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THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

East Anglia TWO Offshore Wind Farm

Appendix C9 to the Natural England Deadline 8 Submission

**Natural England's Update and Comments to Terrestrial Ecology Documents
Submitted at Deadline 6 and Deadline 7**

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 Update and Comments to Terrestrial Ecology Documents Submitted at Deadline 6 and Deadline 7

This document is applicable to both the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23rd December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again for the other project.

Introduction

This document provides an update on Natural England's position and advice to the following documents submitted by the Applicant at Deadline 6 and Deadline 7 in relation to terrestrial ecology:

- Outline Code of Construction Practice Version 3 [REP6-003, REP6-004] and Version 4 [REP7-025, REP7-026].
- Outline Landscape and Ecological Management Strategy (OLEMS) Version 3 [REP6-007 and REP6-008].
- Outline Sandlings SPA Crossing Method Statement [Clean and Tracked REP6-036 to REP6-038].
- Outline Water Course Crossing Method Statement [Clean and Tracked REP6-041 and REP6-042].

In addition, please refer to our comments in relation to terrestrial mitigation measures in Appendix F10 All Other Matters Update at Deadline 8.



1) Natural England's Further Comments to the Outline Code of Construction Practice Version 3 [REP6-003, REP6-004] and Version 4 [REP7-025, REP7-026]

1. Natural England notes that many of the construction methods statements included with the Outline Code of Construction Practice (CoCP) relate to our role and remit and therefore we require consultation on the finalised CoCP.
2. However, as set out in our D8 Appendix G5, Natural England are not a named consultee. This should be rectified especially as it is not explicitly clear in the CoCP that the relevant Statutory Named Consultation Body (SNCB) should be consulted.
3. In addition please also see our comments to the Outline Landfall Construction Method Statement Version 2 [REP7-074] provided at Deadline 7 as our comments on minimising noise and vibration and not increasing environmental impacts are also relevant at Section 9.1.1.
4. Finally, the contingency planning Section 15 is not what Natural England would expect in terms of managing potential construction issues. If there is a change from the CoCP, and what was assessed in the environmental statement [ES], then the contingency planning should allow for that to be efficiently be resolved.



2) Natural England’s Further Comments to the Outline Landscape and Ecological Management Strategy (OLEMS) Version 3 [REP6-007 and REP6-008]

5. In our Deadline 5 Appendix C7 [REP5-084] we provided comments on the Outline Landscape and Ecological Management Strategy (OLEMS) version 2 document submitted at Deadline 3 [REP3-030 Clean and REP3-031 Tracked]. These comments are updated, as presented in Table 1 below, following review of Version 3 of the OLEMS [REP6-007 and REP6-008] submitted by the Applicant at Deadline 6.

Table 1 Natural England’s Further Comments to the OLEMS Version 3 [REP6-007 and REP6-008]

Paragraph	Appendix C7 Natural England’s Comments to the OLEMS Version 2 at Deadline 5 [REP5-084]	Natural England’s Further Comments to the OLEMS Version 3 at Deadline 8 [REP6-007 and REP6-008]
11	Overall Natural England welcomes the additional text added to the Outline Landscape and Ecological Management Strategy (OLEMS), which provides greater clarity concerning the proposed mitigation and other matters raised by stakeholders. However, in our view the additional text is generally not in a form that would be legally binding i.e. words such as ‘would’ and ‘could’ are used in place of ‘will’. Also, ‘where possible’ or ‘where practicable’ are added to statements, which lessens the commitment to carrying out the described action. We recommend that the document is revisited and wording amended to ensure that the document is legally robust.	We welcome the strengthening of the wording and therefore commitment to undertake consultation, monitoring, mitigation and ecological management as set out in the OLEMS and have no further comments on this point.
12	We welcome the woodland retention, additional woodland planting and the proposed increased density of tree planting outlined in 45 (3.1.4) Amendments to the OLMP. However we are now aware that there is an area of deciduous woodland, which is Priority Habitat, adjacent to the Hundred river crossing (see comments in paras 7 and 8 above). Natural England is surprised this habitat has not been picked up during the phase one habitat survey, or included within the mitigation plans, and request that this habitat is assessed and added to all relevant documentation.	We note that Work No. 19 Woodland adjacent to the Hundred River is now included at para 156 of the OLEMS Version 3 [REP6-007 and REP6-008] and that woodland will be replanted. However, this is contradictory to [REP6-042 and REP6-043] the Outline (Hundred River) Watercourse Crossing statement as within that it specifies that the replacement of trees may not be possible due to impacts from roots. So, woodland is likely to be replaced with shrub and grassland. In addition to this, please see Paragraph 7 of Appendix C7 [REP5-085] where we raise



Paragraph	Appendix C7 Natural England's Comments to the OLEMS Version 2 at Deadline 5 [REP5-084]	Natural England's Further Comments to the OLEMS Version 3 at Deadline 8 [REP6-007 and REP6-008]
		concerns in relation to changes in ground conditions.
13	Furthermore, in the recent response to Natural England's comments regarding hairy dragonfly, <i>Brachytron pratense</i> , a qualifying species of the Leiston-Aldeburgh SSSI, the habitat near and at the Hundred River crossing point was described as completely unsuitable for dragonfly larva. However, the wet woodland habitat described above in paragraphs 9 and 10 is considered suitable and therefore we recommend that the Applicant carries out a further review of the likelihood of hairy dragonfly being affected by the proposed works.	We note that paragraph 305 of the OLEMS version 3 [REP6-007 and REP6-008] submitted at Deadline 6 that hairy dragonfly is not going to be surveyed until post consent and subsequent mitigation will then be outlined if it is found to be present. Natural England advises in these situations it is advisable to assess the worst case scenario that hairy dragonfly is present and identify possible mitigation measures that could be adopted to demonstrate to the ExA that mitigation is possible which will give assurance to the decision making process.
14	Natural England also note that hairy dragonfly have not been included within Section 7, the overview of pre-construction ecological surveys. Note that, particularly given the new information above concerning suitable habitat, the pre-construction survey of the whole onshore development area detailed in Paragraph 284 will need to include an assessment of the suitability of the habitat for hairy dragonfly.	Natural England notes that surveys of hairy dragonfly will be undertaken before construction, however please see point above.
15	In Section 6.3.4.1, we note the further details provided on the mitigation to be provided for the Sandlings SPA birds. We expect this mitigation area to be available and used by the birds prior to construction. Surveying for five years, as detailed in the OLEMS, does not appear a sufficient length of time considering how long the mitigation is likely to take to become favourable for the birds when coupled with the full construction period. The Applicant will also need to survey post-construction to check that the birds are actually using the land. If the land is not being used, alternative mitigation will need to be provided. This mitigation will need to be secured within the DCO.	In relation to mitigation measures for Sandlings SPA please see Natural England's comments on the latest crossing statement [RE6-036] as our advice is also relevant for the OLEMS document.
16	Habitats in the OLEMS are often described as	Natural England's previous advice



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	being of 'low ecological value' e.g. in relation to the land around the substations. Note that Natural England consider that land of current low ecological value provides an excellent opportunity to provide enhancement to that land so that it becomes of greater ecological value. Therefore, rather than simply noting the land is of low ecological value, we expect the Applicant to be considering what can be done to improve it.	in relation to seeking opportunities for Net Gain remain relevant.
17	3.5.13. Natural England agrees that it is important to replace Public Rights of Way (PRoW) during works and operation, and to ensure the new PRoW are in place prior to any construction taking place.	No further comment.
18	Table 5.1 – The timing of the seasonal restriction to avoid the bird breeding season may be based on the Ecological Clerk of Works records, but if the Applicant wants to start works early owing to this information, they will still need to consult Natural England.	Table 5.1 - there is no acknowledgement of our comment that further consultation with Natural England will be required should they wish to start early. Therefore we assume the Applicant doesn't consider this to be an issue.
19	5.3.2. We welcome the change to a width of 16.1m where the cable route crosses important hedgerows.	No further comment on the working width update.
20	<p>We have noted the wording is an issue in the following areas i.e. where the text needs firming up from a legal standpoint:</p> <ul style="list-style-type: none"> • Paragraph 155: Landscaping • Section 5.6.3.2: During Construction • Paragraph 222: Post Construction • Paragraph 232: Invasive Species Method Statement • Paragraph 250: Badgers • Paragraph 259: Bat surveys • Table 6.2 Embedded Mitigation Relating to Onshore Ornithology • Paragraph 333: Additional Mitigation - Pre-Construction • Paragraph 346: The Breeding Bird Protection Plan (BBPP_ • Section 9: Monitoring <p>Note that there may be other examples and therefore a full review of the document is</p>	Natural England notes the wording has been addressed to be legally robust and have no further comment.



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	necessary.	
21	242 – The document states that ‘where possible, known setts will be avoided’. We consider that main setts are likely to be already known and therefore there should not be an issue in avoiding them during micro-siting of the cable route.	Natural England is concerned that at paragraph 254 (previously 242) the wording has been amended to state that rather than avoiding known badger setts through micro-siting, the cable corridor these will actually be destroyed. With no further information included this issue is of major concern to Natural England.
22	5.7 – It appears that effects to farmland birds have not been considered in the OLEMS within the ornithology section, despite arable land within the application site. Natural England would welcome clarification within the OLEMS of whether any ground nesting birds (other than those associated with Sandlings SPA) such as skylark, for example, have been found during survey, and whether any mitigation is being provided for loss of farmland habitat in this context.	Natural England notes that farmland bird protection still has not been addressed in the OLEMS. Please note that the protection and/or provision for farmland birds may be part of landowners Agri – environment schemes and therefore the potential implications should be considered in the OLEMS document.
23	333 - Natural England consider that the text regarding avoidance of the bird breeding season needs to be more robust. Works need to avoid the bird breeding season, or works should cease in that area until such time as the birds have fledged. In our view 5m is very close to potential nests. We would welcome further explanation of why 5m is thought to be in this context.	Natural England notes that no further explanation of the 5m distance from nesting birds has been included. We would therefore welcome further consideration on this matter.
24	410 - Natural England should be added to the section regarding consultation.	Natural England still has not been named within this consultation paragraph (now paragraph 425) and should be added.



3) Natural England's Further Comments and Advice on the Sandlings SPA Crossing Method Statement [REP6-036 - REP6-038]

6. In our Deadline 5 Appendix C7 [REP5-084] we provided an update to our position on the Sandlings special protection area (SPA) crossing. These comments are updated, as presented in Table 2 below, following review of Version 2 of the Outline SPA Crossing Method Statement [REP6-036 to REP6-038] submitted by the Applicant at Deadline 6.

Table 2 Natural England's Position and Advice on the Sandlings SPA Crossing Method Statement

Paragraph	Appendix C7 Natural England's Updated Position and Advice on the SPA Crossing at Deadline 5 [REP5-084]	Natural England's Updated Comments and Advice Following Review of the SPA Crossing Method Statement Version 2 [REP6-036 - REP6-038]
3	Therefore, Natural England would advise that an Adverse Effect on Integrity (AEoI) of the Sandlings SPA is unlikely to occur from an open cut trench option; but as proposed there remains residual concerns. To address these concerns we advise that the following must be secured:	See responses to 3a, 3b, 3c and 3d.
3a	<p>There must be a requirement within Schedule 1 of the DCO which ensures that 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. This will need to be reported to and signed off by the regulator in consultation with the relevant SNCB.</p> <p>Reason: As this this mitigation is fundamental and immutable to preventing an AEoI we believe that it is imperative that it is has its own requirement and not part of other wider project plans, which implies a level of flexibility to the use of this mitigation. We consider that such a requirement, appropriately worded, would meet all five tests for a planning condition.</p>	<p>Natural England notes at 2.11.2 Para. 71 that the mitigation will be 'established' prior to construction, but there remains no guarantee/confirmation that it is delivering the required mitigation. Natural England has provided some proposed wording for a requirement within Appendix K6.</p> <p>Therefore, our advice remains unchanged. The ExA and decision makers will need to be confident that there is a high likelihood of the birds using the mitigation areas to successfully remove an AEoI should the Application progress.</p>
3b	<p>There needs to be agreement on what recovery of the SPA supporting habitats will look like. Also, monitoring will need to be undertaken and reports submitted to the regulator, in consultation with Natural England to confirm that recovery has occurred.</p> <p>Reason: Maintaining/Restoring supporting habitat is a conservation objective of the</p>	<p>Natural England notes that what successful recovery looks like has been deferred to post consent. But we welcome the increased monitoring to help determine the recovery of the site and any restoration measures.</p>



Paragraph	Appendix C7 Natural England's Updated Position and Advice on the SPA Crossing at Deadline 5 [REP5-084]	Natural England's Updated Comments and Advice Following Review of the SPA Crossing Method Statement Version 2 [REP6-036 - REP6-038]
	Sandlings SPA.	
3c	<p>We advise that vegetation should be planted, and where required managed, before, during and post completion of the works until full recovery is achieved. Which may mean that the 5 years as set out for this mitigation measure may not be appropriate. Therefore, there will need to be more flexibility than the 5 years currently committed to in the plan.</p> <p>Reason: Without flexibility in terms of duration and active management of the vegetation to maintain favourable heights, it is unlikely that the mitigation will fully negate the impacts.</p>	<p>Natural England notes that as with point 3a above the pre-construction element has not been progressed further by the Applicant. But we do welcome the extension of managing the mitigation areas (excluding the horse paddock) to 10 years rather than 5.</p>
3d	<p>Considerable weight has been given in the Outline SPA Crossing Method Statement plan to the lower ecological value of the area to be impacted by the open trench. However, as a statutory undertaker and a Section 28G body under the Wildlife and Countryside Act 1981 (as amended), the Applicant has a duty to explore reinstatement options that would improve the habitat for interest features of the designated sites. Therefore, we advise that improvements to the habitats be included in the Outline SPA Crossing Method Statement plan with full details submitted prior to construction.</p> <p>Reason: Please be advised that in relation to enhancement measures we do not feel that the OLEMS are sufficiently detailed and/or binding to allay our concerns in relation to impacts to the SPA.</p>	<p>Natural England notes that improvements to the ecological habitats have not been included in this document. Please see our feedback on the OLEMS [REP6-007 and REP6-008] within this Appendix C9.</p>



4) **Natural England's Comments to the Outline Watercourse Crossing Method Statement Version 2 [REP6-042 and REP6-043].**

7. In Appendix C6 [REP4-092] we raised concerns about the crossing not assessing impacts to Sandlings SPA and Leiston-Aldeburgh SSSI. In Appendix C8 [REP7-073] we highlighted issues with the February 2021 ecological surveys [REP6-035] of the habitats adjacent to the SPA.
8. In relation to the ecological surveys [REP6-035] our advice provided at Deadline 7 [REP-073] remains unchanged and therefore we do not feel that reference to this survey provides the sufficient evidence in relation to the significance of the impacts to habitats and species located immediately adjacent to the crossing point.
9. However, Natural England welcomes the inclusion of the assessment of the potential impacts to designated sites further downstream in Appendix 5. And whilst we stress that the assessment to the designated site features should be kept separate due to the different legislation; we do agree with the conclusions that there is unlikely to be an AEoI of the Sandlings SPA and significant adverse effect on the notified features of the SSSI from the proposed crossing if carried out in strict accordance with the proposals.