

Date: 15 April 2021
Our ref: Case: 10572 Consultation: 348182
Your ref: EN010078



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BY EMAIL ONLY

Dear Sir/Madam

East Anglia TWO (EA2) Offshore Wind Farm

The following constitutes Natural England's formal statutory response for Examination Deadline 9.

1. Natural England Deadline 9 Submissions

Natural England has reviewed the relevant documents submitted by the Applicant at Deadline 8. Please find a summary of Natural England's position regarding these documents in Table 1 below. In addition, Natural England is also submitting the following detailed responses, signposted from Table 1, within the following thematic appendices:

- EN010078 348182 EA2 Appendix A14c – Natural England's Response to Legal Submission at ISH14 [REP8-099] Deadline 9
- EN010078 348182 EA2 Appendix A15c - Natural England's Comments on Offshore Ornithology Without Prejudice Compensation Measures v2 [REP8-089] Deadline 9
- EN010078 348182 EA2 Appendix A16b – Natural England's Comments on Cumulative and In-combination Collision Risk Update [REP8-035] Deadline 9
- EN010078 348182 EA2 Appendix A17b – Natural England's Comments on Updated Displacement of RTD in OTE SPA [REP8-033] Deadline 9
- EN010078 348182 EA2 Appendix G6 – Natural England's Comments to Updated DCO

Version 6 [REP8-003] Deadline 9

- EN010078 348182 EA2 Appendix I1g – Natural England’s Risk and Issues Log Deadline 9

2. Natural England’s Response to the Rule 17 Letter

The response to the outstanding Rule 17 question R17QB.34 to Natural England, deferred from Deadline 8 [REP8-158], is detailed in Table 2 below.

3. Ornithology Without Prejudice Compensation Measures

Natural England have provided comments on Offshore Ornithology Without Prejudice Compensation Measures v2 [REP8-089] in Appendix A15c.

Please be advised that we still intend to provide advice on the Applicant’s compensatory measure Annex in regards to increasing colony productivity through improving prey availability (fish) which was submitted at Deadline 6 [REP6-046]. Natural England continues to have in depth cross-sectoral discussions on this issue and plan to provide detailed advice by Deadline 11

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely

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Table 1 Natural England's Response/Summary Position to the Applicant's Documents Submitted at Deadline 8.

PINS Document Reference	Applicant's Document Name	Natural England's Response/Position Summary
REP8-003, REP8-004	Draft Development Consent Order (Clean and Tracked)	Please see Appendix G6 at Deadline 9.
REP8-005	Schedule of Changes to the Draft Development Consent Order	Please see Appendix G6 at Deadline 9.
REP8-015	ES Appendix 6.2 – Onshore Plans Secured by the DCO Version 4	Natural England has no comment to this document.
REP8-016	ES Offshore Plans Secured by the Development Consent Order	Natural England has no comment to this document.
REP8-017, REP8-018	Outline Code of Construction Practice (OCoCP (clean and tracked) v5	Natural England has reviewed the amended text and currently has no further advice. However, we are aware that the OCoCP will be updated for D9 and therefore we will provided further comments on any updated versions.
REP8-019, REP8-020	Outline Landscape and Ecological Management Strategy (clean and tracked)	Natural England notes the minor changes to the sections pertinent to NE remit and has no further advice. The more detailed advice provided at REP8-162 remains unchanged.
REP8-027, REP8-028	Offshore In Principle Monitoring Plan (clean and tracked)	<p>Terrestrial: Natural England notes the points raised in the Deadline 7 Appendix F9 submission [REP7-074] are addressed and have no further comment.</p> <p>Marine Mammal: Natural England notes the word 'statistically' has been removed from Table 4 in relation to defining the 'significance' of underwater noise monitoring. We are content with this removal.</p> <p>Ornithology: we are satisfied that the Applicant has addressed our previous comments, and we have no further comments to make.</p>
REP8-029, REP8-030	Marine Mammal Mitigation Protocol (clean and tracked)	Natural England notes and accepts the changes removing the reference to cluster detonation.
REP8-031,	In Principle Southern North Sea Special Area of Conservation	Natural England notes and accepts the changes removing the

REP8-032	Site Integrity Plan (clean and tracked)	reference to cluster detonation.
REP8-033, REP8-034	Displacement of red-throated divers in the Outer Thames Estuary SPA (clean and tracked)	Please see Appendix A17b at Deadline 9.
REP8-035	Deadline 8 Offshore Ornithology Cumulative and In Combination Collision Risk Update	Please see Appendix A16b at Deadline 9.
REP8-036, REP8-037	Best Practice Protocol for Minimising Disturbance to RTD	This protocol provides appropriate best practice to mitigate disturbance from vessels and helicopters transiting the SPA to an acceptable level to exclude an adverse effect. However, please note that it doesn't address the impacts from presence of the turbines and from cable installation. Please see D8 Offshore Ornithology [REP8-110] Statement of Common Ground between the Applicant and Natural England.
REP8-040	Underwater Noise Modelling Update	Natural England accepts the additional modelling within this update and has no further comment.
REP8-041	Ecological Enhancement Clarification Note Addendum	Whilst Natural England acknowledges that the Ecological Clarification note addendum addresses our concerns raised at [REP4-092, REP5-084, REP8-162] in relation to removal of hedgerows and reinstating either like for like or better; the points raise by NE at Deadline 2 [REP2 – 054] in relation to the Ecological Enhancement Clarification note [REP1-35] remain unchanged.
REP8-043	Applicants' Comments on Natural England's Deadline 6 Submissions: Responses to RTD statistical analysis	Natural England note the Applicant's comments. Natural England does not see any value in engaging further given that the Applicant does not intend to carry out any revisions to their modelling. Instead, Natural England has provided our advice with respect to the Applicant's modelled outputs. Notwithstanding our concerns that the extent and level of displacement may have been significantly under-estimated, we still conclude that an AEoI alone from EA1N cannot be ruled out.
REP8-053, REP8-054	Outline Landfall Construction Method Statement (clean and tracked)	Natural England notes that the main concerns we raised in relation to future consultations in our Appendix F9 submitted at D7 [REP7-074] have been addressed. Therefore we are content with

		the Outline Landfall Construction method statement and provide no further advice on this document.
REP8-075	Landscape and Visual: Sizewell C Cumulative Impact Assessment	Natural England note the submission of this assessment and has no further comment.
REP8-081	EA2 Offshore Ornithology Compensation Measures Funding Statement	No comment, this is outside of Natural England's remit.
REP8-084, REP8-085	Outline Watercourse Crossing Method Statement (clean and tracked)	Natural England's position remains unchanged. Please see previous comments [REP8-162], [REP7-073], [REP5-084], [REP4-092]. Please note that Natural England is reviewing best available evidence and will provide further advice in relation to the potential 'wet' woodland and hairy dragonfly habitat at Deadline 10.
REP8-088	HRA: Derogation Case	Natural England's has reviewed version 3 of this document and our advice at Appendix A15b [REP7-071] remains unchanged. However, we would like to reiterate that the justification/constraints listed for not moving the EA1N development area further away from the Outer Thames SPA boundary (e.g. presence of Sabellaria reef and/or wrecks) remain <u>hypothetical</u> constraints and may be manageable through further discussions, once more detailed evidence is provided.
REP8-089, REP8-090	Offshore Ornithology Without Prejudice Compensation Measures (clean and tracked)	Please see Appendix A15c at Deadline 9.
REP8-099	Applicant's Responses to Hearings Action Points	Please see Appendix A14c at Deadline 9 for Natural England's response to the Applicant's Deadline 8 written summary: <i>ISH14 – Red Throated Diver of the Outer Thames Estuary SPA: Concluding Legal Submissions</i> .

Table 2 Rule 17 Letter

Legal Considerations			
R17QB.34	NE	1	2
		<p>Weight to be accorded to NE advice 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 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>	
		<p>Natural England is the statutory advisor to Government on nature conservation in England. Natural England provides expert scientific and technical advice on matters that fall within its remit. Clearly, therefore, considerable weight should be given to its advice, a point that is recognised in case law as accurately reported in our submissions. Your question about reducing the weight given to Natural England's evidence because it "<i>has not been subject to questioning and testing in hearings</i>" is not understood. The Department for Communities and Local Government's publication <i>Planning Act 2008: Guidance for the examination of applications for development consent</i> says the following:</p> <p><i>The use of written representations will be the primary means by which the Examining Authority will examine applications. They will also be one of the main types of evidence which the Secretary of State will take into account when taking a decision. (para 71).</i></p> <p><i>The Examining Authority can also ask written questions and require additional information from anyone at any stage of the examination process, and require that a response is to be made in writing within a period it specifies. (para 75).</i></p> <p>Natural England has provided written evidence which, according to the guidance, is the primary means by which applications are examined and one of the main types of evidence which the Secretary of State will take into account. If the Examining Authority has additional questions it can ask those in writing and require a response in writing. Natural England is happy to answer further questions in writing, as it is doing here, and through that process have its advice tested to the satisfaction of the Examining Authority.</p> <p>Natural England has attended and will attend hearings where there are specific agenda items/questions which are additive to our written advice, or to engage in discussions that have clear potential to resolve/close out nature conservation matters. In addition to hearings, Natural England's resources are heavily engaged in analysing voluminous applications</p>	

				documents in order to provide its advice. Weight still ought to be given to the independent and expert scientific advice that Natural England provides and rational, substantive, reasons should be given for departing from it.
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