



National Infrastructure Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: EastAngliaOneNorth@planninginspectorate.gov.uk
EastAngliaTwo@planninginspectorate.gov.uk

To Natural England
By email only

Your Refs:

Our Refs: EN010077 & EN010078

Date: 17 March 2021

Dear Sir/Madam

**Planning Act 2008 (as amended) – Section 89 and
the Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17**

**Application by East Anglia ONE North Limited for an Order Granting
Development Consent for the East Anglia ONE North Offshore Wind Farm and
by East Anglia TWO Limited for an Order Granting Development Consent for
the East Anglia TWO Offshore Wind Farm**

Requests for further information and written comments

On 16 and 17 March 2021, the Examining Authorities (ExAs) held Issue Specific Hearings (ISHs) 14 into Biodiversity and Habitats Regulations Assessment matters.

The ExAs have decided to seek further information in writing arising from the subject matters of and contributions to these hearings. Questions under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (R17Qs) are set out in **Annex A**. These are the second set of such questions issued in these Examinations and are known as R17QB. They are addressed to Natural England. However, other Interested Parties (IPs) wishing to respond may do so.

The deadline for the submission of the information sought is **Deadline 8, Thursday 25 March 2021**. Any IP wishing to comment on information submitted in response to this request may do so at Deadline 9, Tuesday 6 April 2021 (midday).

All responses should be marked as relating to Rule 17 Questions of 17 March 2021 (R17QB).

Yours faithfully

Rynd Smith

Rynd Smith
Lead Member of the Examining Authorities

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**Application by East Anglia ONE North Ltd for East Anglia ONE North Offshore Wind Farm
Application by East Anglia TWO Ltd for East Anglia TWO Offshore Wind Farm**

**Questions under EPR Rule 17 (R17QB)
Biodiversity and Habitats Regulations Assessment**

Issued on 17 March 2021

This R17Qs document is a parallel document applicable to both Examinations. Each individual question indicates the Examination(s) it is applicable to as follows.

- 1** A yellow icon with a black **1**: the question is applicable to the East Anglia ONE North Examination.
- 2** A blue icon with a white **2**: the question is applicable to the East Anglia TWO Examination.
- 1 2** Both icons: the question is applicable to both Examinations.

The questions raised in this document would have been asked orally of Natural England, had it been represented at Issue Specific Hearings 14: Biodiversity and Habitats Regulations Assessment (ISHs14). Instead, responses are requested in writing. Natural England are also requested to review and respond separately to relevant matters in the ISHs14 Action List, which is directed at all Interested Parties involved in that hearing.

An editable version of this table in Microsoft Word is available on request by email from the Case Teams (please include R17QB in the subject line of your request). It would assist the ExAs if responses were provided in tabular format as far as possible.

Responses are due by **Deadline 8: Thursday 25 March 2021**.



R17Q B To		Question	
Overarching HRA Matters			
R17QB.1	Natural England (NE)	1	2 New HRA Guidance DEFRA/ NE Guidance entitled 'HRAs: protecting a European site' was published on 24 Feb 2021 ¹ . The guidance applies to only European sites in England and Wales and their inshore waters. Notwithstanding this, does NE consider that there is anything in this new Guidance that would alter the approach that the Applicants should take in any HRA responses and specifically in their derogations cases or compensation measures plans? If so, please provide reference to specific parts of the Guidance that require further attention.
R17QB.2	NE	1	2 Implications of the quashing of the decision to grant Norfolk Vanguard DCO On 18 February 2021, the decision to grant development consent for Norfolk Vanguard Offshore Wind Farm was quashed (<u>Pearce v SoS BEIS and Norfolk Vanguard Limited</u> [2021] EWHC 236 (Admin)). It is anticipated that the Secretary of State will now re-determine that application. What do you consider is the most appropriate way to treat the Norfolk Vanguard project in the assessment of cumulative and in-combination effects for these Applications, given the current circumstances?
R17QB.3	NE	1	European sites carried forward to Stage 2 of the HRA assessment A number of European sites and associated qualifying features were screened into the assessment and carried forward to Stage 2 (ie Adverse Effects on Integrity / AEOI) by the Applicant. At [RR-059], NE clearly states those sites/ features for which it cannot agree to conclude no AEOI; however, it does not explicitly agree to conclude no AEOI in relation those sites/ features for which it has not raised concerns. Please can NE confirm whether it is able to advise that the Proposed Development will not result in AEOI on any of the remaining sites and features included that were carried forward to Stage 2 of the assessment for East Anglia ONE North, including (but not limited to): <ul style="list-style-type: none"> • Greater Wash SPA;

¹ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>



R17Q B	To		Question
			<ul style="list-style-type: none"> • Breydon Water SPA and Ramsar; • Broadland SPA and Ramsar; • North Norfolk Coast SPA and Ramsar; • The Wash and North Norfolk Coast SAC; • Humber Estuary SAC; • Vlaamse Banken SAC; and • Voordelta SAC and SPA.
R17QB.4	NE		<p>2 European sites carried forward to Stage 2 of the HRA assessment</p> <p>A number of European sites and associated qualifying features were screened into the assessment and carried forward to Stage 2 (ie AEOI) by the Applicant. At [RR-059], NE clearly states those sites/ features for which it cannot agree to conclude no AEOI; however, it does not explicitly agree to conclude no AEOI in relation those sites/ features for which it has not raised concerns.</p> <p>Please can NE confirm whether it is able to advise that the Proposed Development will not result in AEOI on any of the remaining sites and features included that were carried forward to Stage 2 of the assessment for East Anglia TWO, including (but not limited to):</p> <ul style="list-style-type: none"> • Greater Wash SPA; • Breydon Water SPA and Ramsar; • Broadland SPA and Ramsar; • North Norfolk Coast SPA and Ramsar; • The Wash and North Norfolk Coast SAC; • Humber Estuary SAC; • Vlaamse Banken SAC; • Voordelta SAC and SPA; • SBZ 1 / ZPS 1 SPA; • SBZ 2 / ZPS 2 SPA; • SBZ 3 / ZPS 3 SPA; • Vlakte van de Raan SCI; • Bancs des Flandres SAC; • Vlakte van de Raan SAC; and • Voordelta SAC and SPA.



R17Q	B	To	Question	
R17QB.5	NE	1	2	Offshore In-Principle Monitoring Plans Please provide your views on the scope and content of monitoring provisions included within the Offshore IPMPs [REP6-016], particularly sections 1.7.4 (benthic ecology), 1.7.6 (marine mammals) and 1.7.7 (offshore ornithology).
Red-Throated Diver (RTD) of the Outer Thames Estuary SPA (OTE SPA)				
R17QB.6	NE	1	2	Barrier Effects and Collision Risk The Applicant concluded that AEOI could be excluded in relation to both 'barrier effects and collision risk' and 'displacement/ disturbance' to RTD in-combination with other plans and projects. NE does not agree with the conclusions on 'disturbance/ displacement' [REP1-058, REP3-117, REP5-083] but does not explicitly raise any concerns in relation to 'barrier effects and collision risk'. For the avoidance of doubt, does NE agree that AEOI can be excluded in relation to 'barrier effects and collision risk' for the RTD feature of the OTE SPA?
R17QB.7	NE	1	2	Confidence intervals around the buffer zone analysis: bootstrap replicates In [REP6-113] you query the use of " <i>only 100 bootstrap replicates</i> " and consider this to be arbitrary and potentially restrictive. Having seen the Applicants' response in [REP7-053], do you still maintain your concerns over the number of bootstrap replicates used and, if so, how many bootstrap replicates do you consider should be undertaken as a minimum?
R17QB.8	NE	1	2	Favourable conservation status Please explain your position on the conservation status of the OTE SPA, with relevant cross-references to submitted evidence and to new evidence as required. Is the conservation status of the SPA considered to be favourable or unfavourable? If it is considered to be unfavourable, why is this?
R17QB.9	NE		2	Project alone displacement effects In the table on page 2 of [REP7-071], NE states that AEOI on RTD of the OTE SPA cannot be ruled out for either EA1N or EA2 on a project alone basis 'due to displacement from EA1N'. Please can NE explain its position on AEOI in respect of EA2 project alone displacement effects for the RTD feature of the OTE SPA?



R17Q	B	To	Question	
R17QB.10	NE	1	2	<p>Best Practice Protocol for Minimising Disturbance to RTD</p> <p>Please comment on version 2 of the above document [REP7-046] by D8. In particular, do the commitments contained therein provide sufficient security in terms of mitigation of potential effects on the RTD feature of the OTE SPA?</p>
Kittiwake, Gannet, Razorbill, Guillemot and Seabird Assemblage of the Flamborough and Filey Coast SPA (FFC SPA)				
R17QB.11	NE	1	2	<p>Kittiwake: in-combination collision impacts</p> <p>In terms of in-combination collision impacts on kittiwake of the FFC SPA you state in your D5 submission [REP5-083] that you "... are still considering the implications of the Hornsea Project Three decision and hence our advice in relation to cumulative and in-combination figures when this project is included in the totals." Please advise on when you will be able to provide your response on this matter. If it is possible to do so by Deadline 8 this will enable comments before the closure of the examinations.</p>
R17QB.12	NE	1	2	<p>Kittiwake: Hornsea Project Three contribution to in-combination collision totals</p> <p>Does NE agree with the Applicant's view in section 5.3.2 of [REP6-045] that the in-combination annual kittiwake collisions apportioned to the FFC SPA should exclude the estimated collisions at Hornsea Project Three since that windfarm has been consented on the basis that it fully compensates for its predicted 73 collisions? If not, please explain your reasons.</p>
R17QB.13	NE	1	2	<p>Gannet: In-combination operational displacement effects</p> <p>In [REP7-071], NE indicates that it cannot advise that AEOI can be excluded for in-combination displacement effects on gannet, or for 'collision + displacement' effects on gannet in-combination. Please explain the reasons for this position, or provide reference(s) to where this position is explained.</p>
Lesser Black-Backed Gull (LBBG) of the Alde-Ore Estuary SPA (A-OE SPA)				
R17QB.14	NE	1	2	<p>Apportioning methodology for LBBG of the A-OE SPA</p> <p>Does the Applicants' response in [REP3-070] fully address the matters you have raised in both [REP2-052] and previously in regard to apportioning methodology for LBBG of the A-OE SPA? If not, then what additional information in this regard do you consider the Applicants should provide</p>



R17Q B		To		Question
				and for what purpose?
The Applicants' 'without prejudice' HRA derogation case				
R17QB.15	NE	1	2	<p>NE position in respect of Collision Risk Modelling</p> <p>In your response to ExQ2 [REP6-116] you state that your response to the Applicant's Habitats Regulations Derogation Case will be dependent on ongoing collision risk modelling updates. Furthermore, in your most recent Risk and Issues Log [REP6-119] you note the Applicants' Offshore Ornithology and Cumulative In-Combination Collision Risk Update submitted at D4 [REP4-042] but you state that this does not alter the conclusions you have reached in your D3 submission [REP3-117]. Please set out in clear terms what collision risk modelling information you consider needs to be provided by the Applicants in any further updates to enable you to alter the conclusions you have reached in your D2 [REP2-052] and D3 [REP3-117] submissions?</p>
R17QB.16	NE	1	2	<p>Imperative Reasons of Overriding Public Interest (IROPI): Public interest</p> <p>In its response to EXQ2.2.8 and in section 5.2.4 of its derogations case [REP6-044], the Applicants contend that the strongest influence on seabird populations in coming years is climate change. How does NE respond to the argument that climate change could be a greater driver of seabird population reduction than the effects from offshore wind farms? What is the basis for your position?</p>
Compensatory measures				
R17QB.17	NE	1	2	<p>Compensatory measures: prey availability</p> <p>In Para 15 of [REP7-071] you have stated that "<i>...it is possible that there are options to increase prey availability that have not yet been fully explored, that could more easily be delivered through mechanisms that are less reliant on a Government led/strategic response, for example buying fishing vessel licences and not using the quota.</i>"</p> <ul style="list-style-type: none"> to your knowledge, is this an approach that has been implemented as compensation for any type of development in the marine environment? Are you able to refer to other such examples of measures to increase prey availability which could be explored by a single wind farm developer without the need for government intervention?



R17Q B	To			Question
R17QB.18	NE	1	2	<p>Demonstrating additionality of compensatory measures</p> <p>Do you consider that [REP6-045] and [REP6-046] adequately address the question of how the proposed compensation measures demonstrate additionality over and above the normal measures that are required for the protection and management of European sites? If not, please comment on specific areas that require further justification.</p>
R17QB.19	NE	1	2	<p>Security for compensation measures</p> <p>Please provide your view on the Applicants' overall approach to securing their without prejudice compensation measures within the version 4 dDCOs [REP7-007], with specific reference to articles 44 and Schedules 18.</p>
R17QB.20	NE	1	2	<p>Effectiveness of security for compensation measures</p> <p>Please comment on the effectiveness of the draft wording within Parts 1-6 of dDCOs Schedules 18 [REP7-007] in securing the proposed compensation measures for each of the features of European sites.</p>
R17QB.21	NE	1	2	<p>Timing of implementation of compensatory measures</p> <p>Do you consider that dDCOs Schedules 18 drafting [REP7-007] complies with the Defra /NE guidance ('HRAs: protecting a European site', 24 February 2021)² that "[c]ompensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur" If not, please explain why not, with specific reference to any parts of the schedules that you find problematic?</p>
R17QB.22	NE	1	2	<p>Kittiwake compensation: Suitable locations for artificial nesting sites</p> <p>NE has previously raised concerns [REP4-088] about the availability of appropriate locations for artificial kittiwake nesting sites given the level of interest in this measure from a number of wind farm promoters in the southern North Sea area.</p> <ul style="list-style-type: none"> Please comment on whether you consider there to be a realistic prospect of suitable locations being identified and, if required, planning permission or other relevant permits being approved

² See page 4 footnote 1.



R17Q	B	To	Question	
				<p>for the introduction of artificial nesting site(s) for kittiwake as stated by the Applicants in [REP6-045].</p> <ul style="list-style-type: none"> In [REP6-045] and oral submissions at ISHs14, the Applicants set out their view that any artificial kittiwake nesting site approach would be likely to deliver a significant over-compensation for the effects of the applications on this feature. Please respond to this view.
R17QB.23	NE	1	2	<p>Kittiwake compensation: timescale to achieve compensation</p> <p>The made DCO for Hornsea Project Three requires that artificial nesting sites need to be in place for four full breeding seasons prior to first operation of the wind farm. For EA1N and EA2, the Applicants are proposing drafting that would require compensation (if necessary) to be place prior to the operation of any turbine.</p> <ul style="list-style-type: none"> Does NE agree with para 76 of [REP6-045] that this would be an acceptable approach given the relatively small 'mortality debt' in these cases? Does NE agree that, for the same reasons, there is also less requirement for the current in-principle compensation plan to contain detailed designs and site locations?
Other offshore ornithology matters				
R17QB.24	NE	1	2	<p>Offshore ornithology: ES conclusions</p> <p>With reference to Tables 12.52 and 12.53 of [APP-060], please provide an update as to your position on the Applicant's EIA conclusions in relation to the potential impacts on offshore ornithology, both in terms of the project(s) alone and cumulative effects. It would assist the ExAs if this was presented in tabular format, with an entry for each potential impact, in a similar way to the presentation of HRA effects in Table 1 of [REP3-117]. Where NE disagrees with the Applicant's conclusion, please explain the reasons for this position, or signpost to the examination submission in which these reasons have been provided.</p>
Marine mammals				
R17QB.25	NE	1	2	<p>Project alone effects on harbour porpoise of the Southern North Sea SAC (SNS SAC)</p> <p>Please set out your current position in relation to AEOI for the harbour porpoise feature of the Southern North Sea SAC as a result of the project alone.</p>



R17Q B	To	1	2	Question
R17QB.26	NE	1	2	In-combination effects on harbour porpoise of the SNS SAC Please set out your current position in relation to AEOI for the harbour porpoise feature of the Southern North Sea SAC as a result of the project in-combination with other plans and projects.
R17QB.27	NE	1	2	In-combination effects on harbour porpoise of the SNS SAC: In-Principle Site Integrity Plan Please respond to actions 7 and 8 from ISHs7.
R17QB.28	NE	1	2	Updated DML conditions [REP7-007] Please comment on the following DML conditions in relation to management, mitigation and monitoring of marine mammal effects: <ul style="list-style-type: none"> • updated condition 16 of Schedules 13 and conditions 12 of Schedules 14 ('UXO Clearance'); • updated wording of conditions 21(3) of Schedules 13 and conditions 17(3) of Schedules 14; • updated conditions 25 of Schedules 13 and conditions 21 of Schedules 14; • new conditions 26 of Schedules 13 and conditions 22 of Schedules 14 ('Southern North Sea Special Area of Conservation Site Integrity Plan'); and, • new conditions 27 of Schedules 13 and conditions 23 of Schedules 14 ('Control of piling and UXO detonations').
R17QB.29	NE	1	2	Scope of derogations case The Applicant's view in response to ExQ2 [REP6-061] is that a finding of No AEOI on the harbour porpoise feature of the SNS SAC will be agreed prior to close of examination and therefore it is not included in the 'without prejudice' derogation case or compensatory measures document. Is NE content with this approach? Do you agree that it is likely that you will be in a position to advise that for SNS SAC, AEOI can be excluded before the closure of these examinations? If not, why not?
R17QB.30	NE	1	2	Marine mammals: ES conclusions With reference to Tables 11.80 and 11.81 of [APP-059], please provide an update as to your position on the Applicant's EIA conclusions in relation to the potential impacts on marine mammals, both in terms of the project alone and cumulative effects. Please state any potential impacts for which NE disagrees with the Applicant's conclusions, and explain the reasons for this position, or signpost to the examination submission in which these reasons have been provided.



R17Q B To		Question		
Terrestrial ecology				
R17QB.31	NE	1	2	<p>Scope of derogations case</p> <p>The Applicants' view in response to ExQ2 [REP6-061] is that a finding of No AEOI on the Sandlings SPA will be agreed prior to close of Examinations and therefore it has not been included in the 'without prejudice' derogation case or compensatory measures document. Is NE content with this approach? Do you agree that it is likely that you will be in a position to advise that AEOI can be excluded for Sandlings SPA before the closure of these examinations? If not, why not?</p>
R17QB.32	NE	1	2	<p>Outline Watercourse Crossing Method Statement (OWCMS)</p> <p>Please respond by Deadline 8 to the revised OWCMS [REP6-041] including the Habitats Regulations Assessment that was provided as Appendix 5 of the revised OWCMS, the updated Outline SPA Crossing Method Statement [REP6-036] and the updated OLEMS [REP6-007].</p>
R17QB.33	NE	1	2	<p>Nightingale mitigation</p> <p>In paragraph 3 of [REP5-084] in relation to "<i>residual concerns</i>" you refer to "... <i>the proposed mitigation measures in the form of planting must be functioning as nesting habitats before any works can commence within the boundary of the SPA.</i>" In response, the Applicants in [REP6-030] indicate that "...<i>it is outside the Applicants control as to whether the area is used by nightingales.</i>"</p> <p>Having regard to the Applicants' comments in [REP6-030], is it your opinion that the mitigation planting should actually have nesting nightingales present or instead that it should be capable of functioning as potential area(s) for nightingales to nest and/or forage irrespective of whether or not they are actually doing so?</p>
Legal considerations				
R17QB.34	NE	1	2	<p>Weight to be accorded to NE advice</p> <p>NE commented on the Applicants' D6 legal submissions on RTD displacement [REP6-020] at D7 in [REP7-070]. Paragraph 12 of that document identifies that "<i>considerable weight</i>" should normally be accorded to Natural England's advice as the statutory nature conservation body and that advice should only be departed from for "<i>cogent and compelling reasons</i>". <i>R. (Akester and Melanaphy) v DEFRA (1) Wightlink (2) and Ors [2010] WEHC 232 (Admin)</i> was advanced as authority for that</p>



R17Q B	To		Question
			<p>submission. The ExAs note that in these examinations there are elements of NE advice that it has not proven possible to question and test to the extent that typically occurs in NSIP examinations, because the expert authors of particular technical positions and/or legal opinions have not been available in hearings. Should the SoS place the same weight on NE advice that has not been subject to questioning and testing in hearings as on equivalent advice that has been questioned and tested, or are there circumstances in which a reduction in the extent of questioning and testing might amount to a cogent and compelling reason why the weight to be accorded might be proportionately reduced?</p>