

TEXT_ISH14_Day1_EA1N&2_Session1_1603 2021

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00:02

Good morning, everyone and welcome to today's issue specific hearings 14 for East Anglia, one North and East Anglia to offshore wind farms. Before we introduce ourselves, can I just check with the case team that you can hear me and that the recordings, live streams and live captions have started.

00:22

Good morning, Caroline. I can confirm that the recordings have started. I can even see you. The live stream has started along with the captions. Everything's good to go.

00:31

Thank you, Emery. And so two introductions. I am Caroline Jones, a member of this panel, which is the examining authority for the East Anglia one North offshore wind farm application. And another panel which is the examining authority for the East Anglia to offshore wind farm application. I am in the chair today. I'm now going to ask my fellow panel members to introduce themselves starting with Jessica Paris.

00:55

Good morning, everybody. I'm Jessica Paris, and I'll be leading on the offshore nephrology matters today.

01:03

Hello, good morning, everybody. My name is Ron Smith. I'm the lead member of these panels. But I will be mainly listening mode today. I'm asked questions if I need to. Thank you very much.

01:15

Thank you, Mr. Smith. You will note that the full panel is not here today. And this is to allow the other two members of our panel to work on preparation for the rest of the hearings this week. Can I also introduce our planning Inspectorate colleagues working with us on these examinations, and Marie Williams is the case manager leading the planning Inspectorate case team, and you will have met him in the arrangements conference this morning. Emery is accompanied today by two case officers, Kj Johansson and Liam fedden. The published agenda sets out our and your reasons for being here this morning. That is to hold a fourth issue specific hearing on aspects of biodiversity ecology, and habitats regulations assessment. I'm now going to hand you over to my colleague Jessica powers, who will ask our participants to introduce themselves.

01:59

Thank you, Mrs. Jones. Good morning, everybody. Jessica, parents panel member speaking. I'll just now run through our list of participants, which is quite short today, and ask you to introduce yourselves if you're part of an organisation that's being represented by a number of individuals today. Could I just ask you to nominate a lead representative to introduce your team? And it would also be helpful if you could let us know at which point of the agenda you anticipate contributing. So to start with, then could I check the name of the main speaker that we have representing the applicants today? Good morning, Madam

02:34

Khan ns on partnerschaft veteran appearing on behalf of both applicants today. I'm instructed by Fiona coil divisional solicitor in terms of we have quite a number of parties who may participate and I'll just go through who they are. Some are very familiar with you with to you but others not. So in terms of the other members of the legal team today. I'm also accompanied by Stephanie mill, our senior associate from my office who will be at speaking some of the later agenda items. And I'm also accompanied by Andrew Fraser arkit qc or Francis Taylor building. And he was one of the signatories to the legal submission rep six, zero to zero. That's engaged at item three see on the agenda. In terms of the technical experts, we've got Pilar Zola, who's the project director for EIA in respect to both projects, and he's a technical director at Royal discounting. We've also got Gera vendler, who is the lead project engineer in the offshore team at rez, and he's the offshore consents manager for both projects. Also attending today is Dr. Mark trender. He's a principal on ufologist at MacArthur green, and it's supporting the applicants on the offshore mythology matters. He's provided extensive input to numerous UK offshore wind farms over the last 10 years. And he's undertaken many Impact Assessments across a very large number of projects. In addition to doing Ei, ei work, he's also involved in post construction monitoring of operational wind farms is also helped in the production of guidance for the crown estate, natural England, rain Scotland, and nature Scott nature's got by the way is the new term for Scottish natural heritage. They had a rebranding last year, but so it's the same as smh. But they've rebranded themselves. At nature, Scott, Mark studied biology and wildlife management before undertaking a PhD in population ecology. This is given my thorough training and analysis and modelling of CBRE population bethard data and methods of assessing the potential effects of offshore wind farms. Finally, we have Professor Bob furnace, also our MacArthur green Professor furnaces over 35 years. beards and academic ornithology during which is published over 300 scientific papers, several books and manage over 50 research grants and supervise over 55 PhD students and Google Scholar. His publications have been cited 30,000 times and his research citation to sistex are amongst the highest of any ornithologist in the world. In addition to his academic experience, he is also chaired the international panel of experts in marine ecology set up by Danish authorities to oversee environmental monitoring work associated with the world's first major offshore wind farms at hohns. rather nice state. He's also worked on assessing impacts of offshore wind and sea by threat advanced of this industry. He is a member of the gmcc Marine subgroup and has chaired ICS working groups on seabird ecology and Samuel stock assessment and an assessment of stocks of shortlist fish such as Spratt and precipitate precipitated an MSc certification of several major North American fish stocks. He's also been a board member of major Scott, a chair of nature Scott Scientific Advisory Committee for eight years, and he's also been a member of a mixture of Scots protected areas committee. And that concludes the representatives that are likely to speak on behalf of the applicants today. Thank you.

06:20

Thank you very much, Mr. Ennis. And welcome to everybody. And then the others I have on our list today. Can I firstly, introduce the marine management organisation, please?

06:33

Good morning, Mark Hershey. MML, a case manager for the EAA one north and two projects. I also have with me, Jack Co who's a case officer on the case team.

06:46

Thank you very much and welcome, Mr. Crashy. And I think final party is Suffolk County Council, please.

06:58

Thank you, Mom. Grand Gumbly Suffolk County Council, charter town planner mainly involved in a coordinating role.

07:06

Excuse me, and I'm accompanied by my colleague Andrew Murray Woods.

07:10

Who's the county ecologist.

07:12

Thank you very much.

07:13

Thank you very much and welcome. Okay, that's everybody I have on my list as anybody else before we move on who is present and we haven't introduced this morning. Okay, we'll move on then. So as a general reminder for all of our speakers today, each time you speak please could you say your name and who you represent so that anybody watching or listening to the hearing can follow the proceedings. And anyone who is not participating directly in this session, but is observing it is welcome to set out any observations about what they hear today in writing by deadline eight, which is March the 25th. The introductions are now complete. And I'll just hand back to my colleague Mrs. Jones to complete item one, thank you.

07:57

Thank you, Mrs. Paris. Today we are holding issue Pacific hearing 14 for both the East Anglia, one North and East Anglia two projects in parallel. There is a single agenda for both hearings, which was issued on the ninth of March. As we have done in previous hearings to make the most efficient use of the time, we plan to deal with the two applications together as we work through the agenda. But we do have the discretion to discuss any matters that are unique or specific to just one of the applications as they arise. We have two days for this hearing. And we plan to spend the first day focusing on offshore on on illogical matters with marine mammals and terrestrial HRA matters on day two. In terms of our

hearing today, we plan to have a short break at around 1130. And then also take a break of around an hour at about 1pm. Could we just ask the applicants if they could keep their camera on today, please, because you will be required throughout the hearing and it helps the flow of discussion to be able to see one another. We appreciate that you're likely to call on various members of your team during the proceedings. And that's absolutely fine. Feel free to switch between yourselves as necessary. So just before we move on, can I just ask the applicants to have their camera on please?

09:15

Thank you, Mr. Ennis. So before we move on to the main business of the agenda, does anyone have any questions or a preliminary nature about today's hearing? I'm not seeing any hands raised. So we'll assume that means we can now move on to item two, which is overarching HRA matters. And I'll pass to my colleague Jessica powers Phyllis.

09:38

Thank you, Mrs. Jones. And but just for the applicants benefit I appreciate you're going to need to switch around between representatives this morning and that's absolutely fine. So when you know whoever's in the in the seat at the time, just just switch between yourselves. Is that okay? You're on mute.

09:57

Yep. comments about that? will probably do would read through the agenda. And what we'll do is we'll have the relevant person switched on at the start the agenda and stay on. Because actually having the experience from last week, it did enable the flow to be much more effective when cameras were on, and certainly will have the right people with cameras on. So there isn't the stop start, which I think breaks the flow. So we'll certainly have the right text, right people on the right agenda items.

10:24

Thank you very much for that. Yes, I agree. And especially as today, we're here with a small number of parties. Okay, so agenda item two, then this is just to pick up on a couple of overarching HRA matters before we move into the detail. Good morning, Mr. pistola. So we have firstly on there the reports on the inpatients for European sites. I just put that on there, because I wanted to make sure that we noted that those are the the two Reese's reports on the implications for European sites were published on the fourth of March. And then meant to set out the key information from these examinations, about the potential effects of projects on the European sites. And there are two separate pieces because we are examining and ultimately we'll be making recommendations in relation to two separate applications. And those documents obviously out at the moment for comments. And the deadline being deadline is the 25th of March. So we haven't had any comments back on them yet. But just to note that they were a point in time, I think 19th of February was was the cutoff point basically for the information that could go into those. So anything that happened after the 19th of February is not captured in the research, but of course, will be fully reported when it comes to our report. And we've invited views on the accuracy of the information presented and about any information that parties feel has not been included, but should have been. So that's and that's part of part of the point of the process, really is to invite those views and to pick up on anything that that needs to be factored into our reporting. So we wanted to make sure that everybody's aware that obviously your deadline is the deadline. We can't be receiving things later than

deadline eight, because there would there would be no opportunity for parties to comment on each other's submissions at deadline. So the main message that you'll probably hear me say many times today is deadline a please. And then at least we have the sort of natural justice point of letting everybody respond to what they've seen from each other at deadline nine. Was there anything else on the recess? Mr. bitola? Before we move on?

12:24

Just obviously to say we will be commenting on both of them. And having gone through though, a reasonable summary of the debate that's been had today. I've there's a few key comments that we will be raising, I can raise those now. If you wish. I won't be long. But if that's helpful, there's a couple of things that I just wanted to flag. Yes. Sorry, Paralympics Allah for the applicant. I didn't know. The we just wanted to highlight on lesser black that goal. There's a couple of comments on the on policy three numbers not being included. And just to emphasise that Hornsey three or amphoe aren't relevant to the lessor blackbox because of the distance of the site from the old or estuary. So natural England's obviously, in agreement with that point as well. So just to clarify that it's, it just needs tidying up on that. There are also a few references to methodological issues with collision risk assessment. And we think that although there are a couple of points mentioned early on, certainly I mean, RSPB obviously has issues with avoidance rates. But we don't have a we've got agreement on avoidance rates with natural England. So that isn't a point of contention, naturally, and obviously, early comments about the use of band option two, but again, they did accept that. In one of the in one of their responses, they accepted that we had indeed discussed that pre application and those the reason for the choice of that. So we don't think that there are any outstanding comments, and we feel that because we adopted the boreal statline, eight figures, which are effectively a common currency, that a lot of the discussions are bogged down previous examinations in terms of methodological issues we just haven't had to have on collision. So I don't think it's a fair reflection to put in that there are even by the end, to say that there have been those methodological issues. So just to highlight that point. Finally on just on the East Anglia to red throated diver point, we believe that the race is actually accurately capturing natural England's position on East Anglia to project alone. But we know that there is there seems to be some inconsistency or confusion for natural England's position because obviously, they state in their table in rep 7071 that there is no project alone. But then they have this unhelpful phrase of their position remains fluid, which I don't think of clearly it leaves some ambiguity into what they think, and what, what everybody else has picked up. In terms of addressing that, I mean, we believe obviously that the there is no project alone. impact from EA to we've made this comment previously in the red throated diver report. What we have done is I'm sure you'll be pleased to hear we've updated the retro dive report again, for deadline eight. What we've done is to add in a response that we put in at deadline seven on this point into the project alone section for East Anglia to so what we've done is we've used natural England's methodology for the effective displacement area, to just show what that is, in terms of the area of the SBA to back up the fact that actually using our mouse modelling, we don't believe there is a project alone impact. And using natural England's highly precautionary method, it's still a nugatory impact. So we don't believe that is that there is a project alone effect there is I don't think it's credible to be saying that they're they that natural England position remains clear fluid, because having used their own methods, we've demonstrated that the this effect is small. So and we've also used that also to justify they're not taking that number, which is tiny naught point naught, seven, five of a percent of the SBA area into the cumulative or in combination assessment. So we've just tied that up, because we feel obviously we had

commented at deadline seven. But given the pile of paper, it's probably better that it goes in a final consolidated version of that report. So apologies for a fourth, I think version of that report, but we feel it's the best approach to the presentation of that information. Thank you.

17:00

Thank you, all of those points are clear. And I actually do, strangely enough, welcome the fourth version of that of that report. So that will be something we'll come on to in further detail anyway. Yes, all of those points are things that I can I completely understand, and particularly that last point about the position of natural England on EA to predict load effects, we will come back to that and, and part of the reason that's partly us actually having the races out with that, you know, that position, it gives everybody an opportunity to come back and absolutely clarify where they are. And so that that does take me on to part B of this item, which was just about points of clarification. And obviously in the process of producing the races. We have also come up with many points of clarification and confirmation. Some loose ends really that need to we need to ensure we have on the record for the purposes of reporting. And it's often these are things where there's no concern being raised. And therefore we can it which implies there is no concern or no problem. But we don't actually have confirmation of that. So we do need to try and close off those areas. I won't deal with those here. But as we go through the specific sites and features, then we might we will be picking out some of those up. But for any that can't be answered today, we will also include them in our action points for this hearing, and request those by deadline date as well. And I will come on shortly to explain how we intend to pick up any of those points of clarification with parties who are not present today. Okay. And then just moving on then to Part C and use of the remaining time and these examinations obviously. We there are still obviously some significant areas of outstanding disagreement remaining on HRA matters in particular, where agreement is not achieved before these examinations closed and the examining authorities will need to ensure that we have sufficient evidence to enable us to arrive at a robust set of recommendations for each application. As it stands, we've got three weeks remaining it today, I think, three weeks time that these examinations are due to close. And once those examinations are closed, we will have no further opportunity to request information from the parties will not have sight of any further information that is sent into the planning Inspectorate. And we'll have to make our recommendations based on the evidence submitted up to an including that closure date. So I just like to stress the importance of parties getting their final evidence submitted by deadline eight and not waiting until deadline nine deadline on falling out but on the on the final day of the examinations. And so there just wouldn't be any opportunity for parties to comment on each other's matters, which does bring us into an area of risk, attempted natural justice. So also it prevents us from seeking clarification on matters that might be very straightforward. If we don't get things until deadline nine there's absolutely no opportunity for us to do that. So welcomed the MMOs assurance I think deadlines every MMO said that they'll be aiming to get all of their issues resolved or where they can't reach agreement to set out their claim positions that deadline eight and that's it. That's an approach that we would welcome from all parties. You'll note that we don't have natural England in attendance today or tomorrow, which does somewhat limit the depth of the discussion that we can have on biodiversity. An HRA matters. But we will treat it deadlines, xand deadlines, seven submissions as read. And we will put some questions to the applicants about matters that natural England have raised. But given the limited time now remaining in these examinations and the need to get this evidence in before we're required to close, then we have decided to issue a request for further information under Rule 17 of the examination procedure rules,

you'll be you'll be pleased to hear it's only for natural England. So it's gonna it's basic, this this rule 17, it will, it will go out as soon as possible after we close tomorrow, and it will just contain questions for natural England that we would have asked had they been here today. So it's not going to be about things that arise today, because I think that will just hold us up and getting at all 17 hour, what we need to do is get the questions out in order that they have time to come back to us at deadline date with responses to things that we would have otherwise asked them today. And I think that's the only way that we could see of dealing with things with the time remaining in these examinations. That is in addition to the normal Action List that will have actions for everybody. And we'll we'll cover the things that arise during today's hearings in the normal way. So the deadline for that rule 17 going to natural England will be deadline at the 25th of March. And therefore the applicants will have an opportunity to to comment a final kind of comment on those responses by deadline nine. Does that? Is that all clear? And see what you have any questions about that approach?

21:37

Well, if it's all if the applicant No, no questions, I've just got a list of what we intended to submit a deadline for clarity. So just again, clarity, we're not there'll be no material changes to any of the assessment materials we've put in and there isn't going to be any changes to project envelopes. That would affect any of the mitigations. So in terms of the documents we'd be putting in we've already said, we're going to be putting in a revised version of the retro diver report. We're also going to provide the responses that were on the stats from the red diver, red throated diver report that we weren't able to provide in time for deadline seven. So that is coming on. And that is literally just those points on the analysis itself. We're at

22:26

granted buffer the Yeah, those with a deadline against them in your final interrupting. Yeah, okay.

22:32

Yeah, absolutely. It's about the bootstrapping and all the rest of the stuff that is slightly beyond myself. The In addition, we're up, we're providing the updated collision risk document the in combination numbers, because it has naturally been highlighted, there was an error with the great black bat gold numbers. So we need to update for that one. We hadn't updated when we were having differences between the non material change potential for assembly one and three. So that was a mistake in just that species for that project. So we need to update that. Obviously, we were hanging on for any horn see three or four updates. But I think the time has passed for that. In order for us to do anything. We're obviously updating, as we've said before the derogation case, which we'll discuss later. And that will be just to reflect the policy changes, and just do that final sweep. And finally, obviously, we're updating the compensation measures again, which we'll come to later, which to reflect the feedback we've had from natural England and obviously, and the workshops we've had with natural England the meantime. So that's what we are intending to submit, aside from obviously, the response to the race.

23:45

Okay, thank you very much. That's actually really helpful. And there might be a couple of other bits that we ask, asked you about as we go through as well in terms of further updates, but we'll look through as we go. had a couple of other kind of procedural things to cover with the applicants before we move on.

Firstly, about final statements of Common Ground obviously. I think your headline seven, seven cover letter has said that we'll be getting the final segment common ground with natural England at deadline eight attempts to confirm is that going to cover all of the range of topics of that of interest to natural England. So offshore mythology, marine mammals, benthic

24:23

terrestrial, powdery solid for the applicant in terms of the ecology, yes, it's going to cover everything. So we are we've been updating that over the last few days. And I'm not sure when the meeting is perhaps Mr. Vela could say but we it is it's on the list of things to get in. So yes,

24:41

Jerry Walesa, the applicant? Yes, we have a meeting with natural England on the afternoon of the 22nd next Monday.

24:50

Fantastic. Thank you. And there was a statement in there in your deadline seven responses about the rest of the statements of common ground that are relevant to this topic. carrier so I'm mainly thinking about MMO RSPB while the wildlife trusts and is there any, are they all on track for deadline eight as well?

25:10

Gero please.

25:13

Mr. Bella,

25:14

Terra Bella, the applicant? Yes, they are all on track for fourth deadline a and we have meetings set up for the majority of them ahead of that deadline. Some of it will be by correspondence.

25:28

Okay. Thank you very much. I don't know whether the MMO wants to come in and confirm there as well that are on track for deadline date for seems a common ground. Mr. caretti.

25:39

Thank you, Mark Hershey and Moe. Yes, we continue to work with the applicants and also naturally showing that we can do everything as much as we can into our deadline in response, and we continue to make progress with the applicants on our statements of common ground.

25:56

Thank you very much. And just to say that that kind of final statement of case or you know, what your position statement where things aren't able to be agreed for the MMO. I know in previous examinations, that's been very helpful summary to have at the end of an examination. So we'd welcome that. And then on the RSPB. I know that I'm RSPB seem to be part of some of the workshops that you've been

having on ornithology. We haven't had any correspondence from them since deadline for when they had they gave us some comments on the first draft of the compensator II measures plan but just you know, we need we need to keep a handle on the RSPB position. So it wants to check. Are they still engaging with you on offshore nephrology and will we see that line eight statement of common ground with those days as Mr. Bhalla

26:42

Durga for the applicants? Yes, we have a three hour meeting with them on Friday afternoon, in fact, to go through the statement of common ground and we've been liaising through correspondence. So again, I'm hoping that will be on track the submission deadline date

26:58

antastic. Thank you. Okay, a couple of other points, just wanted to flag the death for guidance. So the new Defra guidance, and you've got different and natural England guidance, I think I'm entitled, hrs protecting European site that was published on the 24th of February. And that was the same day of that same deadline six. So obviously, we that hasn't been taken into account in the version two delegations and compensation documents. And obviously, that guidance, it only applies onshore and within 12 nautical miles. But notwithstanding that, are you going to be in a position to take that guidance into account in that revised let version three derogations case and compensation measures report.

27:45

Purpose of the applicants, I believe we have already in the in the latest version? I can't. It's been quite a busy period, if you remember, which we certainly use the some. There was a different update earlier in the year, it may not have been this one, but we'll certainly check against that and make sure that it's clear what we have used. Thank you. Thank

28:07

you. Yeah, I think I think there was the policy paper at the very start of the year after the regs change. But yeah, this one was, I think it's called h res protecting European site published on the 24th of fabric kind of snuck in under the radar, actually, but it does have some some bits in there that we will need to ensure are complied with. So worth doing that Check, please. And And then, finally, just a question, and in principle question about the implications of the decision to quash the vanguard DCF. Because obviously, 18th of February, that decision was quashed. The Secretary state is now Well, now we determine that application I just wanted to because Vanguard has factored into your cumulative and in combination assessments. on the basis that was a consented project, to what do you consider is basically the most appropriate way to do to treat Vanguard now in your cumulative and in combination assessment? Have you made any changes? Or are you leaving it as it was?

29:06

purpose of the Afghan leaving it as it was on the basis of I mean, I guess I don't know what tear it goes into now. But obviously, it is a project that is real and relevant. And we have all the information for that. So I don't think there's any requirement to change the numbers for that. It's part of the mix as Hornsey for is in in a slightly different capacity. So no, no change.

29:32

Okay, yeah, fine. And that's understood. So I think, yes, back in the back in the world of consenting. I think that's the that's the response I was expecting you to give. Okay, so in terms of the rest of this agenda, falls really into two main parts. The first one being an update on the positions in relation to the European sites and features for which we still have outstanding disagreement. So that's items three to five. And then secondly, we move into consideration of the applicants derogations case and compensator II measures plan. Just admitted without prejudice to the position that there would be no adverse effects on the integrity of any of the European sites. And that's items six and seven. Because we don't have any here today natural England here today, we will have to focus on the areas that we can make progress without them. And as I've said, that will be written questions issued after we close tomorrow for natural England. Before we move on, then is there anything that any of our attendees would like to raise under item two that we haven't already covered? And I'm not seeing any hands raised. So I think we'll move straight on. Okay, so straight onto them to the red throated Diver of the outer Thames sbsta. I'm going to ask the applicants to start us off by giving us a summary or an update of the status of agreement with natural England on the project alone effects. It's just just be a summary position for the time being. And this is an area where we need you to consider the effects of the two projects separately. So could I ask you to start with East Anglia, one north, please?

31:00

pelvic South African I'm gonna hand over to Dr. tender, please. Good morning.

31:06

Good morning. I think I turned on successfully. I think I have Jolly good. Okay, so an update on. So this is natural England's position for East Anglia. One north is as we understand it, they consider that there is an adverse effect of the project alone as a consequence of the displacement distance extending to their advice, distance of 11 and a half kilometres. And we considered that distance should actually be somewhat less at about seven. And but until we have, but we've assessed on both of those sets of estimates. And we don't consider it makes a material difference to the conclusion. And that's because the number of individuals that would actually be affected relative to the population size in the SBA is still extremely small. But sorry, let me just clarify was this natural Lincoln's position you were particularly

32:12

well, just really about where you both are. So where, what what's outstanding between you? And I think you've mostly covered that probably summarise that now in a yes.

32:22

Yes, totally. Okay, because I don't want to say naturally indisposition. And Mr. I'm sorry.

32:27

I know. And we are in a difficult position, I'm just asking you to sort of characterise where things are and where the outstanding matters. I've missed a bit. So as already mentioned that, that I think it was the Netflix has raised some concerns about the use of the novel displacement assessment methodology. So that buffer zone analysis and the generation of counterfactuals. And that's coming at redlining. I

think he's just confirmed, are you able to give us a bit of an explanation about what is coming at deadline? Eight, and that was?

32:57

Not much I'll be honest, a lot of that is very technical questions, obviously, they've been raised on the statistical methods. And that was our sort of sometime colleague, Professor Matthew awfulest, at Glasgow University undertook that piece of work. He can't be here with us today, because he's got a very heavy teaching loads at the moment. So but what he is doing is he's working through those points that were raised, and basically providing a response to those that will have for the next deadline. In essence, our position hasn't really changed from the natural England's comments have not really changed from the ones they put in, originally, and we provided a response, we're providing a second kind of further consideration of those but but our position has not changed. In that, we consider that modelling to be robust, and done in a reasonable manner. And a lot of the points that are raised are actually ones which are sort of don't really have any, any merit. Well, that's that's an unfortunate phrase, but we don't make any material difference. So they're talking about different forms of spatial model that you could use, well, Jason's experience of this is that it actually would make very little difference. And most of these methods sort of collapsed into a very similar sort of output, when you consider the inputs that are going into the modelling and that it really doesn't really make any difference at all. But so that that will be a lot of the nature of the responses that will come back, but in using rather more technical terms that I just did. So no, there's no no change on that. But as I said, I mean, I think one I should also say we're not intending to undertake any more modelling work on this for for these reasons. But also because we've already used effectively what natural England considered to be the worst case in the assessment anyway, so we don't see that. There's an awful will not have further justification for doing further modelling. And continuing this debate. Further

35:09

understood Thank you. And then turning to East Anglia to in the project Elaine effects, we've touched on this already in item two, but perhaps you could just again characterise what the latest position is in terms of agreement with natural England.

35:24

So in essence is the same only, of course, East Anglia two is farther away from the edge of the SBA. It's far enough away that on the basis of our modelling outputs, we would say there is no extension of the effect far. And so we assessed on that basis, naturally. And then of course, say, Well, no, it extends further than that. And so therefore, there are little little pieces of the SBA, which do fall within that distance. And so we've assessed on that basis as well. So now the the in combination considers both of those projects and add in there. And again, it doesn't make any material difference to the conclusions that we're drawing. Okay,

36:03

thank you. And we have some questions to natural England on that as well, so that they can speak for themselves about where they see things. So thank you very much. And so then moving on to the in combination effects. And could you quickly just summarise the latest position in terms of agreement there?

36:21

Will again, so positions are not really changed, I don't think since deadline for In fact, something from natural England on this. We have included extra wind farms that they asked us to, even though actually we consider that there is a very strong case to be made that they should be part of the baseline. Because the time when the SBA was designated and when these wind farms were constructed, and then when the population estimate was recently updated, for surveys conducted in 2018. All of those factors sort of rather suggest to us that that any effect those wind farms are having, and this is specifically London array Ram. And that's the largest impact in within the SBA is already existing and was around the same time or the SBA was designated. So for that, notwithstanding, we have included it and the assessment has all of those in, we still consider that it doesn't amount to an adverse effect on the integrity. And a lot of that comes down to the fact that the population appears to be in very good health. Despite the fact that there is something that misses in this story of how much the impact how large the impact should be, according to natural England's advice, versus what has actually happened on the site. And so the fact that the population has, at the very least not decreased, and very probably has increased. And this comes down to a question of whether the early visual surveys with people looking out the window or playing we're actually counting all the birds? Well, either they missed two thirds of the birds, or they've gone up by a factor of three. So somewhere in there, there is a reality of what's actually happened to the population. And at the same time, these wind farms will come along, which naturally inside they displace up to 11 kilometres, and up to 10% of them die as a consequence. Well, again, those those facts just don't seem to sit together. And the most, most compelling one is the fact that the population is doing fine. And furthermore, it's doing fine throughout Europe on the basis of the most recent EU assessments of that. So the birds that we have in the southern North Sea in the outer Thames Estuary, and further up the coast up towards the greater wash is also designated for them. In the spring, they move over to the gym and bind to are a lot of those studies have been done on displacement before they're moving on to their breeding grounds in, in Russia and Scandinavia. And in all of those places the population is considered to be doing well. I mean, we don't know very much about the breeding grounds because they're very dispersed. But certainly in those wintering and spring migration locations, there is no concerns about them. So again, all of these facts, they don't really seem to tie in with the precautionary approach the natural England are advising and taking on this assessment.

39:17

Okay, thank you very much for that. I think we'll probably come on to a few more of those points. As we turned to Part C of this agenda item, which is to look at the matters raised and the legal submissions that we've also had. So in parallel to the sort of technical, scientific information that's been exchanged over the last few deadlines. We've also had an exchange of legal submissions about the applicants approach to assessing whether to divert displacement. So we've had natural England submissions that deadline for we've had the applicants submissions, deadline, six, and then at deadlines seven, natural England's provided some further comments on this and raised some further points and obviously, the applicants have not yet had a chance to respond to that except that I has only recently passed. So we have the respective positions set out in writing. We don't have natural England here today, so we're not going to be able to go into them in detail. But there are a few questions I'd like to ask the applicants to respond on, given what we've had for natural England at the deadline seven and that's rep 070 and

7072. So the first one is around this question of effective habitat loss is going to be a surprise to you that's coming up. So natural England has submitted this, this track changed version of your version to red throated diver displacement document. And the intention being I think, to demonstrate some revisions that have been made between version two and bed version three, that natural England claims show an important change to the way in which the effects of in East Anglia, one northeast Angular two are presented and the specific concerns relate to them. What they're characterising is the reframing of effects from effective habitat loss within the SBA to effective area of the SBA subject to displacement. So, just for the avoidance of doubt, firstly, that document that has been submitted by natural England because I get asked the Africans just to confirm that that is a document that you produced and shared with natural England. And that's all legitimate

41:21

policies of the African? Yes, we did make changes to that document. And in the interest of transparency, we shared that track change version with natural English. So it is our document. We are not trying to hide anything on this one.

41:35

And so we're cleared apart from having to track changes marked on it. Is that document exactly the same as the version three document that would send submitted a deadline? Six?

41:43

Yes. Okay.

41:46

And so your legal submissions and make the case that you do not consider that there would be any habitat loss within the outer Thames Estuary SEPA, and that you see this as a disturbance case, rather than a habitat loss case? Is that your current position still

42:02

valid? Yes, I think I think the it's unfortunate natural England's response here seems to make a mountain out of a molehill. If you look at the original deadline three submission that we made, we use the phrases affected area, the SBA, which could be subjected to placement in tables five to nine, we have the column titles, effective area of displacement, and we use that phrase in throughout the document. And indeed, at the final table 10, which summarises our position on the conservation objectives, it's very clear that we are talking about displacement here and disturbance, not habitat loss, we did use both terms. And obviously, it's in the the table titles of five, two tables five to eight, we did use the table the the term, effective habitat loss, and, and that that made it through to the next version as well. And it wasn't it wasn't until another check that was done, which led to us updating that for deadlines. Six, the key point is to clarify that what our position is, and to make sure that especially having seen that's Lincoln's arguments that they were there was no ambiguity about what our position was, and what the effect that we were looking at. So there wasn't an attempt here to change our view. If, if we if it had been effective, you know, effective habitat loss throughout the original version of that document, and we changed every version. Clearly, that would have been a change of position, but it simply isn't the case. It's a mischaracterization of what we were trying to do there. And obviously, as I

said, we provided the track change version of that document to natural England. So those those nothing going on. I think, as well, I think, you know, it's it's clear from the way we've approached this from beginning that we're not talking about habitat loss, because we're talking about highly mobile species that are dynamic and moving around. And the numbers are different from every time that the surveys are done, you can see the 2013 2018 numbers, you can see the differences between the two days of each of the 13 and 18 surveys are vastly different numbers. So clearly, this isn't about loss. This is about animals and birds moving around. It's a dynamic thing. And it's about distribution in displacement is not about habitat loss. So that is our scientific position. That's a position that ourselves and Dr. trender have taken. And then obviously there is a further legal interpretation of that which one of my colleagues can bring up but in terms of this mischaracterization of what we've done with the different versions of the report, it's simply to ensure that the final version of that report is as clear as possible in terms of what we actually mean and we reserve the right to update our documents to correct errors if and ensure clarity if those are highlighted to us.

44:55

Okay, so the change between version two and version three. That was a result of Scientific appellate scientific advice or further legal advice.

45:07

There is it was a result of a further review that pointed out that there's an inconsistency in the terminology we're using.

45:15

And so we've had natural England then come back in on this, this, this positions question. And I think they're saying deadline seven, that while the amount of habitat will not change, as a result, the projects, the amount of benefit that it can yield for a greater diver is diminished so that a quantity of its habitat function is lost. It sounds from what you're saying that you don't you don't accept you don't accept that position. Is that correct?

45:44

upbringing Mark Turner on that, please.

45:47

Thank you.

45:49

Thank you, hello. So

45:54

no,

45:54

I think we did the habitat is not actually degraded in any way. The point here is that the birds are, if they're avoiding the turbines by whatever the distance might that be, whether it's ours or natural

England's version, they are, therefore excluded for want of a better word from that that location, as long as they don't like being net close to turbines. So that's why this slightly different versions of this have have been used. But but we don't consider that to be an ecological effect. Furthermore, the number, this is why we keep coming back to the populations, which is because we, our understanding of it is that the SBA is there to protect the population. And if it can still maintain and protect the population, irrational irrespective of the displacement distances, then it's still performing its duty. And so the looking at just the area without considering the number of birds that it that is involved, is sort of is being a little bit too simplistic, and it needs to consider both really in tandem.

47:10

Thank you. And just a follow up finish on that point, naturally then referred us to the bank more wind case, again, this is probably now coming to the more to the legal side of things. But does the applicant have any views on the relevance of the bank more wind case to these examinations?

47:28

I think I'm going to neatly pass them back to Paolo and

47:33

back to Glasgow, please. Thank you. Thank

47:36

you, Mr. Ennis.

47:39

Hello, coin spot applicant. I'm going to invite Andrew Fraser rocket to respond to that matter for me. Thank you, madam.

47:48

Good morning,

47:49

Andrew Fraser Queen's counsel. And I'm going to come to your point about bag more wind in a moment, if I may. But just to put this entire discussion into its proper legal context, if I may, forgive me, I can't help but I'm a lawyer. What I would say is this, the purpose the underlying purpose of the exercise is obviously that requirement cast upon you by regulation 28 of the offshore marine habitat regs. And that is to perform the appropriate assessment. And then subject to I ropey declining consent, if there is an adverse impact or adverse effect on the integrity of the European site. Now, we have fortunately had a good deal of narrowing of the legal issues based upon the response from natural England rep six, zero to zero. Now, with respect to this matter of disturbance and integrity, it's important to look at paragraph nine of the natural England submission, which tells us that with the focus on this phrase effective habitat loss, and I'm not going to say any more to add to what our experts have already said about the way in which that phrase came to be used its ability to confuse was detected and it's been put right, that is the blunt summary of what's happened. But looking at what natural England say they agree with our underlying submission, that the test of what amounts to adverse effect on integrity

should be broad, and not mechanistic. That's a submission that we advanced and they agree with. And then they go on to say very importantly, the simple fact of an element of disturbance is not of itself enough to prove adverse effect on site integrity, and we thoroughly agree with that. But we then go on to ask well as well what is necessary to prove an adverse effect on site integrity and so therefore, we go back, almost to the beginning to our Understand what the the answer to that is. And we start with the conservation objectives for this SBA. And most importantly, with the very wording of the birds directive, you'll appreciate that the birds directive is referred to effectively as the principal conservation objective. An article two of the birds directive makes claim that the requisite measures in the directive are to be taken, quote, to maintain the population of the species referred to in this case, red throated dry divers. So from the beginning, the focus is on population and impacts on population that's made more clear, we say by the way in which the requirement for appropriate assessment is framed in regulation 28 of the optional habitat regs where it said that the assessment must be made in view of the site's conservation objectives. So when you dive into the list of the five conservation objectives, which has naturally been rightly say, do involve issues of habitat, but when you look at that, the assessment is simply what's the effect on population, in view of those objectives? Had it been intended that there was some mechanistic exercise, the wording of that would be somewhat different. And then finally, we look to the broad definition of integrity, which is put forward, for example, by the European Court in grace, I won't read it in detail. But if you look at paragraph 35, you will see that the effect there is all described as a broad

51:42

abroad exercise in looking to see again, primarily where the population has been affected. And so therefore, you will perhaps have detected a site stress on the word population in these submissions. And that's really the nub of it. And what we say is that when you hear the evidence from our experts, it's entirely clear that the effect on population is negligible. And it's in that context, that all of the discussions about the effect of the disturbance, and however you characterise it, it is an effect of disturbance rather than a physical disappearance of the habitat. And in that context, the only real question you've got to address yourself to is is there a genuine adverse effect of any significance upon the population of red throated divers, in this SBA, and we say that the evidence clearly proves that it doesn't. And that's only really in that context that the bag more wind case comes up. Without being disrespectful to natural natural England, we will text taken rather out of context, that bag more is a case where it is possible, it may have been possible to have said that the impact on the habitat of the turbines might have had an appreciable effect on on population. It wasn't analysed in that way. But that's the only way in which it could properly take effect. That's not the case here. The scientific evidence just just shows that's not the case here. And just very Finally, in the light of way, the way natural England has addressed themselves. And apologies if this is jumping to a question you're going to ask subsequently, but they refer to the acaster case and the need to give full weight to the views of natural England. Well, we entirely accept that. But what we do say and this is made absolutely plain plain paragraph 105 of the acaster authority. When you come to look at it, you'll see 105 is a very, very long paragraph. In fact, it's about 10 paragraphs wrapped into one but the very last sub paragraph makes absolutely plain that natural England's views are not determinative of the issues. And insofar as that case involved an error of law, it was because natural England's views were rejected. And you can pick this up a pair of 115 of the decision, they will reject without adequate reasons being given and without appropriate scientific backup to a challenge to natural England's view. And obviously, nothing

really could be further from the position in this case, we provide a very considerable body of scientific evidence. And obviously, we invite you when you come to make your decision to provide reasons as I'm sure you will, as to why, as we say the scientific evidence suggests that a departure from the views of natural England is entirely the right course based on the evidence.

54:44

Thank you very much for those clear submissions. Do you intend to come back in writing on them those matters that have been raised in particularly those case that that case or that have been raised? Will that be coming back in a deadline eight? Yes, we'll

54:58

have got summarise those Use and when writing. Yes.

55:02

Thank you very much for that. Now, I think my colleague, Mr. Smith had a comment he wants to come in with is that correct Mr. Smith at this stage?

55:11

Not anymore. It was essentially to ensure that we received a clear explanation of the applicants position in respect to that that material that Mr. Rocha has just usefully taken us through. So we're grateful for that. Only really to emphasise for the purposes of then the transcript and the recordings. That obviously, we would greatly appreciate natural England's attention to those matters. And just as Mr. Rocha will be placing his final position in writing deadline eight, it would be very, very useful indeed, if natural England also did so that I suspect may be an action.

55:52

Yes, thank you. So it will be an action and it will be upon both the applicant and natural England naturally, then hopefully, we'll be able to review this part of the recording and respond, given the short time we have remaining. I had a couple of follow up questions on conservation objectives. Since that's been raised. Obviously, coming down now to the level of those five conservation objectives. And that version three assessment rep 6019 focuses on objectives D and E of the five objectives. And it states that they would projects would not have an effect on objectives A to C, but a deadline seven, we do have natural England stating that because of this logic here, because they because it would be an effect that amounts to habitat loss, they appear to be suggesting that your assessment therefore should engage with the implications for our conservation objectives, A and B, in addition to what you've already looked at under D and E. So here, we're talking about the A being extent and distribution of the habitats as qualifying features, and B being the structure and function of the habitats of the qualifying features. I just wondered how the applicants respond to that? And is that part of your, your version four document?

57:10

Perfect. So for the upcut, I hadn't intended to, to, I think we will, we'll look at that and work out if we're going to respond. I think in terms of, you know, structure and function is a really interesting concept that, you know, when I was at JCCC, I used to write conservation objectives. And these phrases are

quite meaningless in some degree. But we're not physically changing the structure of the sea surface, which is what we're talking about here, we're not changing the function of the sea surface, which is, it's bobbing around and a movement of particles of water. Likewise, the extent of that of habitat, we're not changing. So I think in terms of a and b, we're not changing that. And as, as I've said previously, if you look at the numbers from year to year, in terms of what the birds are doing, they are moving about they are dynamic. And, you know, I would characterise ecologically that anything that was to do with extent, was was a, it was a real loss. And I think that's why, you know, we're outside of the SBA, would there is no physical impact on the SBA for either of these projects, hence, why we we've ruled those out, and we've gone just to E, which is this distribution, which is where obviously, there is a clear effect, and the argument is whether or not that effect is significant or not, but no, I don't I don't think that A or B or are actually relevant. I think, again, it's it's kind of mischaracterizing, but we will we'll put something in deadline a on those points.

58:45

Thank you. And I think we are at the stage where, as you said earlier, will we now just need the evidence on both sides, and we can form a view and put that to the Secretary of State as competent authority I've got, I have the applicant.

59:00

And rephrase record QC again, just very briefly, just to say that, again, just to re emphasise, really that the, the consideration is the effect on population in view of those matters. So there's very much sub matters, the ultimate question which you have to determine, and it's important not to lose that ultimate focus, if I may respectfully say so.

59:21

Thank you. Yes. And that's understood. And then I'll just find one on this, which was coming back to the question of favourable conservation status again, so it's common ground I think now between the applicants and natural England that the question of whether or not a site or species is in favourable conservation status is a matter for the decision maker at the time of the decision being made. Could you summarise the state of agreement between yourselves and natural England with respect to the conservation status of the outer Thames Estuary? sspa

59:52

that's one of the Mr. Zoeller I think you

59:57

might be self they might bring in Marcus Well, on this one, I mean, I think we've made the case all along that because of the population and the conservation objectives of being maintain rather than restore that you would presume that that was in favourable condition. Now, obviously, natural England has stated that they consider that the site to be in unfavourable condition, but of course, in their deadline a 37 response, they also highlight the fact that there is no condition assessment. So, it would, we don't know what exact basis other than a hunch that this is a real impact here is the basis by which they are saying that there is this site is unfavourable, is in unfavourable condition. My understanding of favourable conservation status, again, from my time in jncc, was that that was around as a concept of

the feature at the level of the Union, the EU, not at the level of the site. But maybe Mark can talk about the population and, and provide some more information on how the population of retro divers generally doing at the wider level,

1:01:11

short Mark gender for the applicant, which I think is the first time I've said that this morning, so apologies, you'll have to track back for any people listening to this. In terms of the population Well, as I said earlier, the it's generally considered to be in a safe and secure status, it's colour coded green across the EU. And so there certainly doesn't seem to be any grounds for concern on that, that scale. And again, it comes it comes down to this discretion of the population size, to use that word again. And all the evidence appears to point to the fact that at the very least, it has not declined within the SBA and has very probably increased. And so it, it's difficult to see On what grounds it would not be classed as favourable. I just wanted to add my one little extra bit to the point about habitat loss and these questions. And they're really habitat in this context with this, you know, a designated part of the sea only really has, has meaning when you consider the birds that are using it. And if you took the birds away completely, to habitat, we wouldn't be considering it as a habitat. It's simply because of the birds present. So you can't divorce the two, they're very much tied together and their habitat is only really something that we will consider because the birds are there making use of it. And it has all of these dynamic qualities, as we said, and this is why we think you can't treat it as a simple area calculation, you have to consider the numbers of those involved as well. But yes, that was all I had to add.

1:02:55

Thank you for that. And on that point, then of conservation, the favourable conservation status, we will include that in our questions to naturally in terms of clarifying their position on this. I don't have further questions on this legal submissions point. Other than to ask that we do get a response at deadline eight from the applicants on the points raised by natural England the deadline seven, I think we are going to be down to a position of adjudicating contended positions. So evidence on both sides is what will really help us. And is there anything else that the applicants or indeed anybody else wanted to raise and Part C of this item three.

1:03:44

And I'm not seeing any raise hands. So I'm going to move on then to Part D, which is about mitigation. And really, my questions are around the red throated diver best practice protocol, because we received a sec version two at deadline seven, which is rep 7045. So who is ever since in the applicants on this item? Jerry, you have the lucky job on this item. So obviously, at what we have now then is the best practice protocol for minimising disturbance to red throated diver that that document before us forms the basis of a final best practice protocol that will be produced post consent under the terms of the pimp, which is a pre construction document secured by DML conditions 17 in terms of the generating assets, and 13 for the transmission assets. So you have updated that document at that deadline seven and we had a couple of questions on section two, which is around the vessel disturbance mitigation, and then on section three as well see if I can get that up as well. So before we start, is there anything you wanted to flag as key changes since version one or should I just dive in

1:05:01

I can do as if that would be helpful to sorry, during the applicant. I think just to sort of step back, the original best practice document was submitted into the examination at deadline three that was read 3074. And that commit to the applicants a number of measures to reduce potential displacement impacts from vessels on red throated diver. The language of that best practice document, which has been used by a number of projects based scottishpower, renewables projects and other projects was not completely definitive. For example, it required things like avoiding and minimising vessel traffic were possible during the most sensitive period, restricting vessel movements were possible to existing navigation routes, things like that. So in response to natural England submission, a deadline for which was rep 4087, where they queried how the applicant would demonstrate that plan works during construction and operation phases would avoid the sensitive periods between November and the end of the end of February. And where it wasn't possible to to avoid what we would actually do. So we sat down with our navigation consultants and tech limited and thought the best way to address this would be to actually look at rerouting measures to avoid as much of the SPI as possible set those rerouting measures down on navigation charts. And they would form the basis of being issued to contract with going forwards. At this stage, the construction and operation and maintenance port have not been confirmed, but they are anticipated to be Great Yarmouth, for construction, and using the existing scottishpower operations and maintenance base at lower stuff. So we had a look at what we could do to reroute around the SBA, where possible to the projects from those ports. The actual SBA covers the approaches to both ports. So it's not completely possible to avoid the SBA. But what we did was to look at the actual approach routes that vessels would take so that we would at least in entering and exiting the ports, we will at least be using existing navigation routes with other vessels. But then we sort of capitalised on the fact that the main component of the SBA is separated from the northern component, and there's a channel between them and looked at routing vessels through that channel in order to be able to access East Anglia, one North and East Anglia. Two, whilst minimising as much interaction with the SBA as possible. The other update to the document was inclusion of information on the use of helicopters, which was requested from natural England as well.

1:07:59

Thank you, and we'll come on to that. So thanks, that that's that's really helpful summary. So that work, then as you've said, we now have that chart at the on page four of sorry, Page Six of the best practice protocol, which does it captures the work by an attack on navigation and that that, that that routing, the mitigation? I suppose. What you've said though, of course, is that we don't have a firm commitment yet we don't have a decision on construction ports or an M basis. And so how does the best practice protocol provide for a scenario in which Great Yarmouth and Lowestoft do not for whatever reason end up being the ports used for construction and O and M respectively.

1:08:47

So that isn't specifically addressed in the best practice protocol, the protocol will be updated and finalised pre consultants submitted as a component of the project environmental management plan. We did consider you know if if construction vessels are coming from Europe, they would not need to enter the SBA. We also had a look at whether vessels were coming from the south such as harridge, they would be able to that the actual SBA doesn't overlap the approaches to harridge. So they wouldn't need to go through the SBA in order to to access the projects. And there was also a bit of discussion about how as well, I didn't capture any of that in the document because I think the only ports for which there's

a very good possibility of vessel traffic originating and and and returning to his Great Yarmouth and Lowestoft. I think they are highly likely.

1:09:50

Okay. And so I think there's also been mentioned a Felixstowe in in passing reference, but I have an Atlanta tech look AP vessel routing options to and from other potential ports or how has it Have they only done that work on the basis of those to have Great Yarmouth and lower stuff,

1:10:07

we focused on Great Yarmouth and other stuff. I would say more than anything else as a result of time limitations and not really having a huge amount of intelligence to base routing measures for other ports on.

1:10:23

Okay. And should then on the basis that this is a document that needs to provide the level of certainty where there is still something moving in terms of final selection of ports, should the best practice protocol commit to the final bPb doing that work? So should a different port be selected post consent for whatever unforeseen reason at the moment? Should there be a commitment just a sentence or paragraph in there that says, you know, we've done this work on the basis of these ports being selected, but in the event as we get post consent, if we find that we're using other ports, this work will be we run, essentially, as part of the final BPP. With that, would that be something the applicants be willing to commit to?

1:11:09

I will have to take that one away, I think, for a jury better for the applicants. Yeah, I'll have to take that one away.

1:11:18

Okay. Thank you, if you consider that and responded deadline eight. And then returning to the scenario in which great, Great Yarmouth and Lowestoft are the port selected. And you've referred in there to alternative mitigation routes that could be used, in addition to those that are shown here for better traffic between the wind farm sites and those ports. Could you explain what alternative mitigation routes might entail and how they might be identified?

1:11:45

So we well, we have actually already looked at that. So an alternative route that doesn't go through the gap would be to come out of the two ports, take a sharp left, turn and head north and go around the top of the Northern component of the SBA and then downside. Again, there might be a reason why vessels, I think that the commitment we made is that other routes could be used. This is the one that we've looked at. But I guess, if there was an awful lot of traffic in the channel, at a particular time, the marine coordinator might direct the vessel to take a route that goes up and around the northern component. And we have also mapped that, but again, I think it might have been start to get a little confusing if we've included sort of all of the potential routes on the figure.

1:12:37

Okay, thank you. And you've stated in there about the final best practice proto POC calls this is the post content version of the document will include details of how the mitigation route will be communicated, enforced and monitored for vessels associated with the project. we've noted that all the vessels would be using Automatic Identification systems, but so that we can understand how this might work in practice, particularly the enforcement side of things. Could you explain what the normal neck mechanisms might be for communicating enforcing and monitoring vessels to ensure that they adhere to this mitigation or these mitigation routes? What would be the way of ensuring that that happens?

1:13:14

Yeah, Jerry valid for the applicant. While all our vessels as he stated, these AI s, they are monitored by the marine coordinator in real time, I think what we plan to do would be to issue the routes to all contractors working on the project, the routes would probably be named. And we would have a a as part of the toolbox talks or the the deeds the pre sailing brief, it will be agreed which route the vessel was going to be taking the route that the the vessel master would sign off on which route he was taking. And then at the end of the day, again, sign off that he had followed that route. I think the point we made in the best practice protocol was that these would apply to, to routine transfers. If there was a health and safety incident or you know, inclement weather, it might be the vessel needs to take the fastest route back to safe, safe ports, in which case, they would record that they've done that, that they haven't followed the route on the way home for the following reasons. But given the all of our vessels are monitored, that's all recorded, they are monitored in real time, we think it'd be very easy to to be able to come up with a really clear enforcement process and monitoring process and reporting process as required.

1:14:42

Okay, I think the other the other exception is of course with cabling where it has to necessarily take place within the SBA. Okay. There's just a final bit on this. You've, You've stated in there about committing to implementing the mitigation routing measures for All project vessels throughout the construction and operation of the project through that core winter period of the first of November until the first of March inclusive. If those routing measures are required to mitigate the effects on the outer terms sspa Is there an argument for securing that commitment on the face of the vcoss? For example, through an amendment to the DML conditions, 17 and 13? Which which deal with the best practice protocol? Is that Is there a is there an argument for doing that

1:15:30

jirga for the applicant? I would say if we have a best practice protocol that is a component of the project's environmental management plan, which has to be approved by the MMO as a regulator. I don't see a specific need to secure that in the DMS.

1:15:50

I asked the MMO if they have a view on that, please.

1:15:55

Thank you maka, Russia MMO. Up? Yes. Take on board your comments. It's something that we could potentially look at. I do acknowledge the applicants position that is secured within that plan. But we could, you know, certainly potentially discuss with the applicant as to its practical side about having a specific condition on the DML.

1:16:20

Thank you. And we will ask the same question of natural England, again, it's just comes down to is secured it as a commitment there. But it's whether it's how important it is that it's it's secured on the face of the whether it should be secured and face to DC or whether it's sufficient to be secured in the way that we have described today. I don't have any doubt that it is there is a commitment there and that it's easy to track that back through to the DCS. But it's just making sure that everybody's happy with that approach. I think we might come back to some of this when we get into agenda item seven, which is about obviously the compensation measures because there is there is a question around where the mitigation ends and the compensation begins. And I think we'll probably end up discussing that a little later on. But for now, I think the only thing I had the only other thing I had on the sprach post called was on section three of the helicopter disturbance. The additional wording which I know was a result of natural England's advice. So, it states in there now that the minimum safe altitude for helicopters operating offshore is 1000 feet above the highest known obstacle within five nautical miles. And at that, at that altitude any disturbance caused by the visual presence or noise of helicopters will be minimal and will not result in a significant disturbance of red throated diver. Can you commit to ensuring this minimum self safe altitude for helicopters in terms of red throated diver disturbance? In the scenario that helicopters are used? So, you stated you stated sort of the situation but you haven't committed to doing it. So I'm just wondering whether you're able to go that step further and put a clear commitment in the best practice protocol that if helicopters are used, you will adhere to that standard

1:18:05

Jovana for the applicants? I'm I think we can I'm I'm fairly certain that this the the information presented here with regard to the minimum flight height for helicopters is is legislation? I would have to I think we can but I think I'd have to take that one away and speak to our aviation manager.

1:18:33

Find

1:18:36

out of interest helicopters only under consideration for use during the operation phase.

1:18:42

Yes.

1:18:45

Geragos to the African? I'm not 100% certain actually.

1:18:49

Just again, that's that was a question that jumped out but I didn't know. Yeah, but there gaminator has confirmed the temporal kind of scope for use of helicopters whether that could if that could at any point be used, for example, for transferring workers for the construction phase or anything like that. I think we need to be clear. Okay. Were there any other questions from any of the parties on question of the best practice to protocol or anything else wouldn't anyone wanted to raise? Okay, then I'm looking at the time and I think what we'll do is we'll try and finish the red throated diver item before we break sort of around 1130. If we can, I've got a couple of questions on monitoring and that is mainly in relation to the offshore in principle monitoring plan. So I think we'll move on to that now. So we've had a version three a deadline six, which is rep 6016. And then there are some changes in there about in relation to the red throated diver monitoring. They're marked in table five, because I've asked the applicants to talk us through those changes. And why they why they're now at why they've been there basically,

1:20:06

for the applicant, just let me get that document up. And then

1:20:12

the main thing I was interested in was table five changes that flagged in table five.

1:20:19

It was this a 201. North, or does it matter? Sorry,

1:20:23

both. Now, it's

1:20:25

gonna be I think it was the one where it wasn't for EA two, it wasn't in there, but it is now.

1:20:30

So the first point, obviously, was that, I think when we originally updated the DML, to include the monitoring for red throated diver, it was in the DML. But it wasn't it hadn't made it through to the, to the principal monitoring plan. So we had included it in one north, and it hadn't made it through to. So that was the initial update to that.

1:20:57

Sorry, a sec,

1:20:59

I think actually, the changes are more obvious when you look at the one North version of the document. But the main things I was interested in is a reframing of the way you refer to the phase of it. So it's gone from talking about the operation phase to the pre and post construction. So I guess I'm widens it slightly, doesn't it from?

1:21:17

I guess the point is, obviously, that if we're going to be looking at this displacement effect, then we need to have a before and after. So we need to see it's no good starting that I think it's no good starting that in operation because that will just be kept picking up the pattern that is, has been established. So that's the that's the distinction there would need. There's no point doing it during construction, because there will be a lot of flushing of birds. So you would do that post pre construction and post construction.

1:21:49

And then you've added in something about Patty undertaking, how can you still hear me? Yeah. Okay. froze for a moment that you've added something about to undertaking a power analysis to inform the number of surveys? Again, is there anything in that that you want to add? Would that be undertaken in consultation with anybody like natural England to to ensure agreement on the sample size?

1:22:19

Yes. So apologies over the applicant? Yes, I mean, all of the monitoring that's undertaken will need to be agreed with natural England and signed off with the MMO. So we would look to develop that methodology with them so that they were happy with what we were doing, and the fact that we were doing something that was going to be useful, and the power analysis, obviously a way of determining the number of samples to do undertake in order to actually get meaningful results. Okay.

1:22:50

And so the marine management organisation, your deadline seven response indicates that the offshore PMP was still under review, and that you would be in a position to provide an update, maybe at this hearing, is that is that just emotion to marine mammals? Or did you also want to comment on the most logical thing?

1:23:10

I think we might give some feedback tomorrow, potentially on marine mammals, but I don't think we're in position today, I'm afraid to get any further feedback on all apologies,

1:23:21

no worries, we will come back to this briefly under the next item in terms of the other offshore nephrology monitoring provision in there. And the only other point I wanted to raise on to that really was that we've had this point raised by natural England and rep 707 for highlighting that the IPM p link the monitoring plan to the residual impacts from the EIA rather than the effects of the designated sites. They acknowledged obviously, they would be they the proposed monitoring would address the residual impacts of designated sites. But do the evidence wish to respond to that? I'm thinking that's probably a conscious decision. But maybe you could explain.

1:24:01

I think if you're sort of the applicant, I think if we obviously we ended up in the realms of having compensation measures, we will have to have monitoring that goes with that. But we that is in the theoretical realms at the moment, and there is nowhere for that to really sit in this. So this is really looking at the displacement effect as itself, irrespective of how that you know, manifests on a designated site. So I think that's why that is we do in the updates, I think make the link that of course, if

there is monitoring for designate for any compensation packages, then that will be linked to that and we just we just touch base effectively on this to to make the link but we can't obviously pull that in here because it's that's entirely the two separate things. So

1:24:54

yeah, and that's that seems to be in line with all natural and drafting terms of monitoring of any compensation measures because they want that all together. completely self contained, which is understood. Okay. I then the final point under this agenda item was about DCA or DML security. And I don't think that I have anything else I want to raise other than we've already discussed on the best practice protocol. But I will just check with the mlo whether you have anything that you wanted to raise about DML condition wording as it relates to red throated diver mitigation, or monitoring.

1:25:26

Mark Hershey, mmm, thank you. No, nothing further tourism, etc. Thank you.

1:25:31

Thank you very much.

1:25:32

Okay,

1:25:33

so unless anybody else, Miss devalve, did you want to come in? Are you just

1:25:38

jealous of the applicant, I just wanted to confirm that the use of helicopters is an option during base construction and operation and maintenance.

1:25:49

Thank you very much. Thank you for confirming that point. Okay, so then unless anybody else wants to raise anything on on the item, three red throated diver matters, then I think what we'll do is we will take a break and come back to look at item four or five and, and we won't be going into quite as much detail on forum five just because of the nature of things we want to discuss. And I want to allow enough time to talk about derogations and compensation. So we will take a 15 minute break now. Actually, I'll make it. I'll make it 19 minutes and we'll take it forward to quarter to 1145 and we'll reconvene here at 1145 Thank you, everybody.