



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

East Anglia TWO Offshore Wind Farm

Appendix K7 to the Natural England Deadline 8 Submission

Natural England's Responses to Rule 17 Letter

For:

The construction and operation of East Anglia TWO Offshore Wind Farm, a 900MW wind farm which could consist of up to 75 turbines, generators and associated infrastructure, located 37km from Lowestoft and 32km from Southwold.

Planning Inspectorate Reference: EN010078

25th March 2021

Natural England's Responses to Rule 17 Letter

R17Q	To	Question	NE Response
Overarching HRA Matters			
R17QB.1	Natural England (NE)	<p>1 2</p> <p>New HRA Guidance DEFRA/ NE Guidance entitled 'HRAs: protecting a European site' was published on 24 Feb 2021¹. 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.</p>	<p>It's important to note that whilst Applicants have access to the guidance it's aimed at and written for competent authorities responsible for making HRAs.</p> <p>But we can confirm that the new guidance aims to reflect established HRA practices and current case law principles. Therefore, it also reflects the approach to HRA that Natural England continues to advocate.</p> <p>This guidance is also intended to reflect the latest EU Exit driven changes to the Habitats Regulations summarised here https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017 .</p>
R17QB.2	NE	<p>1 2</p> <p>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</p>	<p>Natural England understands that Vattenfall intend to resubmit for new determination as soon as possible. Therefore, it is highly probable that EA1N and EA2 will be in the planning system at the same time as Norfolk Vanguard. We therefore advise that cumulative and in-combination figures with and without Norfolk Vanguard are presented - this will 'de-risk' the projects and provide the SoS with all of the information that might be relevant. We would also advise that Norfolk Vanguard also takes into consideration the Norfolk Boreas, EA1N and EA2 projects in their re-submission to assist with this.</p>

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

R17Q	To		Question	NE Response
			cumulative and in-combination effects for these Applications, given the current circumstances?	
R17QB.3	NE	1	<p>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 Adverse Effects on Integrity / AEIOI) by the Applicant. At [RR-059], NE clearly states those sites/ features for which it cannot agree to conclude no AEIOI; however, it does not explicitly agree to conclude no AEIOI 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 AEIOI 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):</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; and • Voordelta SAC and SPA. 	<p>Due to outstanding issues at the time of Relevant Representations it was not possible to confirm that all other sites should be excluded.</p> <p>However, we can now confirm the following:</p> <p>Of those sites listed three (Vlaamse Banken SAC, Voordelta SAC, Voordelta SPA) are not UK sites, so Natural England is unable to provide comment on those.</p> <p>Natural England can confirm that based on the information provided by the Applicant we can rule out an AEIOI on the following sites:</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.

R17Q	To	Question	NE Response
R17QB.4	NE	<p data-bbox="562 188 1167 252">2 European sites carried forward to Stage 2 of the HRA assessment</p> <p data-bbox="562 252 1167 635">A number of European sites and associated qualifying features were screened into the assessment and carried forward to Stage 2 (ie AEOL) by the Applicant. At [RR-059], NE clearly states those sites/ features for which it cannot agree to conclude no AEOL; however, it does not explicitly agree to conclude no AEOL in relation those sites/ features for which it has not raised concerns.</p> <p data-bbox="562 667 1167 906">Please can NE confirm whether it is able to advise that the Proposed Development will not result in AEOL 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 data-bbox="562 906 1167 1433" 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 	<p data-bbox="1167 188 2123 268">Due to outstanding issues at the time of Relevant Representations it was not possible confirm that all other sites should be excluded.</p> <p data-bbox="1167 300 2123 331">However, we can now confirm the following: -</p> <p data-bbox="1167 363 2123 427">Of those sites, the following sites are not UK sites, and so Natural England is unable to provide comment on those:</p> <ul data-bbox="1167 427 2123 794" style="list-style-type: none"> • 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. <p data-bbox="1167 794 2123 826">are not UK sites therefore we are</p> <p data-bbox="1167 858 2123 890">Natural England can confirm that based on the information provided by the Applicant we can rule out an AEOL on the following sites:</p> <ul data-bbox="1167 922 2123 1145" 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.

R17Q	To		Question	NE Response
			<ul style="list-style-type: none"> Voordelta SAC and SPA. 	
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).	Please see our Deadline 7 response Appendix F9 [REP7-074].
Red-Throated Diver (RTD) of the Outer Thames Estuary (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?	Natural England confirms that an Adverse Effect on Integrity (AEoI) can be excluded for barrier effects and collision risk for red-throated diver from the Outer Thames Estuary 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	We raised this issue as the number of replicates sounded lower than is usual. Natural England notes the Applicant's response and the number of bootstraps was a decision partly determined by examination timescales, and due to the time to run the models. Please note that 1000 bootstraps is very typical, but it can be computationally inefficient to do that (as noted in this case). We accept that based on the

R17Q	To		Question	NE Response
			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?	<p>information supplied, additional simulations are unlikely to make a material difference to the confidence intervals.</p> <p>However, please note that this was not the main area of concern. A much more significant issue is the lack of validation of model predictions, and the use of the 33% 'within windfarm' displacement figure in the in-combination assessment, which is contradicted by empirical evidence on red-throated diver displacement from turbine arrays.</p>
R17QB.8	NE	1	<p>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?</p>	<p>Whilst there is not condition assessment for the site, we advised at Deadline 1 Appendix A4 [REP1-172] that there is currently an in-combination AEol, with the conservation objectives for the site being hindered by the presence of operational windfarms. Post-construction monitoring within the SPA has indicated there are significant levels of displacement both within and beyond those arrays, resulting in considerable areas within the SPA being no longer able to support the number of divers that they would otherwise be able to, thereby affecting the distribution of the qualifying features within the site. Therefore, the logical conclusion is that the site is in unfavourable condition.</p> <p>This has been referenced in our Appendix A4 [REP1-172], A12 [REP4-087], A14 [REP4-089] and A14b [REP7-070].</p>
R17QB.9	NE		<p>2 Project alone displacement effects In the table on page 2 of [REP7-071], NE states that AEol 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 AEol in respect of EA2 project alone displacement effects for the RTD feature of the OTE SPA?</p>	<p>Natural England's position is that AEol on RTD of the OTE SPA cannot be ruled out for EA1N alone. This conclusion can be reached using the Applicant's modelled extent of displacement of 7km from the windfarm. Natural England maintains its concern that this may be an underestimate of the displacement, and that the area of the SPA affected may be greater. The AEol arises due to the extent of supporting habitat affected by displacement, therefore resulting in an effective loss of habitat, and the associated change in the distribution of RTD within the SPA.</p> <p>For EA2 the array is 8.2km from the SPA boundary, and we note that based on the Applicant's modelling displacement effects would not extend to beyond 8km. Whilst we maintain that there is evidence that displacement effects may extend to 11.5km we acknowledge that the</p>

R17Q	To		Question	NE Response
				area of SPA potentially affected is considerably smaller than EA1N. Therefore, we accept that a case can be made that EA2 alone will not have an AEoI on RTD of the OTE SPA. However, EA2 may have the potential to contribute to the in-combination displacement impact, and therefore should be included as part of the in-combination assessment.
R17QB.10	NE	1	2 Best Practice Protocol for Minimising Disturbance to RTD 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?	Natural England note the updated Best Practice Protocol (BPP) submitted at Deadline 7. However, we have no comments to make regarding the BPP at present, as we understand the Applicant intends on submitting an updated version at Deadline 8.
Kittiwake, Gannet, Razorbill, Guillemot and Seabird Assemblage of the Flamborough and Filey Coast SPA (FFC SPA)				
R17QB.11	NE	1	2 Kittiwake: in-combination collision impacts 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.	As set out in previous Examiners questions, we have approached BEIS on this matter several times now and we continue to wait for a further steer from them. We therefore are unable to comment further at this time on likely timeframes, but confirm this is unlikely to happen within the Examination timeframe.
R17QB.12	NE	1	2 Kittiwake: Hornsea Project Three contribution to in-combination collision totals	Natural England confirms that the SoS decision is clear that the impacts from the project will be fully compensated for [REP5-083]

R17Q	To		Question	NE Response
			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.	
R17QB.13	NE	1	2 Gannet: In-combination operational displacement effects 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.	We provided this as part of our response at Deadline 7 Appendix A15b [REP7-071].
Lesser Black-Backed Gull (LBBG) of the Alde-Ore Estuary (A-OE) SPA				
R17QB.14	NE	1	2 Apportioning methodology for LBBG of the A-OE SPA 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 and for what purpose?	Yes, Natural England is satisfied with the approach to apportioning methodology for LBBG of Alde-Ore SPA. We are not expecting any additional information from the Applicant.
The Applicants' 'without prejudice' HRA derogation case				
R17QB.15	NE	1	2 NE position in respect of Collision Risk Modelling	Natural England notes that Hornsea Project 3 only provided updated collision prediction figures for the revised design parameters for Flamborough and Filey Coast SPA kittiwake in their information

R17Q	To		Question	NE Response
			<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>	<p>provided post examination, with no updated collision predictions provided for the other key species for cumulative/in-combination collision assessments (gannet, LBBG, great black-backed gull).</p> <p>Additionally, no updates were provided by Hornsea Project 3 as to the seasonal abundance estimates when the additional 3 months of baseline data collected by the project were added, and hence updated displacement predictions for the project alone are not available for any key species for inclusion in the cumulative/in-combination displacement assessments (gannet, guillemot and razorbill).</p> <p>Therefore, no OWF project in the planning system is currently in a position to update their in-combination assessments until updated figures to account for the revised worst-case scenario or inclusion of the additional 3 months of data have been provided by the Hornsea Project 3 . Therefore, our advice remains as set out in RR-059, REP2-052 REP3-117.</p> <p>We do not consider that it should be for the EA1N/EA2 applicants to recalculate the figures to include for Hornsea 3. If this information does become available, then the Applicants should provide updated cumulative/in-combination collision and displacement totals and assessments incorporating these figures - and Natural England will then be in a position to provide updated advice accordingly.</p>
R17QB.16	NE	1	<p>2 Imperative Reasons of Overriding Public Interest (IROPI): Public interest 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</p>	<p>Please be advised that as a Statutory Nature Conversation Body (SNCB) our remit as regard the derogations doesn't extend beyond advising on the ecological of compensatory proposals, thus excluding us from making comment on IROPI cases.</p>

R17Q	To		Question	NE Response
			wind farms? What is the basis for your position?	
Compensatory measures				
R17QB.17	NE	1	<p>2</p> <p>Compensatory measures: prey availability</p> <p>In Para 15 of [REP7-071] you have stated that “...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.”</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? 	<p>To date there has been no fully marine compensation under Article 6.4 derogations in UK waters. Until the Hornsea Project 3 decision, collision mortality impacts on SPA seabirds were not considered by Secretaries of State to require compensatory measures, so there is very little by way of precedent to refer to. Compensatory measures have traditionally been in the form of the creation of habitats to replace those lost due to development e.g. managed realignment of sea walls to replace intertidal mud lost to port development, but habitat creation is not likely to be a relevant measure where the impact being addressed is off-site mortality. It is undoubtably challenging to identify relevant compensatory measures for this kind of impact, particularly during the compressed timescales of an application. Nevertheless, it is widely recognised that in terms of ecological effectiveness, increasing prey availability (and in doing so increasing seabird productivity) has significant potential as a compensatory measure to address mortality impacts. This is why Natural England has encouraged the Applicant to explore the potential for more novel approaches to compensation relating to this measure e.g. quota purchase, in recognition that developers cannot manage fisheries directly.</p> <p>There may also be a requirement to enable adaptive management measures to be undertaken for compensation measures such as these to address uncertainty.</p>
R17QB.18	NE	1	<p>2</p> <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</p>	<p>Please see Natural England’s D7 Appendix 15b response [REP7-071].</p>

R17Q	To		Question	NE Response
			protection and management of European sites? If not, please comment on specific areas that require further justification.	
R17QB.19	NE	1	2 Security for compensation measures 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.	Please see NE Deadline 8 Appendix G5.
R17QB.20	NE	1	2 Effectiveness of security for compensation measures 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.	Please see NE Deadline 8 Appendix G5.
R17QB.21	NE	1	2 Timing of implementation of compensatory measures 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?	Please see NE Deadline 8 Appendix G5.
R17QB.22	NE	1	2 Kittiwake compensation: Suitable locations for artificial nesting sites NE has previously raised concerns [REP4-088] about the availability of	Please see NE Deadline 7 Appendix 15b [REP7-071]. This issue was further discussed with the Applicant at a workshop on 10 th March 2021 (of which we are happy for minutes and actions to be shared) and we anticipate commenting on this matter again at Deadline 9.

² See page 4 footnote 1.

R17Q	To			Question	NE Response
				<p>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 for the introduction of artificial nesting site(s) for kittiwake as stated by the Applicants in [REP6-045]. • 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>	<p>Natural England has concerns with the following the same approach as HP3 as set out in our Deadline 7 submission Appendix 15b [REP7-071]. We disagree with the Applicant about pushing these discussions to post-consent, as under this approach there is no guarantee that the compensation can be delivered.</p>

R17Q	To		Question	NE Response
			<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 Offshore ornithology: ES conclusions 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>Please see Natural England Deadline 8 Appendix A19, which includes a table with our position on EIA based on our final position at Boreas.</p> <p>Natural England's advice has not changed from our Rel Rep (RR-059) para 46, as follows:</p> <p><i>"Natural England has previously provided regulators with our advice regarding our concerns about predicted level of cumulative and in-combination impacts on North Sea seabirds. For EIA we have been unable to rule out a significant adverse effect for cumulative operational impacts on:</i></p> <ul style="list-style-type: none"> <i>kittiwake, gannet and great black-backed gull for cumulative collision impacts;</i> <i>guillemot, razorbill and red-throated diver for cumulative displacement impacts"</i>
Marine mammals				
R17QB.25	NE	1	2 Project alone effects on harbour porpoise of the Southern North Sea SAC (SNS SAC)	Natural England is satisfied that there will be no AEOI alone for the harbour porpoise feature of the Southern North Sea SAC.

R17Q	To		Question	NE Response
			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.	
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.	Natural England cannot exclude adverse effect on integrity of the SNS SAC in-combination until a mechanism is in place to manage multiple SIPs (as per our Relevant Representation). Therefore, this is considered to be a wider, regulator issue rather than a project-specific one. The correct mechanism should mitigate the in-combination impacts such that compensatory measures are not required.
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.	Please see NE Deadline 8 Appendix B3b.
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,	Please see NE Deadline 8 Appendix G5.

R17Q	To		Question	NE Response
			<ul style="list-style-type: none"> new conditions 27 of Schedules 13 and conditions 23 of Schedules 14 ('Control of piling and UXO detonations'). 	
R17QB.29	NE	1	<p>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?</p>	Please see Natural England Deadline 8 Appendix K8 for our response on the RIES for more detail. Overall, we do not consider that a compensatory package is required for the SNS SAC. However, Natural England maintains that the mechanism for control of in-combination noise impacts needs to be provided at the earliest opportunity. It is acknowledged that the responsibility for providing this mechanism remains with the regulators group.
R17QB.30	NE	1	<p>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.</p>	Natural England has no outstanding concerns regarding the EIA conclusions relating to marine mammals. For detailed advice on EIA matters, please refer to Natural England's Relevant Representation [RR-059].
Terrestrial ecology				
R17QB.31	NE	1	<p>2 Scope of derogations case The Applicants' view in response to ExQ2 [REP6-061] is that a finding of No AEOI on the Sandlings SPA will be agreed prior</p>	Natural England confirms that if mitigation is suitably adopted there will be no adverse effect on the Integrity of the Sandlings SPA. Please see NE Deadline 8 Appendix C9.

R17Q	To			Question	NE Response
				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?	
R17QB.32	NE	1	2	Outline Watercourse Crossing Method Statement (OWCMS) 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].	Please see NE Deadline 8 Appendix C9.

R17Q	To	1	2	Question	NE Response
R17QB.33	NE			<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>	Please see NE Deadline 8 Appendix C9.
Legal considerations					
R17QB.34	NE			<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>”. <u>R. (Akester and Melanaphy) v DEFRA (1) Wightlink (2) and Ors</u> [2010] WEHC 232 (Admin) was advanced as authority for that</p>	Natural England is seeking guidance from our Senior Leadership Team on the most appropriate response on this matter.

R17Q	To	Question	NE Response
		<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>	