises:
 - Poor semi-improved grassland to the east which is used as horse paddock and is considered of low ecological value; and
 - dense/continuous scrub to the west which is considered of higher ecological value which provides suitable nesting habitat for nightingale and could potentially provide suitable habitat for nesting turtle dove.
41. The Applicants submitted an **Outline SPA Crossing Method Statement** (REP1-043) at Deadline 1, presenting an outline of the construction techniques and mitigation associated with an open trench crossing of the SPA and a trenchless technique crossing.
42. The Applicants consulted with Natural England; the RSPB; East Suffolk Council and Suffolk County Council (the 'Councils') in the preparation of the **Outline SPA Crossing Method Statement** (REP1-043), which has facilitated the development of additional mitigation measures to reduce the potential impacts

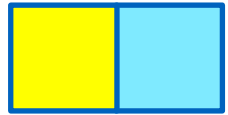


on the SPA of these crossing techniques, in particular the open trench crossing technique which is the Applicants' preferred method of crossing the SPA.

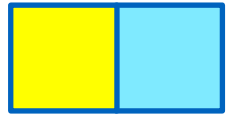
6.1.2 Matters Agreed

43. The Applicants consider that all matters relating to the SPA crossing are agreed with East Suffolk Council and Suffolk County Council by virtue of the measures adopted within the **Outline SPA Crossing Method Statement** (REP1-043). This includes the early establishment of mitigation areas, provision of a 5-year post construction habitat management area should an open trench crossing be adopted and a seasonal restriction for the works.
44. As per the **RSPB Written Representation** (REP1-180) submitted at Deadline 1, the RSPB note the constructive engagement with the Applicants during the pre- and post-application phase.
45. As per the **RSPB Statement of Common Ground** (REP1-395), RSPB confirm that their:

"most significant concerns regarding open trenching have been resolved (subject to the additional detail in the Outline SPA Crossing Method Statement (REP1-043) being submitted to the Examination and the mitigation proposed being appropriately secured)", and advise that an open trenching crossing "must be fully justified by the Applicants and approved by NE".
46. In addressing RSPB's comments in the preparation of the **Outline SPA Crossing Method Statement** (REP1-043), the Applicants consider RSPB's position to be supportive of an open trench crossing of the SPA subject to Natural England's agreement.
47. In their **Appendix C6 - Comments to Onshore Ecology Documents** (REP4-092) Natural England acknowledges that the area within Sandlings SPA is not supporting habitat.
48. As per the **Joint Local Impact Report** (REP1-132), the Councils confirm engagement with the Applicants in relation to a draft Outline SPA Crossing Method Statement, and based on the information available, the Councils would at present prefer the open cut trenching method as it is considered that on balance this will result in the least adverse ecological impact due to the reduced working time (decreasing likely disturbance impacts), minimised working width and potential to reinstate any habitats impacted upon.
49. Open cut would also appear likely to result in less disturbance impacts in the surrounding area compared with a trenchless technique and is likely to have non-ecological benefits as well. Matters Outstanding



50. The Applicants have responded to Natural England's **Comments on SPA Crossing Method Statement** (REP2-053) at Deadline 3 (**Applicants' Comments on Natural England's Deadline 2 Submissions** (REP3-070)).
51. Key outstanding matters are:
- Natural England have sought further information to rule out no adverse effect on the SPA beyond all reasonable scientific doubt and consider that insufficient information has been presented in the environmental statement. The Applicants maintain that a comprehensive assessment of potential impacts upon the qualifying features and integrity of the Sandlings SPA arising from an open trench SPA crossing is presented within the **Habitats Regulations Assessment** (HRA) (APP-043). This assessment concludes that, for each Project alone, in-combination with each other and in-combination with other known developments, there would be no adverse effect on the integrity of the SPA.
 - Natural England would welcome more detail on open cut trench operations within the SPA including all plant and machinery required for excavating and backfilling and advise that impacts should be considered as much as possible during the consenting phase to avoid some yet to be identified likely significant effect requiring a further HRA. The Applicants do not agree that 'some yet to be identified likely significant effect, may require a further HRA' as the Applicants have assessed the worst case within the Environmental Statement (ES) and **Information to Support Appropriate Assessment report** (APP-043) and therefore any works undertaken will fall within the envelope assessed and should therefore not give rise to likely significant effects that have not yet been considered. Furthermore, the Applicants note that vehicles associated with construction will not be used within the SPA during the seasonally restricted period and therefore direct impacts on the SPA qualifying species of nightjar and woodlark will be avoided.
 - Natural England consider that the additional mitigation offered by the Applicants should extend beyond five years post installation and that there is no consideration of how long the habitat will take to recover and what monitoring will be undertaken. The Applicants consider that the mitigation provided within Work No. 12A will provide functional habitat for breeding nightingale within the time frame, considering its establishment prior to commencement of construction. Preparation of Work No. 12A will occur during the non-breeding season in the calendar year prior to the SPA crossing works commencing and will involve the thinning of scrub and bracken removal on rotation. This is considered by the Applicants to be a reasonable timeframe for the mitigation area to achieve a suitable level of



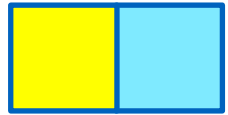
ecological functionality for nightingale prior to the commencement of construction of the SPA crossing. The mitigation area will continue to improve during the construction period by virtue of the management measures implemented. However, the Applicant is mindful of the need to return the land to the owner after this period and ongoing management of Work No. 12A beyond this time is not justified considering the existing baseline. The Applicants will update the **Outline SPA Crossing Method Statement** (REP1-043) to include provision of annual monitoring of the mitigation provided within Work No. 12A in order to inform management and maintenance measures during the 5-year management period.

52. The Applicants await Natural England's position in light of the significant commitment made by the Applicants at Deadline 2 that should both the East Anglia ONE North project and the East Anglia TWO project be consented and then built sequentially, when the first project goes into construction, the ducting for the second project will be installed along the whole of the onshore cable route in parallel with the installation of the onshore cables for the first project (**Project Update Note** (REP2-007)). This commitment removes the need to re-enter the SPA boundary to facilitate the construction of the second project at a later date, should the Projects be constructed sequentially, and the Applicants would hope that that this addresses Natural England's concerns.
53. Should this be confirmed, the Applicants would progress the open trench technique into the detailed design stage, thereby reducing the extent of the onshore cable corridor

6.2 Outline Landscape and Ecological Management Strategy

6.2.1 Outline Ecological Management Plan

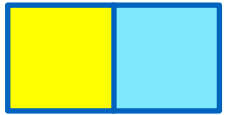
54. The **Outline Landscape and Ecological Management Strategy** (REP3-030) summarises the general landscape and ecology principles and mitigation measures to be adopted during construction and operation. It provides the framework for the preparation of the final, more detailed Ecological Management Plan (EMP) (and Landscape Management Plan) which will be developed post-consent.
55. The Outline EMP is therefore contained within the **Outline Landscape and Ecological Management Strategy** (REP3-030). In particular:
- Section 5 addresses habitats and non-avian species (and provides outline details on the arboricultural method statement and invasive species method statement).
 - Section 6 addresses onshore ornithology species (and includes outline information on the breeding bird protection plan at Section 6.4).



- Section 7 provides a summary of pre-construction surveys proposed.
- Section 9 discusses requirements for monitoring of agreed mitigation measures.
- Section 10 provides detail on the EMP, including the responsibilities of the contractor and Ecological Clerk of Works, including section 10.3 which considers any licence requirements necessary to undertake the agreed mitigation measures.

6.2.2 Pre-Construction Surveys

56. Pre-construction survey requirements are based on the findings of surveys to date. Should the need for further surveys be identified during future pre-construction surveys, such surveys will be undertaken.
57. The **Outline Landscape and Ecological Management Strategy** (REP3-030) submitted at Deadline 3 commits to the following surveys being undertaken:
- Invasive species walkover survey to confirm whether invasive plant species have spread from known locations;
 - Badger walkover survey of the onshore development area would be undertaken in order to assess the status and current use of previously identified setts and identify any new setts excavated;
 - Bat activity and roost surveys along all routes identified for hedgerow or tree removal (assessing value for commuting);
 - Great crested newt surveys of all ponds within 250m of proposed works;
 - Fish, eel, otter and water vole at the Hundred River (agreed with the Environment Agency through the Statement of Common Ground (SoCG) process (EA-301 within REP1-077));
 - Breeding birds (targeted at Schedule 1 species);
 - Wintering birds. If construction activities occur within 200m of Hawsell's Farm (Compartment 7 of Figure 23.11 of **Chapter 23 Onshore Ornithology** (APP-071)), wintering bird surveys (October to March) will be undertaken within 200m of Hawsell's Farm prior to commencement of works in this area.
58. Pre-construction ecological surveys will inform each EMP (and Breeding Bird Protection Plan) produced under Requirement 21 of the **draft Development Consent Order** (REP3-011). A summary programme of these surveys is provided in the **Outline Landscape and Ecological Management Strategy** (REP3-030); a full and detailed programme will be included within the EMP.



7 Agenda Item 7: Update to the Habitats Regulations

59. The Applicants have looked at the Defra policy paper and they do not consider that there are any material implications for the Habitats Regulations Assessment.
60. The Applicants note the changes in terminology, for example with respect to the terminology of the National Site Network. For the final submission of the without prejudice derogation case the Applicants will update the documentation with regard to terminology and policy to ensure this accords with the post-Habitats Directive position.