



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

East Anglia ONE North Offshore Wind Farm

**Natural England's Written Summary of Oral Representations made at Issue
Specific Hearing 3: Biodiversity and Habitats Regulations Assessment**

For:

The construction and operation of East Anglia ONE North Offshore Windfarm, a 800MW windfarm which could consist of up to 67 turbines, generators and associated infrastructure, located 36km from Lowestoft and 42km from Southwold.

Planning Inspectorate Reference: EN010077

3rd February 2021



This document is applicable to both the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) 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 23rd 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 for the other project.



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Natural England's Written Summary of Oral Representations made at Issue Specific Hearing 3: Biodiversity and Habitats Regulations Assessment

Tuesday 19th January 2021

Natural England Attendees: Louise Burton, Alan Gibson, Tim Frayling, Helen Mann and Lydia Tabrizi

AGENDA

1. **Welcome, Introductions and Arrangements for these Issue Specific Hearings – No further comments**
2. **Effects on Offshore Ornithology (including HRA Considerations)**
 - a. *Red-Throated Diver of the Outer Thames Estuary Special Protection Area (SPA)*
 - i. *Update on the status of agreement between the Applicants and nature conservation bodies.*

Natural England confirmed for EA1N there is an AEOI alone and in-combination. For EA2, there is an AEOI in-combination. But, until further work is done in relation to the modelling, and validating the modelling outputs, our position remains fluid.

- ii. *The Applicants' Deadline 3 Red-Throated Diver assessment for East Anglia ONE North [REP3-049] and offshore order limits reduction [REP3-052], [REP3-073].*

Natural England was asked about the 2km buffer that was introduced at Deadline 3, we confirmed that whilst we welcome the commitment for a buffer, at 2km it's not sufficient to mitigate the impact of displacement to an acceptable level, and therefore, we are not able to rule out an adverse effect from the project alone on that basis.

- iii. *Elaboration of Natural England's response to [REP3-049] and [REP3-052], as summarised in [REP3-113] and [REP3-117], and any additional comments submitted at Deadline 4.*

Natural England was asked about REP4-089 (Appendix A14 Legal Submission on RTD Displacement within OTE SPA). This document outlines there are some areas of law in the RTD Assessment that lead to incorrect conclusions. Natural England were asked what the remedy is for the areas highlighted. Natural England responded to say the Applicant has included, for illustrative purposes only, the displacement impacts from the existing wind farms that are having ongoing impacts within the OTE SPA. However, Natural England's view is that those projects are resulting in the SPA being in unfavorable condition, and that there is already



an adverse effect on integrity occurring. Therefore, our position, is that those projects should be incorporated in the in-combination assessment. Any additive impact from either EA1N or EA2, should be avoided.

In relation to making progress to address these issues Natural England acknowledges that technical issues take time to deliver, and we're not going to receive the updated or the revised modelling outputs until Deadline 5 (3rd February). It's therefore very unlikely that we will have had full opportunity to have reviewed Deadline 5 submissions to inform a discussion on it for the 18th of February (next ISH on this matter). From Natural England's position, it's unlikely that we will be in a place to move things forwards by the 18th of February.

We also wanted to raise we are having capacity issues across Natural England, due to current lockdown restriction and homeschooling, we would like to make the Examining Authority aware that we are finding it very difficult to meet deadlines. We will raise our capacity limitations at Deadline 5 too.

Natural England responded to point raised by Dr Mark Trinder, on behalf of the Applicant, in relation to effects on populations. Natural England highlighted that whether the displacement is 7km as the Applicant's modelling shows, or if it is 11.5km as the modelling in the post consent monitoring work at London Array has shown, the mitigation proposed of a 2km buffer is insufficient. Irrespective of what happens with the modelling, it seems clear now, that isn't going to provide adequate mitigation. The reason there's a difference in opinion on positions here is the Applicant's focus on the abundance attribute of the Conservation Objectives, but we need to note that there are several Conservation Objectives, all of which need to be fulfilled. The issues that we are focused on is the Conservation Objectives relating to the maintenance of distribution of RTD within the OTE SPA and the maintenance of the supporting habitats within the OTE SPA. What is clear from both the Applicant's modelling and from evidence that we know is that the extent of the displacement of RTD does exceed 2km and therefore we cannot rule out AEOI alone for EA1N. It is noted that pre-application Natural England had similar concerns with EA2 but the boundary of this proposed OWF has been moved following comments at PEIR stage, and as a result of the 8.3km buffer between EA2 and the OTE SPA an AEOI alone for EA2 can be ruled out.

iv. The Applicants' response to the position of Natural England. – no comment



- v. *Best practice protocol for minimising disturbance to Red-Throated Diver [REP3-074] Please see Deadline 4 response Appendix A12.*
- vi. *Offshore In-Principle Monitoring Plan [REP3-040; REP3-041] and Deadline 4 responses to it. Please see Deadline 5 response Appendix F8.*

b. Kittiwake, Gannet, Guillemot, Razorbill and seabird assemblage of the Flamborough & Filey Coast SPA

- i. *Update on the status of agreement between the Applicants and nature conservation bodies.*

Our position as set out in REP3-116 and REP3-117 has not changed. Natural England will work with the Applicant should updated figures be provided (which we believe there is an intention to do so).

- ii. *Elaboration of Natural England's response to [REP2-006], as summarised in [REP3-116] and [REP3-117], and any additional comments submitted at Deadline 4.*

Natural England were asked about the cover letter we submitted into examination at Deadline 4. We raised concerns regarding the legal security of Non-Material Change (NMC) requests and the Applicant's handling of that and were asked to expand on those.

Natural England are concerned as to whether or not the non-material changes (NMC) are sufficiently legally binding. We question whether they are sufficient enough to prevent further development and restrict developments that would provide headroom for further impacts. Natural England is looking into this as part of a project that we are leading on. Included within that is consideration of NMCs and how they feed into the process. Natural England intends to update our views on NMCs at Deadline 5 Appendix G3. Our concern is, if you had consent for a project, can you build out beyond the original build and what is the risk? Can you therefore say that is valid headroom?

Natural England were asked if this is related to NMC route applications that have been approved by the Secretary of State, for example, EA3 and EA1 which brings down the total number of turbines in accordance with what is actually built. We were also asked to confirm that we are concerned that even if that is an approved application, that there could still be the ability for further development under the DCO. Natural England confirmed that is correct. Please Deadline 5 Appendix G3.

Natural England were asked to confirm that our research is built on practice of other cases.



We confirmed that is correct.

- iii. *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.*

On the back of Hornsea Project 3 decision, Natural England is going to contact BEIS (on behalf of the SoS) to request the Hornsea Project 3 displacement and collision figures and updates for all other species.

The figures should be coming into the public domain soon. Ørsted are aware we are looking for the figures so we are hoping they will be provided. However, we will have to check with SoS (BEIS) that is their understanding of the figures.

- iv. *Natural England and the MMO's position on the wider applicability of the approach to securing HRA compensation measures in the made Hornsea Three Offshore Wind Farm Order 2020², specifically Article 45 and Schedule 14, should they be required.*

c. Lesser Black-Backed Gull (LBBG) of the Alde-Ore Estuary SPA

- i. *Update on the status of agreement between the Applicants and nature conservation bodies.*
- ii. *Drawing on the Applicants' response [section 1.4 of REP3-070] to Natural England's comments [section 1 of REP2-052] on the apportioning methodology for LBBG of the Alde-Ore Estuary SPA, and any further position from Natural England submitted at D4.*

Natural England confirmed that Dr Mark Trinder's (on behalf of the Applicant) position is correct. We do not have any further updates on our position from REP2-052 and REP1-047. We will work with the Applicant once we have seen the updated Collision Risk Assessment. This remains an in-combination concern for ourselves.

Until we have updated in-combination and project alone figures from the modelling (HP3 for clarification), we are not in a position to provide an update. Natural England will try and respond at Deadline 5, but it is more likely to be Deadline 6 as the modelling won't be updated until then.

Natural England were asked for an update regarding guillemot and razorbill in FFC SPA. Our advice is as per Deadline 4, we will wait to see further information before we confirm our position.



Natural England were asked about Hornsea Project 4 figures and how they should be considered in the in-combination totals. Natural England responded to state that Hornsea Project 4 is due to submit application within the timeframe of this examination. Therefore, because the project will be in the planning system, it would be a material consideration for the SoS and the undertaking of Habitats Regulations Assessment. Updated figures will need to consider in-combination effects with and without Hornsea Project 4.

(It has been confirmed that Hornsea Project 4 is due to submit an application mid-March)

d. The Applicants' 'without prejudice' HRA derogation cases and compensatory measures

- i. Drawing on Deadline 3 submissions [REP3-053] [REP3-054] 3 and any responses to them at Deadline 4.*

Artificial nesting sites have been proposed as kittiwake compensation, a number of OWFs projects in the planning process seek to use this method, but there is a limit for availability of nesting sites. Natural England were asked to elaborate on this.

Natural England responded to state that a number of projects (Norfolk Vanguard, Norfolk Boreas, Hornsea Project 3, EA1N, EA2, and Hornsea Project 4) are all proposing artificial nest sites. Each projects needs to consider how much they need to compensate for (like for like or increase of that). They also require true locations of where it will be beneficial to increase the population that is the Flamborough and Filey Coast SPA. Locations can't be too close to OWFs so there is no added collision risk and there needs to be adequate prey availability (and take into consideration all other constraints around that).

The success of artificial nesting sites that can provide compensation becomes lower the more you have out there. In addition, this method is not yet proven as a compensation technique for the marine environment. Logic says it has got a fair chance, but as the RSPB have set out (in a BBC article on New Year's Day) there is a concern as to whether or not the Hornsea 3 compensatory measures will actually deliver that compensation. We need to understand the delivery before we can say if it will work at what scale it can be rolled out at i.e. is it is appropriate for 1, 2, 3 or more projects? What is and isn't achievable as a compensatory measure?



Overall Natural England are advising that more or alternative options are taken forward. Please see Deadline 5 Appendix A15.

Natural England were asked what the most appropriate alternative options would be for kittiwake. We have advised in our Deadline 4 response, there are some high level options to consider. There is an option of prey availability and we recognize that this may require strategic thinking in relation to delivery, but it shouldn't be taken off the table.

Natural England commented in reply to Dr Trinder's point regarding 'contribution to the in-combination impacts'. Whilst we recognize that it is a low number, we also recognise that HP3 did not allow for any de-minimis element, it was to fully compensate for the impacts of the project. This is very different from the Vanguard approach. Also, we will await the Boreas decision. Natural England and the RSPB raised at the HP2 ISH, three years ago, that there was an adverse effect on integrity on kittiwake; anything greater than one bird is effectively an adverse effect on integrity and our advice is unlikely to change on that. This is an additive position where there has been multiple projects since HP2 that are either in the process of being determined, or have been determined, that are adding to that. So it's a greater impact than was at HP2.

Furthermore, in relation to the work that was done by David Tilsley (and associates) on strategic level compensation, Natural England is not questioning that work. We are not asking the Applicant to redo that work. We are identifying that, at a regulatory level, and at a strategic level, there needs to be opportunities in which compensation can be delivered. It is not necessarily a project issue, but we need to be looking at prey availability, prey enhancement and other opportunities. Developers may need to feed into a wider projects to deliver those.

The ExA had queries in relation to the combined effects of these projects is something in the order of 2.4 kittiwakes. These figures are down to individual birds. Natural England were asked how much can you rely on these figures when they could start to blur into the margin of error in some of the calculations. Natural England confirms that yes, there is a margin of error on the figures, but that is what we have. We advocate a consistent approach so 'like with like' can be compared. The ratio of impact for EA1N and EA2 would be the same in proportion to the other projects. The figures are what we have got, there is a consistent approach. This project may impact on two birds, that is two birds on a scale of increasing impacts to Kittiwake.



- ii. *Approaches to securing ‘without prejudice’ compensation measures within the draft DCO/DMLs (notwithstanding the Applicants’ intention to provide further detail on compensation at Deadline 5).*

Natural England were asked about security for compensation measures. There are some conditions that have been included for the DCO DML for HP3. Natural England haven’t reviewed or discussed these yet, but we will be providing further comment.

Natural England were asked if the way the SoS has secured HP3 conditions could be applicable to other cases. Natural England are still reviewing those conditions, we didn’t feed in on them so we haven’t had chance to comment on them until they were made. We are looking at them now and will be able to feed in more in the future. But until this is complete we advise against any wholesale adoption.

- e. Any other offshore ornithological matters

The Applicants, Natural England, RSPB, the Marine Management Organisation and any other relevant participants will be invited to comment.

3. Effects on subtidal and intertidal benthic ecology

Outer Thames Estuary Special Protection Area (SPA) as a supporting habitat for qualifying features

- a. *The Applicant and Natural England to set out their position on HRA findings and any work on going to address areas of disagreement.*
- b. *NE to set out their position on the Applicant’s D3 Clarification Note [REP3-059] and whether the submission addresses concerns raised that sandwave levelling is likely to have a significant effect on the interest features of the OTE SPA.*

Natural England is happy with the Applicant’s Deadline 3 submissions on the Effect of Supporting Habitats of OTE SPA. This issue is considered resolved by Natural England, it has been removed from our Risk and Issues Log – NE Deadline 4 Risk and Issues Log [All Other Matters, REP4-095].



4. Effects on marine mammals (including HRA considerations)

a. Harbour porpoise of the Southern North Sea SAC

- i. *Update on the status of agreement between the Applicants and the MMO and nature conservation bodies.*
- ii. *Elaboration of Natural England's comments [REP3-118] on the Applicant's Marine Mammals Addendum [REP1-038] in relation to project-alone HRA findings and any related submissions (including the Applicants' response) at Deadline 4.*
- iii. *Underwater noise implications of the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants' Deadline 3 Project Update Note [REP3-052] and any Deadline 4 responses to it, particularly from Natural England and the MMO.*
- iv. *Inclusion of Unexploded Ordnance (UXO) clearance activities within the DMLs: latest positions of the MMO and the Applicants.*

Natural England were asked if we have any views about whether or not it would be appropriate to include UXO clearance within DMLs. We support the MMO's position, as the authority on the DML, we will defer to them on whether it should be on the DML. We also support that there should be 6 months for the turnaround of the SIP.

b. In-Principle Site Integrity Plans

- i. *Content of the version 2 In-Principle Site Integrity Plans [REP3-044] and any Deadline 4 responses to them.*
- ii. *The inclusion of project-alone effects within Site Integrity Plans, drawing on concerns raised by the MMO [REP3-109], Natural England [REP3-118] and TWT [REP3-148].*

A large part of Natural England's concern relates to the use of the SIP and the use of a Grampian condition which effectively defers the full decision to post-consent. We are comfortable for that being used for in-combination, the issue is the mechanism for control of in-combination projects and impacts which we are awaiting from the regulators group. We are aware there is a mechanism coming, however we see the mechanism and how it is to operate we cannot have provide our opinion on its efficacy (we are aware this is not coming from the Applicant).

With regards to project alone, this is something we weren't expecting. Previous projects have used the SIP to cover in-combination effects and by putting project alone effects into the SIP, the Applicant is bringing that into the Grampian condition and the full decision on that is going to be made by the MMO post-consent. We have concerns over that because we don't think that is appropriate at this stage, the decision on project alone effect should be made now by



recommendation by ExA and decision by SoS.

iii. *DCO/DML security [REP3-011]*

c. *Marine Mammal Mitigation Protocols*

i. *Content of the updated draft Marine Mammal Mitigation Protocols [REP3-042] and any Deadline 4 responses to them.*

ii. *DCO/DML security [REP3-011].*

d. *Cessation of piling*

i. *Amended Condition 21(3) of the generation assets DMLs and Condition 17(3) of the transmission assets DMLs [REP3-011], [REP3-013]: views of MMO, Natural England and The Wildlife Trusts.*

e. *Any other marine mammal matters*

The Applicants, Natural England, Marine Management Organisation, The Wildlife Trusts, WDC and any other relevant participants will be invited to comment.

5. Effects on fish and shellfish ecology

a. *Outstanding effects of concern on fish and shellfish ecology*

i. *Underwater noise implications, including those arising from the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants.' Deadline 3 Project Update Note [REP3-052] and any Deadline 4 responses to it, particularly from Natural England and the MMO.*

The Project Update Note [REP3-052] includes comments about the scheme offshore, including increasing the flexibility of project parameters for the types of foundations that may be installed for offshore platforms, adding into the Rochdale Envelope the option of using monopile foundations for the offshore platforms, please explore the underwater noise implications of this option. Natural England expressed concern about the hammer energy; the DML will need to be amended from 2700 to 4000 which would be needed for the monopile. We are content the assessment is within Rochdale envelope.

(It was confirmed this has been updated)

ii. *Seasonal restrictions.*

iii. *Other effects*

b. *Means of security*



c. Any other fish and shellfish matters

The Applicants, the Marine Management Organisation Natural England and any other relevant participants will be invited to comment.

6. Effects on terrestrial ecology

Nightjar and Woodlark of the Sandlings SPA

- a. The Applicant and Natural England to provide an update on the status of outstanding areas of disagreement in relation to the Sandlings SPA crossing and to provide an understanding of positions on this matter.*
- b. Matters in relation to the crossing solutions and the Outline Crossing method Statement [REP1-043].*

Natural England believe there is a lot of changes and commitments being made in relation to the SPA crossing. We will take away and action to consider our position. We need to appropriately conclude where we are at – Natural England will provide our advice at D5 Appendix C7.

- c. Update on the status of discussions and any work ongoing to address outstanding areas of disagreement in relation to the crossing of the Hundred River.*
- d. Natural England to provide clarification on whether the Applicant's D3 Outline Watercourse Method Statement [REP3-048] and whether this addresses its outstanding areas of concern.*

Natural England agrees that the Applicant outlined our position correctly.

Appendix 4 of the Applicant's statement outlines why HDD is not possible. Natural England were asked if we were satisfied with the justification that HDD isn't possible at the Hundred River. In relation to the justification provided from the Applicant, Natural England has no queries. Subsequent to the examination, we have considered matters raised by interested parties at the ISH 3 in relation to the surrounding habitats to the Hundred River. Please see Appendix C7.

Outline Landscape and Ecological Management Strategy

- a. The Applicant's D3 Outline Landscape and Ecological Management Strategy [REP3-030] including, but not limited to:*
 - i. Outline Ecological Management Plan*

As set out in our Deadline 4 cover letter, we will provide our response to OLEMS at Deadline 5.



ii. *Pre-construction surveys*

This is still under review, unfortunately due to COVID 19, we are struggling to get specialist input into terrestrial matters and we will consider for Deadline 5.

iii. *Embedded and additional mitigation for badger, bats, Great Crested Newts and reptiles*

iv. *Ecological enhancement*

The Applicants, Natural England, the Councils, interest groups and any other relevant participants will be invited to comment.

Natural England is still undecided whether we're attending any other ISH, specifically, ISH6. We note that there are discussions that are happening that also cover Natural England's remit. We are not participating but if you, or any interested parties, have specific questions for Natural England, we would be happy to receive them through examiner's written questions.

7. Update to the Habitats Regulations

Defra has published a policy paper on the changes to the Habitats Regulations, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019: <https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-thehabitats-regulations-2017>

The Applicant and Natural England will be invited to comment on the extent to which the changes to the Regulations may have implications for their position on HRA matters.

Natural England has reviewed this new advice document and at this time consider that the changes do not impact on this project or the sites. More they relate to the marine protected sites network as a whole and to the transition of the regulations into UK law.

8. Any other business relevant to the Agenda

The ExAs may raise any other topics bearing on biodiversity and HRA as is expedient, having regard to the readiness of the persons present to address such matters.

The ExAs may extend an opportunity for participants to raise matters relevant to the topic of these hearings that they consider should be examined by the ExAs.

If necessary, the Applicants will be provided with a right of reply.



9. Procedural decisions, review of actions and next steps

10. Closure of the Hearings

Natural England were asked if we would be able to attend any future biodiversity ISHs. Natural England's default position is one of not attending ISHs in order to focus on trying to resolve matters in workshops and through discussions with Applicants and interested parties. In terms of attending other ISHs, we would have to see where are in terms of progressing the issues, and agenda items that the examining authority put forward.

Natural England would like to thank the examining authority for having specific questions rather than running through updates on our position, this has been really helpful in ensuring our attendance and getting the most benefit out of the ISH.