

**SCOTTISHPOWER  
RENEWABLES**

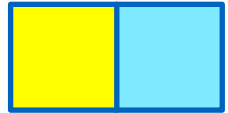
# **East Anglia ONE North and East Anglia TWO Offshore Windfarms**

## **Applicants' Comments on Natural England's Deadline 11 Submissions**

Applicant: East Anglia TWO and East Anglia ONE North Limited  
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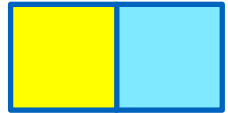
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**Applicable to East Anglia ONE North and East Anglia TWO**



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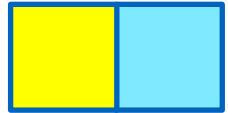
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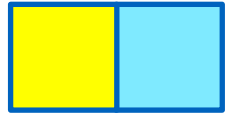
## Glossary of Acronyms

AEoI	Adverse Effect on Integrity
AONB	Area of Outstanding Natural Beauty
APP	Application Document
AQMA	Air Quality Management Area
AS	Additional Submission
BLF	Beach Landing facility
CoCP	Code of Construction Practice
CRM	Collision Risk Modelling
DCO	Development Consent Order
DML	Deemed Marine Licence
EIA	Environmental Impact Assessment
EMP	Ecological Management Plan
ES	Environmental Statement
ESC	East Suffolk Council
FFC	Flamborough & Filey Coast
HRA	Habitats Regulation Assessment
IPMP	In-Principle Monitoring Plan
IPSIP	In-Principle Site Integrity Plan
kW	Kilowatt
LCA	Landscape Character Assessment
LCT	Landscape Character Type
LMP	Landscape Management Plan
LVIA	Landscape and Visual Impact Assessment
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
NE	Natural England
NGET	National Grid Electricity Transmission
NO <sub>2</sub>	Nitrogen dioxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NRMM	Non-Road Mobile Machinery
OLEMS	Outline Landscape and Ecological Management Strategy
OTE	Outer Thames Estuary
OWF	Offshore Windfarm
PD	Procedural Decision
PEIR	Preliminary Environmental Information Report
PMoW	Precautionary Method Statement
PRoW	Public Right of Way
PTS	Permanent Threshold Shift / Permanent Auditory Injury
PVA	Population Viability Analysis
RSPB	Royal Society for the Protection of Birds
RTD	Red-Throated Diver
SAC	Special Area of Conservation
SCC	Suffolk County Council
SCHAONB	Suffolk Coasts and Heaths Area of Outstanding Natural Beauty
SEAS	Suffolk Energy Action Solutions
SIP	Site Integrity Plan
SNS	Southern North Sea
SPA	Special Protected Area
SuDS	Sustainable Drainage System
UXO	Unexploded Ordnance

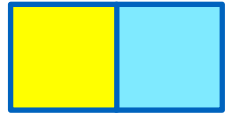


## Glossary of Terminology

Applicant	East Anglia TWO Limited / East Anglia ONE North Limited
Construction operation and maintenance platform	A fixed offshore structure required for construction, operation, and maintenance personnel and activities.
East Anglia ONE North project	The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia ONE North windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
East Anglia TWO project	The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive, as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017 and regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017. These include candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas.
Generation Deemed Marine Licence (DML)	The deemed marine licence in respect of the generation assets set out within Schedule 13 of the draft DCO.
Horizontal directional drilling (HDD)	A method of cable installation where the cable is drilled beneath a feature without the need for trenching.
Inter-array cables	Offshore cables which link the wind turbines to each other and the offshore electrical platforms, these cables will include fibre optic cables.
Jointing bay	Underground structures constructed at intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
Landfall	The area (from Mean Low Water Springs) where the offshore export cables would make contact with land, and connect to the onshore cables.
Link boxes	Underground chambers within the onshore cable route housing electrical earthing links.
Meteorological mast	An offshore structure which contains metrological instruments used for wind data acquisition.
Mitigation areas	Areas captured within the onshore development area specifically for mitigating expected or anticipated impacts.
Marking buoys	Buoys to delineate spatial features / restrictions within the offshore development area.



Monitoring buoys	Buoys to monitor <i>in situ</i> condition within the windfarm, for example wave and metocean conditions.
Natura 2000 site	A site forming part of the network of sites made up of Special Areas of Conservation and Special Protection Areas designated respectively under the Habitats Directive and Birds Directive.
Offshore cable corridor	This is the area which will contain the offshore export cables between offshore electrical platforms and landfall.
Offshore development area	The East Anglia TWO / East Anglia ONE North windfarm site and offshore cable corridor (up to Mean High Water Springs).
Offshore electrical infrastructure	The transmission assets required to export generated electricity to shore. This includes inter-array cables from the wind turbines to the offshore electrical platforms, offshore electrical platforms, platform link cables and export cables from the offshore electrical platforms to the landfall.
Offshore electrical platform	A fixed structure located within the windfarm area, containing electrical equipment to aggregate the power from the wind turbines and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which would bring electricity from the offshore electrical platforms to the landfall. These cables will include fibre optic cables.
Offshore infrastructure	All of the offshore infrastructure including wind turbines, platforms, and cables.
Offshore platform	A collective term for the construction, operation and maintenance platform and the offshore electrical platforms.
Platform link cable	Electrical cable which links one or more offshore platforms. These cables will include fibre optic cables.
Safety zones	A marine area declared for the purposes of safety around a renewable energy installation or works / construction area under the Energy Act 2004.
Scour protection	Protective materials to avoid sediment being eroded away from the base of the foundations as a result of the flow of water.
Transition bay	Underground structures at the landfall that house the joints between the offshore export cables and the onshore cables.
Transmission DML	The deemed marine licence in respect of the transmission assets set out within Schedule 14 of the draft DCO.



## 1 Introduction

1. This document presents the Applicants' comments on Natural England's (NE) Deadline 11 submissions as follows.
  - Applicant's Comments on Natural England's Deadline 11 Submissions – Natural England's Cover Letter (REP11-120);
  - Applicants' Comments on Natural England's Deadline 11 Submission – Natural England's Representation to East Anglia ONE (EA1) Non-Material Change to DCO Application (REP11-121);
  - Applicants' Comment on Natural England's Deadline 11 Submission – Natural England's Response to ExA Questions (REP11-123);
  - Applicants' Comments Natural England's Deadline 11 Response – Natural England's Response to Commentaries on the Draft Development Consent Order (REP11-124); and
  - Applicants' Comments on Natural England's Deadline 11 Submission - Natural England's Response to London Array OWF Year 3 Ornithological Monitoring Report (REP11-122).
2. This document is applicable to both the East Anglia TWO and East Anglia ONE North DCO applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23<sup>rd</sup> December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.



## 2 Comments on Natural England's Deadline 11 Submissions

### 2.1 Applicant's Comments on Natural England's Deadline 11 Submissions – Natural England's Cover Letter (REP11-120)

ID	NE Comment	Applicants' Comments
<b>Natural England's formal statutory response for Examination Deadline 11</b>		
01	<p><b>Natural England Deadline 11 Submissions</b></p> <p>Natural England has reviewed the relevant documents submitted by the Applicant at Deadline 10. We would like to highlight to the Examining Authority that only new documents (version 1) or revised versions of outline documents/plans where amendments have been formally made will be responded to by Natural England at each relevant Deadline. Natural England is submitting the following documents within the following thematic appendices:</p> <ul style="list-style-type: none"> <li>• EN10078 355130 EA2 Appendix A22 – NE Representation to East Anglia ONE (EA1) Non-Material Change to DCO Application</li> <li>• EN10078 355130 EA2 Appendix A23 – NE response to London Array OWF Year 3 Ornithological Monitoring Report</li> <li>• EN10078 355130 EA2 Appendix K9 – NE response to ExA Questions (ExQ3)</li> <li>• EN10078 355130 EA2 Appendix K10 – NE response to Commentaries on the draft Development Consent Order</li> </ul>	Noted
02	<p><b>Risks and Issues Log</b></p> <p>Natural England will not be submitting an updated Risk and Issues Log into examination at Deadline 11. This is because there have</p>	Noted





ID	NE Comment	Applicants' Comments
	<p>been limited changes. We will submit an updated log at Deadline 12 to reflect any progress and/or changes in our position that have occurred.</p>	
03	<p><b>Natural England's Representation to East Anglia ONE (EA1) Non-Material Change to DCO Application</b></p> <p>A copy of Natural England's response to the East Anglia ONE (EA1) Non-Material Change (NMC) to the Development Consent Order (DCO) Application, submitted to the planning inspectorate on the 1st June, 2021 is included in Appendix A22 at Deadline 11 for consideration with regards to the EA1N and EA2 project applications.</p> <p>Within this document, Natural England questions whether such a NMC (if granted) provides the legal certainty required to rely on the as-built parameters for the purposes of Habitat Regulations Assessments (HRA), including whether the use of 'as built' values e.g. for collision risk modelling based on a NMC can be used for in-combination assessment. We recommend that the Department for Business, Energy and Industrial Strategy (BEIS) seek advice on the matters outlined within the document.</p>	<p>See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1).</p>
04	<p><b>Natural England's Strategic Advice on London Array</b></p> <p>In response to issue ID 4 of REP10-017 where the Applicant challenges the 11.5km buffer on the grounds of no supporting data, Natural England thought it appropriate to submit our statutory advice provided to the MMO on London Array OWF into examination. Appendix A23 at Deadline 11 is NE's response to the London Array Year 3 Ornithological Monitoring Report. This document clearly demonstrates evidence of a larger buffer.</p>	<p>See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1).</p>



ID	NE Comment	Applicants' Comments
05	<p><b>Outline Code of Construction Practice</b></p> <p>Natural England has reviewed the updated Outline Code of Construction Practice (OCoCP) (clean and tracked) submitted at Deadline 10 [REP10-003, REP10-004]. We welcome the amendments and in-principle the points securing consultation with the relevant Statutory Nature Conservation Body (SNCB) subject to the final wording of Requirement 22 of the DCO which we expect to be submitted at Deadline 12.</p>	<p>Noted. The amendments have been included in the draft DCO submitted at Deadline 12 (document reference 3.1)</p>
06	<p><b>Outline Landscape and Ecological Management Strategy</b></p> <p>Natural England note the Applicant submitted an updated Outline Landscape and Ecological Management Strategy (clean and tracked) and Deadline 10 [REP10-005, REP10-006]. Natural England welcomes the additional mitigation included for nesting birds in Section 7.3.</p>	<p>Noted.</p>
07	<p><b>Issue Specific Hearing 17 Action</b></p> <p>Natural England's response to the Issue Specific Hearing (ISH17) action is as follows:</p> <p><b>Offshore Ornithology Compensation Measures:</b> Submit response to any outstanding matters of concern regarding the updated Schedule 18 of the dDCOs.</p> <p>Natural England will advise on the suitability of Schedule 18 once we have further details on the ornithology compensation measures which are to be discussed further with the Applicant prior to Deadline 12.</p>	<p>Noted.</p>



ID	NE Comment	Applicants' Comments
08	<p><b>Letter of No impediment</b></p> <p>Natural England continues to work with the Applicant through our Discretionary Advice Service with the intention to resolve outstanding issues regarding badger setts and provide a draft Letter of No Impediment (LONI) before the end of Examination.</p> <p>We understand the Applicant will confirm at Deadline 11/12 that it will not be possible to obtain a draft LONI for Great Crested Newt (GCN) by the deadline for the end of Examination.</p>	<p>The Applicants have updated the draft badger mitigation licence application documents to address comments received from Natural England under their Discretionary Advice Service and have re-submitted this to Natural England's Wildlife Licencing Team.</p> <p>As per the <b>Applicants' Comments on Natural England's Deadline 10 Submissions</b> (REP11-049), the application for a great crested newt (GCN) licence will be progressed post-consent given an emerging change in practice by Natural England in issuing Letters of No Impediment. The Applicants agreed with NE during consultation undertaken prior to submission of the draft GCN licence that e-DNA survey data was sufficient for Natural England's decision-making in respect of determining a Letter of No Impediment. Natural England have since confirmed that they are unable to determine an application for a draft GCN licence on this data alone, and require population size class estimates which would require presence/absence surveys to be undertaken. These surveys would ordinarily be undertaken post-consent when the specific locations of onshore infrastructure has been determined and prior to requesting a GCN licence. The Applicants therefore intend to progress the application for a GCN licence post-consent and this approach has been discussed with Natural England.</p>



## 2.2 Applicants' Comments on Natural England's Deadline 11 Submission – Natural England's Representation to East Anglia ONE (EA1) Non-Material Change to DCO Application (REP11-121)

ID	NE Comment	Applicants' Comments
<b>Introduction</b>		
1	<p>This document provides a copy of Natural England's representation to the East Anglia ONE (EA1) Non-Material Change to DCO application submitted to the Planning Inspectorate on the 1<sup>st</sup> June 2021.</p> <p>Within this document we provide generic advice regarding NMC and the implications for legally securing headroom for the East Anglia ONE offshore wind farm. Our concern is that wind farm projects cannot rely on NMC from another project when assessed in combination to free up headroom . If approved for East Anglia ONE, this may potentially result in setting a precedence for NMC for other wind farm developments and we seek further review by the Department for Business, Energy and Industrial Strategy (BEIS) on this matter.</p> <p>Natural England request this should be taken into consideration by both the EA1N and EA2 windfarm applications.</p>	<p>See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1).</p>
<b>DCO Non-Material Change</b>		
2	<p>Natural England understand that East Anglia ONE Limited (EAOL) is seeking to amend the Development Consent Order (DCO) to reduce the maximum number of turbines to reflect the 102 turbines installed for the project. We agree that the proposed amendments should be considered as a non-material change (NMC), as they are fully within the consented Rochdale Envelope and the adverse impacts will be no worse than those assessed in the original</p>	<p>See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1).</p>



ID	NE Comment	Applicants' Comments
	<p>environmental statement (ES) and Habitats Regulations Assessment (HRA) for EA ONE.</p> <p>However, Natural England questions whether such a NMC (if granted) provides the legal certainty required to rely on the as-built parameters for the purposes of HRA, including the use of 'as built' values from e.g. collision modelling in an in-combination assessment.</p>	
3	<p>Below Natural England sets out our initial analysis of this issue, including some concerns that in our view require further consideration before 'as built' values based on a NMC can be adopted in in-combination assessments. We consider it would be prudent for BEIS to seek legal advice on these matters:</p> <ol style="list-style-type: none"> <li>1. Under the Planning Act 2008, the Secretary of State (SoS) has the power to change or revoke a DCO for up to four years following substantial completion of the development. However, this time limit does not apply in relation to non-material changes, i.e. those changes that the SoS is satisfied are not material.</li> <li>2. The legislation does not define what amounts to either a material or non-material change, but Government guidance on the subject confirms the following: <ol style="list-style-type: none"> <li>a. A change should be treated as material if it would require an updated Environmental Statement (ES) (from that at the time the original DCO was made) to take account of new, or materially different, likely significant effects on the environment as a result of the change.</li> <li>b. A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment (HRA). Similarly, the need for a</li> </ol> </li> </ol>	<p>See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1).</p>



ID	NE Comment	Applicants' Comments
	<p>new or additional licence in respect of European Protected Species (EPS) is also likely to be indicative of a material change.</p> <p>3. The Applicant believes the Application amounts to a NMC because it would not require an updated EIA or HRA. Specifically, the Applicant states that the as-built parameters are fully within the Rochdale Envelope originally consented and that the adverse impacts are no worse than those assessed in the EIA or HRA accompanying the original DCO. The Applicant has also stated that the Application meets other criteria for NMC applications concerning compulsory acquisition, land rights and the local population.</p> <p>4. There is no legal time limit on making non-material changes to DCOs. As such, there would be nothing to prevent the developer in this case from making a further NMC application in the future to increase the number and size of turbines specified for this windfarm. So long as the adverse impacts of the change being requested were no worse than the worst-case scenario assessed in the EIA or HRA accompanying the original DCO (and other criteria concerning compulsory acquisition, land rights and the local population were met), there is the risk that such an NMC application could be granted and thus that additional and/or larger turbines could be installed in the future.</p> <p>5. In view of the above, even if the NMC is granted, we question whether it would be appropriate to rely on as-built parameters for HRA purposes in-combination assessments. This is because the developer could, in theory at least, keep on amending the project via NMC applications up to the limit of the Rochdale Envelope.</p>	



ID	NE Comment	Applicants' Comments
4	<p>Natural England recognises the desirability of establishing environmental 'headroom' in order to facilitate further offshore wind development, and is keen to ensure this is achieved in a legally robust manner. We would be pleased to have further discussions with BEIS regarding this matter if that would be helpful.</p>	<p>For the reasons set out at R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021 (document reference ExA.AS-36.D12.V1), the Applicants consider that a NMC <u>is</u> a legally robust mechanism in which to release headroom.</p>
<b>Supporting Statement – Collision Risk Modelling Update</b>		
5	<p>Natural England has reviewed the Collision Risk Modelling Update in Appendix A of the Supporting Statement. The following aspects of Appendix A require clarification:</p> <ol style="list-style-type: none"> <li>1. We note that the revised values were calculated using species specific avoidance rates with Band Model Option 1 for gannet, kittiwake, lesser black-backed gull and herring gull, and Option 2 for great black-backed gull. However, it is not clear how the site specific proportion of birds at collision height (PCH) used for Option 1 have been calculated, i.e. from boat-based estimates, or by using the relative size of the bird using digital aerial survey methods. This detail should be included in Appendix A for clarity. Natural England also advise that outputs from both Option 1 and Option 2 for all species are presented.</li> <li>2. Natural England's general advice is that Option 2 i.e. generic flight height information should be used in Collision Risk Modelling unless it can be demonstrated that robust, site-specific datasets are available, so it is important that Option 2 outputs are provided by the Applicant.</li> <li>3. We also seek clarity on the different reference points for the turbine parameters (i.e. mean high water spring (MHWS) vs mean sea level (MSL) in terms of draught height). We question why</li> </ol>	<p>As the content of this submission relates to material submitted in relation to the East Anglia ONE NMC application, the Applicant does not think it is appropriate to respond to the submission.</p>



ID	NE Comment	Applicants' Comments
	<p>Appendix A refers to the draught heights to MSL, but the main section of report refers to draught height at MHWS.</p> <p>4. Natural England's understanding is that the hub height entered in the Band (2012) spreadsheet should be referenced to Highest Astronomical Tide (HAT) – Band (2012) states:</p> <p>'Normally, the hub height of wind turbines is measured from Highest Astronomical Tide (HAT), to help ensure navigational clearance requirements are satisfied. However, bird flight heights are measured relative to sea level, which may be 2-3 metres or more lower. Mean sea level (Z0) and HAT are normally stated relative to Chart Datum (CD). The calculation allows for a tidal offset to be added to the hub height, to allow for this additional height above mean sea level.'</p> <p>5. In the main report there is reference to draught height being increased from 22m MHWS to 28m MHWS (Table 2.1), whereas Appendix A seems to be suggesting it is being increased from 22m MSL to 30.8m MSL. Perhaps a correction that accounts for the change going to 28m MHWS vs 30.8m MSL has been applied, but it is not clear why both the report and Appendix A state 22m MHWS/MSL. We seek clarification on this point, as this could potentially affect the CRM predictions.</p>	
6	<p>Please be advised that if this is eventually an accepted route for as built project values to come forward, the full assessment using Natural England's advised values and parameters must be made available and a best practice approach agreed across the industry.</p>	Noted





## 2.3 Applicants' Comment on Natural England's Deadline 11 Submission – Natural England's Response to ExA Questions (REP11-123)

ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
<b>3.3 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))</b>				
<b>Offshore Ornithology</b>				
1	3.2.1	<p><b>Red-throated diver (RTD) displacement</b></p> <p>With regard to RTD displacement, on page 36 of [REP10-017], the Applicants state that "... <i>the in-combination assessment is already overprecautionary...</i>".</p> <p>a) To the Applicants: Drawing together the evidence from your previous submissions, please provide a summary of your reasoning to justify this statement.</p> <p>The Applicants' argument in relation to the potential displacement effects on RTD is predicated upon its contention that the SPA population is at worst, not declining and at best, may be increasing.</p> <p>b) How confident are you that this statement is robust, given improvements in survey techniques?</p>	<p>b) Natural England's view is due to the change in survey platform of the visual aerial survey methods used to inform the original designation of OTE SPA and the more recent digital aerial surveys it is difficult to specifically quantify how substantial a factor the change in survey platform was in apparent increase. However, there is clear evidence that digital aerial surveys have a significantly greater level of detection than earlier methodologies, hence them now being industry standard.</p> <p>In REP4-089, REP6-113, REP8-160 we have emphasised the importance of considering all the relevant conservation objectives, including the extent of supporting habitat and distribution. It is clear from recent surveys within the Outer Thames</p>	<p>b) This question was about the population size, and specifically with reference to whether it has increased or remained stable over the last 20 years or if the observed changes in abundance are due to changes in survey methods. As noted by the ExA, the Applicants consider the population has at the very least remained stable, and quite probably increased over the period. In arriving at their position, the Applicants have given consideration to the scale of change in estimated population size, how feasible the alternative explanations are (improved methods vs. increased abundance) and where the likely balance lies between those two factors.</p> <p>Natural England has simply stated that it is difficult to know the answer and has provided no response to the points made by the Applicants.</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		<p>c) Should future surveys using digital surveying techniques indicate that the SPA population was declining then how would this be accounted for in the mitigation and the compensation measures that you are proposing?</p> <p>Does <u>Natural England</u> have any comments on (b) and (c)?</p>	<p>Estuary SPA using digital aerial surveying techniques that the presence of OWFs does affect the distribution of RTDs, (see Figure 8 from Irwin in REP8-160) which shows the largest density of divers is equidistant from the three windfarms – London Array, Kentish Flats and Gunfleet Sands.</p> <p>c) If future surveys indicated a decline in the SPA abundance of RTD and evidence that this was due to the presence of OWFs then it would be difficult to see how the mitigation measure of moving EA1N 2km from the SPA boundary would mitigate, given the extent of displacement is likely to be either 8km as Applicant's modelling suggests, or 11.5km as the London Array monitoring work suggests. It is NE's view that the compensatory measures proposed by the Applicant of managing shipping will not compensate for displacement caused the presence of OWFs. Natural England re-iterates that mitigation and/or compensatory measures are already required to</p>	<p>Natural England has repeated the assertion that '<i>It is clear from recent surveys within the Outer Thames Estuary SPA using digital aerial surveying techniques that the presence of OWFs does affect the distribution of RTDs</i>'. However, as the Applicants have demonstrated through comparison of distributions recorded before the windfarms were built with ones recorded after construction (<b><i>Applicants' Comments on Natural England's Deadline 8 Submissions</i></b> (REP9-016)) this is an overly simplistic interpretation of the recent surveys: the concentration of red-throated divers in the area between the three windfarms existed before there were any windfarms for the birds to avoid. While the windfarms will have had an additional effect on the bird locations, it is apparent that this is only one of the influences on red-throated diver location preferences.</p> <p>c) As stated in <b><i>Applicants' Responses to ExQ3 Volume 4 - 3.2 Biodiversity Ecology and Natural Environment</i></b> (REP11-088), if a population decline was observed in the SPA, the first steps</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
			<p>address the impacts arising from the proximity of EA1N to the SPA, irrespective of what future monitoring shows. The mitigation and compensatory measures proposed by the Applicant for RTD do not adequately address the likely impacts of the proposal on the ability of parts of the SPA to support its qualifying feature.</p>	<p>would be to determine the reasons. To date there is no evidence that the presence of offshore windfarms has reduced the red-throated diver population in any part of the wintering range. It seems highly improbable that future windfarms located <u>outside</u> the SPA will trigger such an effect when ones <u>inside</u> the SPA boundary have not had this effect. Therefore, the Applicants consider that it is not appropriate to give consideration to impacts which have not occurred (i.e. population decline in the wintering area attributable to windfarms) and for which there is currently no evidence to suggest will occur.</p>
2	3.2.3	<p><b>Legal submissions: RTD displacement – ‘effective habitat loss’</b></p> <p>In [REP10-017], the Applicants contend that recorded densities of red throated diver (RTD) vary within the Outer Thames Estuary (OTE) SPA and that to treat all parts of the SPA as being of equal importance for the species is not appropriate. They state that, “<i>the areas of the SPA within the potential zone of influence of the windfarms have consistently recorded lower</i></p>	<p>Natural England accepts that densities of RTD do vary within the OTE SPA. However, those areas within the boundary of the OTE SPA constitute the ‘most favourable territories’ for this species in the non-breeding season, these having been identified for inclusion in the SPA through the classification process. This used ‘maximum curvature analysis’ to determine those areas of sea with greater importance for divers within a surveyed area, excluding those of lesser</p>	<p>The method for defining SPA boundaries is necessarily arbitrary to some extent, since in the marine environment there are no distinct lines which separate areas of suitable habitat from those which are not. However, while there needs to be some method for defining boundaries, this should not be mistaken for representing a line which the birds themselves recognise: it is a statistical distinction. As noted by the Applicants</p>



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		<p><i>densities of birds and this is a material factor in considering the magnitude of potential impact</i>".</p> <p>Does Natural England accept this line of reasoning? If not, please explain your reasons.</p>	<p>importance. This is a transparent and repeatable process used to classify a number of marine SPAs for non-breeding waterbirds.</p> <p>Therefore, we do not accept the implication that because some parts of the SPA have lower densities, impacts on these areas should not be considered as potentially resulting in AEoI. The proposal will affect parts of the SPA classified as 'most suitable territories' for the conservation of red-throated diver and impair their ability to support that feature of the site. At least 0.5% of the entire SPA (using the Applicants' model outputs) or 1.4% of the SPA (using displacement percentages from the London Array monitoring) will be impacted. This level of effective habitat loss means that an AEoI from EA1N alone cannot be ruled out beyond reasonable scientific doubt.</p>	<p>and acknowledged by Natural England, it is very evident from the surveys of the region that there are large variations in densities within the SPA. Furthermore, these are remarkably consistent through time, so it is appropriate to take this into consideration when assessing potential effects. All else being equal, a windfarm located in or near a region of higher densities would be predicted to have an effect on a larger number of birds than one located near lower density regions (a category which applies to the current projects). A redistribution of a small number of birds must be of less concern than a redistribution of a large number, and the likelihood of an AEoI as a consequence will also reflect such differences. It is on this basis that the Applicants consider that East Anglia ONE North and East Anglia TWO will have such a small effect that an AEoI either alone or in-combination can be ruled out.</p>
3	3.2.4	<b>Legal submissions: RTD displacement – 'effective habitat loss'</b>	Natural England highlights that the relevant test under the Habitats Regulations is whether an AEoI can be ruled out beyond	The Applicants broadly agree with Natural England's position that red-throated divers avoid offshore



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		<p>In REP9-064, Natural England accepts that exclusion effects can be seen as a continuum of severity and states that “<i>the Bagmoor Wind case appears to have been a severe case</i>”.</p> <p>The Applicants [REP10-017] submit that in the Bagmoor Wind case, there was a concluded ecological consequence (i.e. that the territory was likely to be abandoned resulting in a potential increase in disturbance), whereas for EA1N and EA2, the displacement of RTD would have effects that are too small to detect.</p> <p>a) How does Natural England respond to this position?</p> <p>In light of what we understand to be the magnitude of displacement effects on RTD of the OTE SPA in the case of the EA1N and EA2 projects, where does Natural England consider that the projects sit</p>	<p>reasonable scientific doubt, either from a project alone, or in combination with other projects. In response to the specific questions posed:</p> <p>a) It is clear from a growing body of evidence that RTD are displaced by OWFs and there is no evidence to date that any habituation occurs. Therefore, the consequences of this ongoing displacement effect are that for a proportion of RTD, some of that habitat subject to displacement effects will be no longer available to them.</p> <p>The severity of displacement effects from an OWF will depend on its proximity to the SPA. There will be a continuum of effect from an OWF within the SPA, where impacts will be at their most severe, to an OWF beyond 10km, where effects would be difficult to detect. In general, the closer a project is to the SPA boundary, the greater the predicted impact of displacement on the effective area of supporting habitat and distribution of the interest feature will be. This is clear from the two projects under examination. EA1N at 2km from the SPA is predicted to</p>	<p>windfarms, although the Applicants consider that the evidence strongly indicates the extent of this effect is context specific and is not readily generalisable between studies (as detailed in previous submissions).</p> <p>The Applicants also agree that there is a distance component to this effect – it is strongest at the windfarm itself and decreases with distance. But, as noted above, the peak strength of the effect and the distance over which it extends are not fixed. The Applicants' modelling has demonstrated that the maximum effect for the current projects is likely to be no more than 35-40% displaced from the windfarms and this will decline to 0% by around 7-8km. These are material factors, since they determine the real world level of impact in a manner which is not considered from Natural England's approach of simply estimating the area of overlap between the windfarm buffer and the SPA. The Applicants consider that when these factors are included it can be concluded that there will be no</p>



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			<p>affect between 0.5% and 1.4% of the SPA, a substantial area given the size of the SPA – thereby triggering an AEol alone. Whereas with EA2 at 8.5km, the area of habitat affected would be between 0 and 0.075% of the SPA – hence our advice being that EA2 will not have an AEol alone, though it will make a contribution to the in-combination AEol.</p>	<p>AEol for either project alone, or in-combination with other projects.</p>
4	3.2.6	<p><b>Cumulative and in-combination collision risk: Flamborough and Filey Coast SPA</b></p> <p>Paragraph 5 of the letter dated 28 April 2021 from Gareth Leigh of BEIS to Norfolk Boreas Limited (NBL)<sup>1</sup> requests that NBL in collaboration with Natural England provides updated in-combination assessments for collision and/or displacement effects at Flamborough and Filey Coast SPA, with and without Hornsea Project Four Offshore Wind Farm, using Natural England's advised assessment parameters and the latest project parameters and baseline ornithology survey data for Hornsea Project Three Offshore Wind Farm. That information is requested by 28 May 2021.</p>	<p>Please be advised that the Norfolk Boreas deadline has been extended to the 25th June 2021. Natural England is continuing to work with Ørsted to agree the final figures that will inform the answer to this question. However, we are currently not in a position to answer this question without agreed final HP3 figures, once available we will provide ExA with a response.</p>	<p>Ørsted have provided revised figures to the Applicants which were used within D11 Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Update (REP11-027). NE has subsequently provided advice on the updated figures which result in a few minor changes which have been incorporated into the Deadline 12 update to the aforementioned document (document reference ExA.AS-8.D12.V1).</p>



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		<p>Since the in-combination totals used for EA1N and EA2 are derived from figures agreed at D8 of the Norfolk Vanguard examination, what do the Applicants and Natural England consider to be the implications (if any) of those updated in-combination assessments for the EA1N and EA2 examinations?</p>		
5	3.2.7	<p><b>HRA Derogation Case: Alternatives Assessment</b></p> <p>The ExA is not satisfied that the indicative array area layout plans submitted as Figure 1 in [REP6-044] and [REP8-088] provide an adequate response to ExQ2.2.5 [PD-030] and questioning at ISH14. This has particular importance for the consideration of EA1N effects, where Natural England has argued that increasing the buffer between the array area and the OTE SPA boundary should be considered as a suitable project-level alternative solution. In the absence of an agreed position with Natural England and other IPs, the ExA seeks the presentation of the following material to inform its consideration of the project's HRA derogation case.</p> <p>a) Please update [REP8-088] to include an indicative layout plan that shows the</p>	<p>Natural England will review the response provided by the Applicant.</p>	n/a





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		<p>minimum inter-turbine spacing requirements specified within the offshore parameters of the dDCO (1200m x 800m) and which shows the siting of structures in the eastern part of the array area. On that plan, please indicate the distance between the closest of the WTGs and the boundary of the OTE SPA.</p> <p>b) If you wish to retain the plan currently presented in [REP8-088] (in addition to, and not instead of, the plan requested under part (a) of this question), then please justify the spacing distances presented and explain why you consider that a spacing arrangement more akin to the minimum spacing requirements could not realistically, in practice, be provided.</p> <p>c) Please also update the layout plan to ensure the key shows which is the purple solid line and which is the purple dashed line for the respective EA3 export cables. Please supplement the supporting text to explain why it is necessary to allow for both a preliminary and alternate export cable</p>		





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		<p>for EA3 and clarify why four structures are depicted within one of the cable exclusion zones.</p> <p>In section A.1.2.2 of [REP8-088] you refer to the Ulysses 2 cable and the EA3 export cables crossing the EA1N site and indicate that an exclusion zone of 500m on either side of each cable is required. However, in Figure 1 of the same document you indicate a cable exclusion zone of 750m. Please explain why these two greyed out zones in Figure 1 are 750m rather than 1,000m wide, or alternatively, amend the plan at Figure 1 to reserve cable exclusion zones that are 1,000m in width.</p>		
6	3.2.8	<p><b>Without prejudice compensation measures [REP8-089]: level of detail in relation to implementation</b></p> <p>Natural England expresses a view [REP9-065] that greater detail about the design and implementation of compensatory measures is needed to provide the SoS with the necessary confidence that those measures can be secured. This is a position echoed strongly by the RSPB [REP10-054, REP9-071]. The Applicants maintain the position [REP10-017, REP10-018, REP9-016] that compensation</p>	<p>Natural England provides the following list of general topics that fully-formed compensation proposals should provide prior to determination, noting that this is not an exclusive list:</p> <ul style="list-style-type: none"> <li>a) What, where, when: clear and detailed statements regarding the location and design of the proposal.</li> <li>b) Why and how: ecological evidence to demonstrate compensation for the</li> </ul>	<p>The Applicants maintain the position from (REP11-088), but note that the Applicants have updated the <b>Offshore Ornithology Without Prejudice Compensation Measures</b> document submitted at Deadline 12 (ExA.AS-4.D12.V4) to make provision for consideration during the detailed design of the compensation measures of any potential wider effects, either beneficial or negative, on other habitats and species that might arise from the implementation of the proposed</p>



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		<p>measures are appropriately secured and provide adequate levels of compensation, whilst providing necessary flexibility to allow for refinements in detail in the post-consent period.</p> <p>The ExAs note that publicly available correspondence from the Secretary of State in relation to the decision stage for the Norfolk Boreas application requests additional environmental information with regard to possible HRA compensatory measures. This includes, for example, "confirmation of the selected site(s) for compensation strategies and details of how the site(s) will be acquired/leased", as well as 'an implementation timetable for when the compensation measures will be delivered and achieve their objectives in relation to the first operation of the wind farm".</p> <p>a) In light of these requests, do the Applicants maintain their position that sufficient detail about the delivery of its without prejudice compensation measures has been submitted into this examination to enable the Secretary of State to discharge its duties as Competent Authority without the need for further consultation in the decision stage?</p>	<p>impacted site feature is deliverable in the proposed locations</p> <p>c) Demonstrate that on ground construction deliverability is secured and not just the requirement to deliver in the DCO i.e. landowner agreement is in place</p> <p>d) Policy/legislative mechanism for delivering the compensation (where needed)</p> <p>e) Clear aims and objectives of the compensation</p> <p>f) Mechanism for further commitments if the original compensation objectives are not met – i.e. adaptive management</p> <p>g) Clear governance proposals for the postconsent phase – we do not consider simply proposing a steering group is sufficient</p> <p>h) Ensure development of compensatory measures is open and transparent as a matter of public interest, including how information on</p>	<p>compensation measure. This is set out in the compensation plans for kittiwake, gannet, razorbill, guillemot and lesser black-backed gull (Appendix 1 through 5). Additionally, the compensation plans for Appendix 1 through 6 have been updated to make provision for including why the location of each compensation measure is appropriate ecologically and likely to support successful compensation.</p>



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		<p>Does Natural England or RSPB have any observations to make on this question? If you consider that additional detail on the implementation of compensation measures is necessary, please set out the main areas in which you consider detail to currently be lacking.</p>	<p>the compensation would be publicly available</p> <ul style="list-style-type: none"> <li>i) Timescales for implementation esp. where compensation is part of a strategic project, including how timescales relate to the ecological impacts from the development</li> <li>j) Commitments to monitoring specified success criteria,</li> <li>k) Proposals for ongoing 'sign off' procedure for implementing compensation measures throughout the lifetime of the project.</li> </ul>	
7	3.2.9	<p><b>Without prejudice compensation measures [REP8-089]: kittiwake feature of the Flamborough and Filey Coast (FFC) SPA</b></p> <p>Specifically, in relation to the proposed compensation measure for the kittiwake feature of the FFC SPA, Natural England states that [REP9- 065], "<i>greater detail regarding the design and implementation of the artificial nest sites are needed</i>". Please can Natural England elaborate on this by being more specific about what further information the Applicants could provide that might assuage your concerns.</p>	<p>Please see our response to 3.2.8. In particular, Natural England requests that the Applicant demonstrates how the proposed artificial nest sites can be delivered in the context of the proposed redevelopment of Lowestoft port, in doing so showing that suitable location/s for an artificial nest site are available and achievable.</p>	<p>The Applicants maintain the position from (REP11-088).</p>



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		Please explain why this information is required prior to decision as opposed to as a possible submission of detail for approval post consent.		
8	3.2.10	<p><b>Without prejudice compensation measures [REP8-089]: information about selected locations</b></p> <p>Natural England [REP10-053] advises that article 3(a) of Schedule 18 Parts 1-4 and 6 of the draft DCO [AS-110] should be amended to require that the information to be submitted includes justification for the selected location in terms of its ecological appropriateness.</p> <p>Please could the Applicants respond to this advice?</p>	Natural England will review the response.	n/a
9	3.2.11	<p><b>Without prejudice compensation measures [REP8-089]: timing of implementation</b></p> <p>Natural England has repeatedly expressed a view [REP9-069, REP8- 163] that compensatory measures must be fully functioning and effectively compensating prior to construction/operation. The Applicants accept [REP9-016, REP10-017] that for some species subject to collision risk, there would be a time lag between the compensation measures being put in place and those</p>	<p>Natural England notes that the lack of detail regarding the location and/or design of compensatory measures makes it difficult to accept some of the Applicant's assertions regarding the likelihood and timeliness of successful compensation. This means in turn that it is difficult to answer the ExA's questions definitively. In response to the questions directed at Natural England:</p> <p>a) Guillemot/razorbill – this measure presumably compensates for</p>	<p>a &amp; b) The Applicants maintain that the small numbers of mortalities predicted due to either collision risk or displacement when compared with the compensation measures being proposed means that it will be almost impossible to not over-compensate for the effects, and probably to a very large degree. Therefore if compensation is required, any short delays before the compensation is considered to be fully operational will be of no material</p>



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		<p>measures resulting in additional birds within an SPA population, but have maintained that the resulting 'mortality debt' would be extremely small and could be recouped within one or two years of the measures becoming operational. The Applicants make the case that an approach akin to that within the made DCO for Hornsea Project Three, in which a lead-in period of four full breeding seasons is specified, would not be proportionate or justified in this case due to the much smaller numbers of birds that would need to be compensated for.</p> <p>a) To Natural England - do you accept the Applicants' reasoning on pages 49-50 of [REP10-017] that for displacement effects, in all cases the compensation measures would have immediate effect (i.e. removing predation mortality or preventing displacement effect at source) and therefore that any 'time lag' concerns should be confined to potential collision effects? If not, please explain your reasons.</p> <p>b) To Natural England - do you accept the Applicants' reasoning on pages 49-50 of [REP10-017] that any 'mortality debt'</p>	<p>displacement related mortality with additional birds reaching adulthood at a colony where rats are reducing productivity. The increase in productivity resulting from the eradication will depend on a number of factors, so it is unclear at this stage how quickly impacts will be addressed, given that the island where rat eradication will occur has not yet been identified, let alone whether the extent to which rats are a limiting factor to guillemot/razorbill productivity on that island. Red-throated diver – it is not clear what 'preventing the displacement effect at source' would mean in the context of compensatory measures – this sounds more like impact reduction/mitigation rather than compensation. We remain concerned at the lack of adequate compensatory measures for RTD at OTE SPA.</p> <p>b) Implementation of compensatory measures prior to the impacts arising is a well established principle in UK Habitats Regulations decisions, being in place to ensure that impacts on the</p>	<p>consequence as once operating, the compensation measure will rapidly pay back any mortality debts accrued, and thereafter since the compensation will continue to deliver, the legacy of these measures will confer considerable conservation benefits.</p> <p>c) The magnitudes of project alone effect are all below the 1% threshold of increases in mortality which are considered to be detectable against natural variations (as agreed by Natural England). Therefore, the Applicants consider that this test has already been met: if an effect is so small it is undetectable, it seems reasonable to assume that it is also not detrimental to the population (at the very least over the short term under consideration).</p>



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		<p>associated with collision effects would be tolerable in this case? If not, please explain your reasons.</p> <p>c) To Natural England – do you accept the Applicants' reasoning on page 68-69 of [REP9-016] that the smaller number of predicted mortalities arising from this project, relative to the predicted mortalities from Hornsea Project Three, justifies the absence of any requirement in Schedule 18 to wait for compensation to become effective before the wind farm may begin operation? If not, please explain your reasons.</p> <p>To the Applicants – if an approach was to be taken within Schedule 18 that required all of the proposed compensation measures to be effectively compensating prior to the potential adverse effects arising (in the manner seen, for example, in the Hornsea Project Three DCO), what (if any) would be the implications for the delivery programme, cost and financial viability of the project as a whole?</p>	<p>affected site are addressed in advance. If the Applicant wishes to depart from this principle, it is for them to clearly demonstrate that the implementation of compensatory measures will be designed and timed in a way that satisfactorily offsets the impacts i.e. that any 'mortality debt' resulting from a lag between impacts arising and compensation delivering would not be detrimental to the conservation of the impacted colony.</p> <p>c) See b) above – if it can be demonstrated that the 'mortality debt' would not be detrimental to the conservation of the impacted colony, it could be the case that Schedule 18 could be drafted in a way that secures the timely implementation of the measures whilst not necessarily requiring the compensation to become effective before operation. Given the lack of specific information regarding design and location of the measures, we are not convinced that this option is currently available to the Applicant.</p>	



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10	3.2.12	<p><b>Without prejudice compensation measures [REP8-089]: duration of compensation measures</b></p> <p>The RSPB has highlighted [REP10-054] provisions in Schedule 14, Part 1, article 7 of the made Hornsea Project Three DCO, which require that artificial nest structures for kittiwake must be maintained beyond the lifetime of the authorised development if they are colonised, with routine and adaptive management measures continuing whilst the structures are in place. Schedule 18, Part 1, article 7 of the dDCO for this project does not include comparable provisions.</p> <p>a) Whilst noting the Applicants' comments on pages 10 and 11 of [REP9-020], including that the EC Guidance does not explicitly require compensation measures to be provided in perpetuity, please could the Applicants set out the justification for taking a different approach in this case to that deemed to be necessary in the recently made DCO for Hornsea Project Three?</p> <p>b) Please could the Applicants set out the justification for departing from Defra</p>	<p>Natural England offers the following comments:</p> <p>c) We agree that this principle has wider applicability as regards artificial nest sites, but stress that each compensatory proposal would need to be considered with respect to its specific requirements and measures.</p> <p>d) Judgements regarding ongoing management would need to be made in the period prior to decommissioning, as these will inevitably be measure-specific. It would be appropriate for compensatory proposals to develop potential options for the post decommissioning phase. We note that in some instances, repowering will be proposed at the end of the project's lifetime, in which case the compensatory proposals would need to be reviewed. As regards their status, Defra are the Government department with lead responsibility for MPA policy and designation. We do note that under planning policy,</p>	<p>c) The Applicants maintain the position from (REP11-088).</p> <p>d) The relevant parts of Schedule 18 state that artificial nest sites and predator proof fencing installed as compensatory measures must not be decommissioned without written approval of the Secretary of State. Furthermore, the <b>Offshore Ornithology Without Prejudice Compensation Measures</b> [REF-XXX] states that "<i>The structure would remain in place, and be maintained as fit for purpose until the later of (i) the decommissioning of the windfarm or (ii) a determination by the SoS that the compensation measure is no longer required, following consultation with the relevant statutory nature conservation body</i>". Schedule 18 requires that the final Implementation and Monitoring Plan submitted to the Secretary of State for approval must include details of the maintenance schedule for any artificial nesting site or predator proof fencing (as appropriate), must accord with the compensation plans set out within the Appendices to the <b>Offshore</b></p>





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		<p>advice to Competent Authorities that they "should make sure the compensatory measures...will remain in place all the time they're needed, which in most cases will be indefinitely"?</p> <p>c) To the Applicants, RSPB and Natural England - The RSPB has raised this matter in relation to kittiwake, however arguably the principle has wider applicability, not least in this case to artificial nesting sites for gannet. Should an approach be taken in Schedule 18 Part 1 which requires the compensatory measures to remain in place beyond the decommissioning of the wind farm where those measures have been colonised, which of the other Parts of Schedule 18 (i.e. which other compensation measures), if any, might require similar amendment?</p> <p>d) Further to the question in part (c), what does Natural England consider would happen to these sites in terms of their management and status if they were to be maintained after the wind farm has been decommissioned?</p>	<p>compensatory sites are given similar protection to classified SPAs.</p>	<p><b><i>Ornithology Without Prejudice Compensation Measures</i></b> document and must be implemented as approved.</p> <p>There are therefore appropriate controls in place to ensure ongoing maintenance of the compensatory measures and this may extend beyond the operational life of the Projects.</p>





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		Could the Applicants please explain any implications of the above approach for the Offshore Ornithology Compensation Measures Funding Statement [REP8-081]?		
11	3.2.14	<p><b>Without prejudice compensation measures [REP8-089]: quantification of effect</b></p> <p>The appendices for [REP8-089] (noting these are unique to each project) follow a standard format, dealing with each species in turn. Under the heading of 'quantification of effect', appendices 1-5 attempt to quantify the effect of the project, alone and then in-combination, upon the feature of the European site. For appendix 6 (red-throated diver) however, there is no clear quantification of the potential effect, either of the project alone or in-combination.</p> <p>a) Please could the Applicants explain the reasons for this?</p> <p>If it is possible to include this information within appendix 6, then please could the Applicants do so in the updated document.</p>	For red-throated diver, Natural England highlights that the clear quantification of the potential effect should be in terms the impacts on the conservation objectives for OTE SPA – see REP4-089, REP6-113, REP8-160 where we have emphasised the importance of considering all the relevant conservation objectives, including the extent of supporting habitat and distribution.	<p>The Applicants updated the Offshore Ornithology In-Principle Compensation Measures document at Deadline 11 (REP11-070 with a final version submitted at Deadline 12 – document reference ExA.AS-4.D12.V4) to include overall displacement and associated mortality figures at the project alone and in-combination level for the East Anglia TWO project and at the in-combination level for the East Anglia ONE North project. Project alone displacement and associated mortality figures were already provided for the East Anglia One North project under the 'quantification of effect' heading in REP8-090.</p> <p>With regard to how the conservation objectives should be considered, refer to Appendix 1 of REP8-093 and ID4 and ID5 of REP10-017.</p>
12	3.2.15	<p><b>Without prejudice compensation measures [REP8-089]: quantification of effects</b></p>	Please see our advice at [REP5-087] on headroom. Subsequently, in response to a	See R17QF.2 of Applicants' Responses to Rule 17 Questions of 18 June 2021



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		<p>In a number of appendices to [REP8-089], the Applicants advance the argument that, “(t)he Project’s impacts are small compared with those for most other windfarms, and would also be more than offset by the difference between the total collisions based on consented windfarm designs compared with as-built designs”.</p> <p>How do Natural England and the RSPB respond to this statement?</p>	<p>non-material change consultation regarding East Anglia 1, Natural England has sought legal advice on this matter. Please see Appendix A22 at Deadline 11.</p>	<p>(document reference ExA.AS-36.D12.V1).</p>
13	3.2.16	<p><b>Compensatory measures for the guillemot and razorbill features of the FFC SPA</b></p> <p>In response to Natural England's advice [REP9-065] that because the FFC SPA is classified for the <i>albionis</i> sub-species of guillemot, compensation should be ideally directed towards this sub-species, the Applicants make the case [REP10-017, page 14] that the <i>albionis</i> and <i>aalge</i> sub-species are probably not biologically valid classifications or genuinely separate populations, and therefore that compensation at colonies within the range of <i>aalge</i> would still improve the conservation status of colonies in the <i>albionis</i> area.</p> <p>Do Natural England and RSPB accept the evidence and logic progressed by the</p>	<p>Natural England advise that from 1 January 2018 the British Ornithological Union (BOU) adopted the International Ornithological Congress (IOC) World Bird List, including for the purposes of maintaining the British List. We note that both <i>aalge</i> and <i>albionis</i> are listed as subspecies of guillemot by IOC, and therefore these sub-species should be treated as biologically valid classifications.</p> <p>It should be noted that Natural England’s previous advice stated that compensation should ideally be directed towards the <i>albionis</i> sub-species. This is in accordance with the general principle that if compensatory measures cannot be directed at the SPA colony itself, then measures should be</p>	<p>Natural England is correct that this is listed as subspecies by the IOC and BOU. However, this does not detract from the rather weak evidence that this is a real distinction, and nor does it detract from the evidence that birds from each “subspecies” may move to breed at a colony of the other subspecies. So, it is clear that actions to improve the conservation status of colonies in either subspecies area will benefit the populations of both subspecies.</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		Applicants in this regard? If not, please explain and evidence your position.	implemented to be as close as possible to the impacted colony, in order to minimise the potential damage to the Natura 2000 network.	
14	3.2.18	<p><b>Without prejudice compensation measures [REP8-089]: updates</b></p> <p>Some parts of [REP8-089] appear to have been overtaken by subsequent events or agreements. For example, section 10.3.1 of the East Anglia TWO document indicates that Natural England is not able to advise that an AEoI on RTD of the OTE SPA for the project alone can be ruled out, whereas in [REP8-110] and [REP8-166] Natural England appear to accept that it can be.</p> <p>Please could the Applicants review the content of [REP8-089] for both projects and ensure that the documents present the latest available information and status of agreement.</p>	Natural England will review the response.	n/a
15	3.2.19	<p><b>Compensatory measures: prey availability measures</b></p> <p>In [REP10-051], Natural England sets out the reasons why it contends that <i>“to deliver the most ecologically robust outcome, prey availability measures are the most appropriate</i></p>	Natural England will review the response.	n/a



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		<p><i>compensatory mechanism to attempt to progress</i>".</p> <p>How do the Applicants respond to this advice?</p>		
16	3.2.20	<p><b>Compensatory measures: prey availability measures</b></p> <p>In [REP10-051], Natural England states that "developing a strategic approach to increasing prey availability will be more judicious".</p> <p>a) Do you consider that there would be a realistic prospect of such a strategic approach being developed within the period necessary for the commencement of the EA1N and EA2 projects?</p> <p>How in practical terms do you envisage that an individual developer (or pair of developers) could drive this strategic approach forward with the range of government, conservation, renewables and fisheries stakeholders that would need to be involved?</p>	<p>Natural England advises that developing the mechanisms for delivery of strategic compensation lie with government departments such DEFRA rather Natural England. However, we are aware that strategic compensation options are being considered in a wider forum than these two projects, and noting the point raised in question 3.2.11 re 'time lag', there may be opportunities that arise at a later date which these projects could contribute to. Therefore, we advise that the door is 'left open' to allow the developers to use such an approach if it is available and advantageous to project/OWF and the environment.</p>	<p>The Applicants maintain the position from (REP11-088).</p>
<b>Marine Mammals</b>				
17	3.2.21	<p><b>In-combination effects on the Southern North Sea (SNS) SAC</b></p>	<p>Natural England will review the response</p>	<p>n/a</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		<p>Natural England's position has remained throughout examination that it cannot exclude adverse effect on integrity of the SNS SAC in-combination until a mechanism is in place to manage multiple SIPs. This is a matter that Natural England acknowledges is a wider, regulatory issue rather than a project-specific one. Nonetheless, the ExAs will need to form recommendations on this matter for the projects before us. In [REP9-060], the Marine Management Organisation (MMO) states that it <i>"acknowledges these comments and believes that the SNS SAC SIP is the appropriate document to manage the in-combination noise impacts, along with the SNS Regulators Working Group"</i>.</p> <p>a) Could the MMO please submit the terms of reference for the SNS Regulators Working Group and confirm whether the control of incombination underwater noise impacts on features of the SAC is within the scope of the Group's responsibilities.</p> <p>Please could the MMO elaborate on how this management of incombination noise impacts will work in a practical sense - is it limited to the management of the SNS activity tracker or are</p>		



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		there other functions of the Working Group in coordinating the noisy activities of multiple projects?		
18	3.2.22	<p><b>In-Principle Site Integrity Plan (SIP) for the Southern North Sea (SNS) SAC</b></p> <p>Natural England's response to outstanding ISH7 action point 9 [REP8- 165] directs the reader to [REP8-161]. However, a direct response to action point 9 appears not be included in [REP8-161]. Please could Natural England respond to these points:</p> <ul style="list-style-type: none"> <li>a) Do you agree that the IP SIP provides an appropriate framework to agree mitigation measures and that the scope of the measures within the IP SIP are appropriate?</li> <li>b) Are you satisfied that through the IP SIP, the Applicants will use the most appropriate measures for the Project based on best knowledge, evidence and proven available technology at the time of construction?</li> </ul> <p>Do you have confidence that the mitigation measures contained in the IP SIP are deliverable?</p>	<p>Natural England confirms that we are content with the IP SIP for project alone impacts. Therefore, the answer to all three questions is 'yes'.</p>	<p>The Applicants consider this matter to be closed.</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
19	3.2.23	<p><b>In-Principle Site Integrity Plan (SIP) for the Southern North Sea (SNS) SAC</b></p> <p>The updated In-Principle SIP [REP8-031] is clear that the document will need to be reviewed once any final management measures for the Southern North Sea SAC are defined or further advice is provided.</p> <p>On the basis of the best available information, could Natural England please indicate when any final management measures for the SNS SAC can be expected, and whether there is any potential for the management measures to be made available within the timescales of these examinations?</p>	<p>The timeframes have not been confirmed to Natural England, but it is highly unlikely to be during the remainder of this examination.</p>	Noted
20	3.2.24	<p><b>Marine mammals: underwater noise modelling update [REP8- 040]</b></p> <p>It is apparent from submissions that there are ongoing discussions between the Applicants and the MMO in relation to underwater noise modelling and specifically [REP8-040].</p> <p>Please could the MMO respond to [REP8-040] and set out any outstanding concerns in full by Deadline 11.</p>	<p>Natural England will review the response.</p>	n/a
<b>Benthic Ecology</b>				



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
21	3.2.25	<p><b>Benthic ecology: Security for reef buffer</b></p> <p>Noting the Applicants response to ExQ2.2.15 [REP6-061], does NE and the MMO consider that the MMO has adequate control through the approval process as currently documented to ensure that significant impacts on Sabellaria reef are avoided?</p>	Natural England is content with the current controls within the dDMLs.	The Applicants consider this matter to be closed.
22	3.2.26	<p><b>Benthic ecology: Cable installation in mixed sediments</b></p> <p>Noting the Applicants response to ExQ2.2.17 [REP6-061] and taking specific note that the additional measured used at Boreas related to cable installation with a SAC whereas that is not proposed here, does NE and the MMO consider that any additional measures or controls around cable installations in mixed sediments are required?</p>	Natural England advises that further controls are not required for these projects due to their location and level of impact.	The Applicants consider this matter to be closed.
<b>Terrestrial Ecology</b>				
23	3.2.28	<p><b>Ammonia emissions on Leiston-Aldeburgh SSSI and Sandlings SPA</b></p> <p>In the representation from SEAS [REP5-109] and at ISH 14 the issue of the impact of emissions, in particular ammonia, on Leiston-Aldeburgh SSSI and Sandlings SPA was raised</p>	Natural England has not identified a significant impact pathway arising as a result of ammonia emissions from vehicles/machinery, and so have not sought further assessments of impacts from ammonia emissions on the SSSI and SPA.	The Applicants welcome this position and consider this matter to be closed.





ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		<p>by Mr Redmore. The Applicants responded to this in [REP6-032]. Having regard to these submissions, please comment on whether this matter has been properly assessed by the Applicants and what you consider the impacts on the habitats and species of the aforementioned SSSI and SPA would be as a result of vehicular and machinery emissions associated with the Proposed Developments.</p>		
24	<b>3.2.30</b>	<p><b>Removal of Badger Setts</b></p> <p>The Applicants have confirmed in [REP9-016] that as detailed design information is not currently available then the worst-case scenario is that the known active badger sett along the cable corridor will require removal. Given that you have stated that without further information this would be of major concern, what further information would you be seeking from the Applicants on this matter and in your view is the matter resolvable during the Examinations?</p>	<p>Natural England is working with the Applicant through our Discretionary Advice Service, with the intention to resolve the matter before the end of Examination and provide a Letter of No Impediment.</p>	<p>As previously mentioned in relation to this matter, the Applicants have updated the suite of draft badger mitigation licence application documents to address comments received from Natural England and have resubmitted this to Natural England's Wildlife Licencing Team.</p> <p>It is commonplace for such badger setts to be closed where required, subject to appropriate mitigation being provided.</p>
25	<b>3.2.31</b>	<p><b>Lowland mixed deciduous woodland mitigation</b></p> <p>Natural England states in [REP10-052] that lowland mixed deciduous woodland is declining and that every effort should be made to avoid</p>	<p>Natural England will review response.</p>	<p>n/a</p>



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		its loss. The OLEMS state that the planting of trees over the cable corridor will not be possible. Please provide further details on how impacts to this woodland and fragmentation thereof will be mitigated in terms of avoiding loss and providing enhancements to this habitat.		
26	3.2.32	<p><b>Hairy Dragonfly</b></p> <p>In [REP10-052] Natural England recommends that a survey for hairy dragonfly can now take place at the end of May/beginning of June to better understand the potential presence of hairy dragonfly and potential use of the meadow adjacent to the Hundred River.</p> <p>a) Will any further surveys be undertaken and submitted into the Examinations?</p> <p>b) If so, please indicate at which deadline additional survey results will be available.</p> <p>If not, then please explain your reasoning, responding to comments from Natural England.</p>	Natural England will review response.	n/a
27	3.2.33	<p><b>Noise and ecological issues at landfall</b></p> <p>Please respond to Natural England's query in [REP7-074] regarding what would happen if</p>	Natural England will review response.	n/a



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		there was a conflict between reducing noise and increasing ecological issues in the placement of the equipment at landfall. How is this accounted for in the dDCO?		
28	3.2.34	<p><b>Nightingale mitigation</b></p> <p>In your D5 [REP5-084] and D8 [REP8-162] submissions you stated that the nightingale mitigation measures within the SPA crossing Method Statement were fundamental to preventing an AEoI of the Sandlings SPA and should be secured by way of Requirement. Could you please justify this position given that nightingale is a named component of the SSSI but not a qualifying feature of the Sandlings SPA?</p> <p>The dDCO Commentaries also refer at page 15 (Missing Requirement – Ecosystem Services for Sandlings SPA)</p>	Natural England confirms that nightingale is not an interest feature of the SPA. We advise that the mitigation measures are fundamental to preventing impacts on the <u>notified interest features of the SSSI</u> . We apologise for any confusion caused.	The Applicants consider this matter to be closed.
<b>3.11 Marine and Coastal Physical Processes</b>				
29	3.11.1	<p><b>Avoidance of the Coralline Crag</b></p> <p>Paragraph 15 of the Landfall Hydrogeological Risk Assessment [REP6- 021] states that the HDD is expected to be within the Coralline Crag beneath the cliffs, and the strength of the</p>	Natural England to review response.	n/a



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		<p>Coralline Crag is expected to prevent any drilling fluid breakout at this point. In [REP8-052] the Applicants state that complete avoidance of the Coralline Crag has never been proposed. The Applicants go on to state any reference to avoiding direct physical disruption to the outcrop of Coralline Crag refers to the parts of the Crag that are visible at the surface; the HDD bores as proposed pass through the Coralline Crag, but beneath its visible surface before 'punching out'.</p> <p>a) Please could you confirm that in referring to the avoidance of direct physical disruption to the outcrop of Coralline Crag it was also your understanding that this meant only those parts visible at the surface and that the HDD bores would in fact pass through the Coralline Crag?</p> <p>b) If this was not your understanding does this cause any concern and what would be the implications?</p>		
30	3.11.3	<p><b>HDD feasibility</b></p> <p>Please comment on NE's assertion in [REP7-074] that even short sections of HDD can fail (eg Lincs OWF 2010). It also notes that in recent years there have been issues with sinkholes (eg Hornsea 2 and Triton Knoll) and</p>	Natural England to review response.	n/a



ID	ExA's Question Ref	ExA's Question	NE Comment	Applicants' Comments
		even though sediment conditions are different, lessons must be learnt to make sure it won't happen here. Should this be considered in the HDD verification note? If not, please justify why.		
31	3.11.4	<p><b>Monitoring of coastal processes and remedial action</b></p> <p>Both monitoring of coastal processes and remedial action are relevant to NE and MMO. How will consultation be undertaken?</p>	Natural England to review response.	n/a
<b>3.16 Seascape, Landscape and Visual Amenity</b>				
32	3.16.1	<p><b>Seascape</b></p> <p>The ExA note the positions of the Applicant and Natural England concerning any effects of the project on matters of seascape as detailed by Natural England [REP10-053] and the Applicant [REP9-017]. The ExA note that the position appears stable – that is that both parties agree to disagree with no further comments. Respond to the above statement with any further comments, should you wish to do so.</p>	Natural England has no further comments.	The Applicants have no further comments.



## 2.4 Applicants' Comments Natural England's Deadline 11 Response – Natural England's Response to Commentaries on the Draft Development Consent Order (REP11-124)

ID	ExA Commentary	NE's Comments	Applicants' Comments
<b>Appendix K10 to the Natural England Deadline 11 Submission - Natural England's Response to Commentaries on the Draft Development Consent Order</b>			
1	<p><i>Art 2(1) definitions: maintain</i></p> <p>This definition is wide, a matter raised at ISHs6, but is expressly limited 'to the extent assessed in the [ESs]'. Parties' concerns in relation to this matter are noted.</p>	No further comment to add.	The Applicants consider this matter to be closed.
2	<p><i>Art 2(1) definitions: relevant to onshore substation design</i></p> <p>Reference to the "substations design principles statement" certified document are noted, and the operation of the substations design process will be discussed further at ISHs16 and 17.</p>	No comment.	The Applicants consider this matter to be closed.
3	<p><b>SCHEDULE 1 — Authorised project</b></p> <p><b>Missing Requirement – Ecosystem Services for Sandlings SPA</b></p> <p>The February 2021 Commentaries identified that Natural England had sought</p>	<p>a) Natural England can confirm the requirement is required in relation to securing mitigation for nightingale.</p> <p>b) Natural England considers that this requirement is still needed to ensure mitigation for this species</p>	<p>See ID21 of the Applicants' Comments on the ExA's Commentary on the draft DCO [REP11-081].</p> <p>The Applicants note NE's confirmation that the request for a requirement does not relate to any qualifying species of the SPA. The Applicants</p>



ID	ExA Commentary	NE's Comments	Applicants' Comments
	<p>a requirement to ensure that proposed SPA mitigation measures in the form of planting must be in functioning condition/ providing ecosystem services as nesting habitat, before works can commence within the boundary of the SPA.</p> <p>The Applicants responded saying that they <i>'do not consider it to be necessary or appropriate for a requirement to be added which prevents construction of the Projects until the proposed SPA mitigation measures (Work No. 12A) must be in functioning condition. The functionality of the habitat is outside the Applicants control as in reality, the habitat could be prepared to an optimum standard, but avian species simply chose not to use the area prior to construction.'</i></p> <p>The ExAs observe that the matters to be fairly included in any requirement should sensibly relate to the management and condition of habitat in broadly floristic terms. It should not require the presence of mobile/ avian species which may choose not to use the land for reasons beyond the Applicants' control. However, it remains our understanding drafting on this point is needed to ensure the avoidance of an adverse effect on integrity (AEol) as</p>	<p>which is a notified feature of the Leiston to Aldeburgh SSSI.</p> <p>Natural England supports the draft wording proposed by the ExA.</p>	<p>would therefore submit that the comment made in the ExA's Commentary that such a requirement is necessary <i>"to ensure the avoidance of an adverse effect on integrity (AEol)"</i> is not correct.</p> <p>The Applicants strongly disagree that any such requirement is necessary as the mitigation is already secured through requirement 21 and the Outline SPA Crossing Method Statement as explained in previous submissions, including in the Applicants' response to this comment at ID21 of REP11-081.</p>



ID	ExA Commentary	NE's Comments	Applicants' Comments
	<p>asserted by NE in D5 submissions [REP5-084] at page 2 and then again at D8 [REP8-162].</p> <p>To ensure that there is a need for a requirement on this point (on the basis that it relates to feature of the SPA), NE are requested to check their records:</p> <p>a) to confirm whether this request relates to the nightjar (an SPA feature) or the nightingale (an SSSI feature); and</p> <p>b) to advise on the need for and extent of security based on the outcome of this check.</p> <p>If the matter at issues remains the need to secure the SPA against and AEol and to achieve adequate security on this point, it would seem necessary for the relevant habitat values to have been provided and to be assessed to be in functioning condition, capable of accommodating relevant mobile/ avian species, before development commences. Such a requirement might provide as follows:</p> <p>{n}. Construction of {an appropriate extent of the onshore works defined with provisional reference to Works Nos. 11, 12, and 13} shall not commence until Work No. 12A has been agreed by the relevant</p>		





ID	ExA Commentary	NE's Comments	Applicants' Comments
	<p>planning authority in consultation with the relevant statutory nature conservation body to have been completed in accordance with the ecological management plan.</p> <p>Drafting changes should be submitted by both parties together with reasons for any outstanding differences.</p>		
4	<p><b>SCHEDULE 17 — Documents to be Certified</b></p> <p><b>Certified documents audit: approval and consultation processes</b></p> <p>The certified documents include outline and in-principle plans and strategies secured by Requirements and to which the relevant decision maker (normally the relevant local planning authority or the MMO) must refer when discharging Requirements.</p> <p>As part of the audit of certified documents, and with reference to the preferred draft DCOs, the Applicants are requested to prepare a table that identifies the following elements:</p> <ul style="list-style-type: none"> <li>• The name of each outline or in-principle plan and strategy;</li> <li>• The name of any body consulted during its preparation;</li> </ul>	<p>Natural England will review the table and provide comments should we notice any discrepancies.</p>	<p>Noted</p>



ID	ExA Commentary	NE's Comments	Applicants' Comments
	<ul style="list-style-type: none"> <li>Whether and if so which provisions in the dDCOs are relied upon to secure a final or detailed version of the document;</li> <li>The identity of the body approving any final or detailed version of the document; and</li> <li>The identity of any consultees engaged in the preparation or approval of the final or detailed version of the document.</li> </ul>		
5	<p><b>SCHEDULE 17 — Documents to be Certified</b></p> <p><b>Certified documents: approval and consultation processes</b></p> <p>Natural England has made the following requests in relation to outline and in-principle plans and strategies. The Applicant's response and the comments of East Suffolk Council are sought.</p> <p>a) That NE be secured as a consultee on the final Code of Construction Practice (CoCP) (R22); and</p> <p>b) That the HDD Verification Clarification Note [REP6-024] should be updated once pre-construction surveys are complete and</p>	<p>Natural England has agreed some updated wording within the outline CoCP and expects the Applicant to submit updated wording for requirement 22 at Deadline 12. We will provide further comment at Deadline 13.</p> <p>Natural England supports the proposed wording for Requirement 13 and the approval of the updated HDD Verification Clarification Note.</p>	<p>Noted. The Applicants have updated the <b>draft DCO</b> at Deadline 12 (document reference 3.1) to make provision for consultation with the relevant statutory nature conservation body during the approval of the code of construction practice to the extent that it relates to the documents specified within the requirement (which reflects those identified within the <b>Outline CoCP</b> (document reference 8.1)).</p> <p>As previously stated within the <b>Applicants' Comments on Natural England's Deadline 7 Submissions</b> (REP8-049), the Applicants do not consider it necessary to update the <b>HDD Verification Clarification Note</b> (REP6-024) post-consent as the results from the pre-construction surveys will inform the final design (including tolerances) which will be included within the final Landfall Construction Method Statement.</p>



ID	ExA Commentary	NE's Comments	Applicants' Comments
	<p>then become a certified document to be considered in the discharge of R13.</p> <p>In relation to item a), in R22 the means of security could be:</p> <p>'... has been submitted to and approved by the relevant planning authority and the relevant statutory nature conservation body.'</p> <p>In relation to item b), in R13 the means of security could be:</p> <ul style="list-style-type: none"> <li>(a) <u>a detailed horizontal directional drilling verification note (which accords with the horizontal directional drilling verification clarification note);</u></li> <li>(b) a landfall construction method statement for the construction of that part of Work No. 6 or Work No. 8 (which accords with the outline landfall construction method statement); and</li> <li>(c) a landfall monitoring plan (which accords with the outline landfall monitoring plan contained within appendix 2 of the outline landfall construction method statement).</li> </ul>		<p>The Applicants do not agree with the proposed amendments to requirement 13 for the reasons set out in ID30 of the <b>Applicants' Comments on the ExA's Commentary on the draft DCO</b> [REP11-081].</p>



ID	ExA Commentary	NE's Comments	Applicants' Comments
	Please provide comments on the means of drafting.		
6	<p><b>SCHEDULE 18 — Offshore Ornithology Compensation Measures</b></p> <p><b>Content Matters in ExQ3</b></p> <p>The ExAs have raised questions on the content of the Schedule in ExQs3 at 3.2.10 – 3.2.12.</p>	See response to ExA questions Appendix K9 at Deadline 11.	See ID9 and ID10 at <b>section 2.4</b> .
7	<p><b>SCHEDULE 18 — Offshore Ornithology Compensation Measures</b></p> <p><b>Consultation on Schs 18 Measures</b></p> <p>In [REP10-049], the MMO maintains the view that a consultation period of six weeks should be specified within Schedule 18 for reasons set out in [REP8-156]. The Applicants' positions remain [REP10-014] that this level of detail is inappropriate and that such details will be determined by the SoS at the relevant time post-consent. The ExAs consider that there is benefit in</p>	No comment.	The Applicants maintain the position from (REP11-088).



ID	ExA Commentary	NE's Comments	Applicants' Comments
	<p>drafting a specific and certain provision (see NPPF para 55).</p> <p>a) Do the Applicants continue to object to a six-week consultation period?</p> <p>b) If so, please propose an alternative period.</p> <p>c) If this matter remains unagreed, the MMO is requested to set out its final position at D12.</p>		
8	<p><b>SCHEDULE 18 — Offshore Ornithology Compensation Measures</b></p> <p><b>Form and Structure of the Schedule and Adequacy of Security</b></p> <p>Are there any other remaining issues about the form and structure of this Schedule or the adequacy of the security provided by it?</p>	<p>Natural England reserves the right to comment with the context of the updated compensation plans following the submission of updated DCO at Deadline 12. At this juncture we have no additional issues to raise.</p>	Noted



## 2.5 Applicants' Comments on Natural England's Deadline 11 Submission - Natural England's Response to London Array OWF Year 3 Ornithological Monitoring Report (REP11-122)

ID	NE Comment	Applicants' Comments
1	<p>In response to issue ID 4 of REP10-017 where the Applicant challenges the 11.5km buffer on the grounds of no supporting data, Natural England thought it appropriate to submit our strategic advice into examination. Below is Natural England's response to the London Array Year 3 Ornithological Monitoring Report. This document clearly demonstrates evidence of a larger buffer.</p>	<p>The Applicants have not been able to review the final version of the London Array monitoring report as this is not currently in the public domain. However, on the basis of Natural England's comments in REP11-122 it appears that the main changes requested by Natural England were to the text and conclusions, rather than the analysis. So, it has been assumed here that the results are largely the same as the previous version which the Applicant has been able to review (Appendix 2 of REP2-004).</p> <p>As the Applicants have repeatedly stated in their submissions on this topic, the apparent extent of avoidance which Natural England has attributed to London Array was clearly evident <u>before</u> the windfarm was built (<b>Applicants' Comments on Natural England's Deadline 8 Submissions</b> REP9-016). The Applicants have made this point repeatedly in their submissions and to date Natural England has provided no response to this nor indicated why this is not an important observation that needs to be taken into account.</p> <p>Note that the Applicants have not responded to Annex 1 of REP11-122 as this provides detailed comments on a report that was produced for a different project and developer.</p>
2	<p>Natural England considers that the key point of concern regarding the need for clarity regarding the magnitude and spatial extent of the displacement of red-throated divers around London Array OWF has now been satisfactorily addressed in the report. Other comments on methodological issues which Natural England has made on previous versions of the report and which have not been</p>	<p>n/a</p>



ID	NE Comment	Applicants' Comments
	fully resolved are secondary and can in Natural England's opinion be considered closed.	
3	<p>Natural England advises that the report shows that displacement effects from London Array OWF on red-throated diver within the Outer Thames Estuary SPA (OTE SPA) are affecting 6.1% of the diver population of the SPA, and that these effects extend beyond 10km from the windfarm boundary. This level of displacement significantly exceeds the 3.1– 3.4% of divers predicted to be displaced in the shadow Appropriate Assessment (AA) carried out by the Department of Trade and Industry (Dti) in 2006 into the impacts of London Array OWF on OTE SPA, and the spatial extent of displacement exceeds by an even greater amount the 1km displacement distance used in that AA. The figure of 6.1% in the report is within the range of 6.01% - 9.66% used in 2013 in the Department of Energy and Climate Change (DECC) Review of Consent AA regarding this project. However, the spatial extent of displacement in the report significantly exceeds the worst-case scenario of 3km assumed in that Review of Consent. In other words, the report demonstrates that the impacts on the OTE SPA have been significantly greater than previously predicted.</p> <p><b>Natural England concludes from the report that conditions for the red-throated diver qualifying feature within parts of the OTE SPA are likely to have significantly deteriorated, and advises that it cannot be ruled out that an adverse effect on integrity (AEOI) on OTE SPA has arisen as a result of London Array OWF.</b></p>	<p>The Applicants' have not seen the final report from which these estimates have been taken. However, on the basis that Natural England has not provided a response to the points made by the Applicants with regards to the pre-existing red-throated diver distribution which can be seen in the O'Brien et al. (2012) analysis conducted before London Array was constructed (REP9-016, as noted above), if the same approach has been taken by Natural England in this case then it raises questions as to the robustness of these conclusions. The crucial point being that it would appear entirely feasible that a similar magnitude of effect could be estimated from the earlier (before windfarm) data even though there London Array was not present. Given the pre-existing distribution is almost identical to that seen in 2018, the Applicants consider Natural England's statement '<i>that conditions for the red-throated diver qualifying feature within parts of the OTE SPA are likely to have significantly deteriorated</i>' is unsupported by the evidence.</p> <p>For clarity, the Applicants do not dispute that windfarms have a redistribution effect on red-throated divers, but nothing the Applicants' have seen in other studies, or found in their own modelling has supported the size or scale of effect which Natural England consider to be appropriate.</p>
4	We strongly recommend that MMO convenes a discussion with Defra and Natural England to determine the appropriate response	n/a



ID	NE Comment	Applicants' Comments
	<p>to the significant deterioration of conditions within the Outer Thames Estuary Special Protection Area due to the disturbance of red-throated divers. This is appropriate in light of the requirement under Article 6.2. of the Habitats Directive to prevent the deterioration of European sites, and the duty placed on competent authorities under regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 to have regard to the requirements of the Directives when exercising their functions.</p> <p>There are two current pieces of work that may usefully inform these discussions:</p> <ul style="list-style-type: none"><li>• The ongoing BEIS Review of Consents for the marine SPA suite;</li><li>• Natural England's condition assessment for the Outer Thames Estuary SPA, which is scheduled for this summer.</li></ul>	