



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

East Anglia TWO Offshore Wind Farm

Appendix K8b to the Natural England Deadline 12 Submission
Natural England's Comments on the Updated Report on the Implication for
European Sites (RIES) [PD-051]

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

28th June 2021



Natural England's Comments on the Updated Report on the Implication for European Sites (RIES) [PD-051]

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.

1. Introduction

Natural England has reviewed the Updated Report on the Implication for European Sites (RIES) [PD-051] for both East Anglia ONE North (EA1N) and East Anglia TWO (EA2).

2. General Comments

- Where sections have not changed within the updated RIES from the previous version, any comments previously raised by Natural England should be considered to still apply to the new document.
- The approach taken of adding substantial 'RIES Amendments and Consultations' updates at the end of each section, whilst understandable, does result in contradictions between these sections and the text that precedes them, and we have some concerns that this will make the RIES liable to mis-interpretation.
- Please be advised that as a Statutory Nature Conversation Body (SNCB) our remit doesn't extend beyond advising on the ecological merits of proposals, thus excluding us from making comment on Imperative Reasons of Overriding Public Interest (IROPI) submissions.

3. Detailed Comments

Detailed Comments to the Updated EA1N RIES and EA2 RIES are provided below in Table 1. Most comments are generic to both the EA1N and EA2 projects with appropriate references annotated to each document, except where highlighted using the appropriate yellow icon directing to EA1N only.



Table 1 Detailed Comments to the EA1N and EA2 Updated RIES

	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
1.	3	1.1.6	EA1N	As previously advised to PINS/BEIS, Natural England does not consider that consultation on the RIES is a formal consultation of Natural England on an Appropriate Assessment, as is required under the Habitats Regulations. The RIES draws no conclusions on AEoI for any European sites, and therefore does not constitute an Appropriate Assessment.	
			EA2		
2.	9	Table 3	EA1N	Natural England note that we are not the statutory body responsible for the newly considered designated sites outside of the English Exclusive Economic Zone. Therefore, we would advise consultation with the correct body regarding the assessment on the new sites and features considered. This is noted at the newly added point 4.1.6 on page 16, however, no comment is added that consultation has been sought with the correct SNCBs with those sites.	
			EA2		
3.	19	Table 4.1	EA1N	Whilst the principal impact on FFC SPA gannet is due to collision, displacement is also considered to exert some effects on this species, as has been later captured in Table 4.3.	
			EA2		
4.	19, 20 & 32	4.2.9, 4.2.10, 4.2.56	EA1N	In the statement of common ground [REP8-110] Natural England also raised the following point in relation to the RTD Best Practice Protocol (BPP) “ <i>NE is increasingly becoming concerned in relation to disturbance and/or displacement of red-throated divers from a more</i>	



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
	19, 20 & 31	4.2.10, 4.2.11 & 4.2.54	EA2	<i>persistent presence of OWF-related vessels. In this context of increasing vessel activity, we consider that a ‘worst case scenario’ of 110 days of cable installation during the period that red-throated diver are likely to be most sensitive (1st November to 1st March inclusive) could make a meaningful contribution to in-combination effects on the SPA. This gives further weight to the need for a seasonal restriction for cable installation”.</i> This has not been fully addressed by the Applicant or the RIES.	Yellow
5.	20	4.2.12	EA1N	Natural England highlights that the NE guidance referred to in this section relates to assessing impacts on RTD at an EIA level, rather than applying to HRA matters.	Yellow
		4.2.13	EA2		
6.	21&-22	4.2.15	EA1N	The approach of having a separate update section for later discussions, rather than updating each section of the original version, gives the impression to the reader that matters are resolved, only to later read that matters have not been resolved. Natural England considers it would be appropriate to state in this section that our concerns were not addressed by this or subsequent iterations of the assessment provided by the document.	Red
	21	4.2.16	EA2		
7.	22	4.2.17	EA1N	As noted in 4.2.15, Natural England fully recognises there is a gradient effect to displacement as distance increases from an OWF, and have not, as is implied here, sought an assessment of complete avoidance out to 10km.	Yellow
	22	4.2.18	EA2		



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
8.	22	4.2.17 & 4.2.18	EA1N	<p>NE has consistently advised, throughout examination, that the proposal will reduce the suitability of a significant proportion of the OTE SPA for one of its qualifying features, resulting in effective habitat loss for some individuals. It is unclear why the RIES has not incorporated this important element of our advice into the impacts of alone consideration, and instead has adopted the Applicant's exclusive focus on mortality in this section. This may have been a function of deferring consideration of this aspect to a later section that follows the in-combination discussion. For avoidance of doubt, Natural England advises that effective habitat loss is a key issue for consideration of EA1N alone.</p> <p>More generally, Natural England highlights that all the conservation objectives for the site should be considered in the Appropriate Assessment, and again notes that the mortality predictions are a crude measure of a range of lethal and non-lethal effects.</p>	Red
9.	23 to 25	4.2.23 to 4.2.31	EA1N	<p>RTD displacement implication for OTE SPA conservation objectives.</p> <p>It is unclear why this information is provided in a separate section following the in-combination assessment, as it is germane to both alone and in-combination impacts. This could be usefully clarified in the header.</p>	
10.	30	4.2.49	EA1N	<p>This section does not fully capture Natural England's position. Our point in response to the latest set of ExA questions was that, whilst densities vary, <i>all</i> offshore areas within the boundary of the OTE SPA have been identified as the 'most favourable territories' for this</p>	Yellow
	29	4.2.47	EA2		



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
				species in the non-breeding season through the SPA classification process, and should be treated as of high importance in impact assessments, rather than assessment applying a further significance criterion relating to the densities of birds within the site.	
11.	32	4.2.59	EA1N	For avoidance of doubt, this advice refers to in-combination effects.	
	31	4.2.57	EA2		
12.	34	4.2.67	EA1N	NE's position of the in-combination displacement figures for guillemot and razorbill, including Hornsea 3 are set out in NE Deadline 12 Appendix A16c.	
	32	4.2.65	EA2		
13.	34	Table 4.2	EA1N	Table 4.2 could be simplified by simply having a tick in the 'in-combination' column for Kittiwake, as for Lesser Black-Backed Gull.	
	33		EA2		
14.	36	4.2.78 to 4.2.81	EA1N	Natural England's position of the in-combination collision figures, including Hornsea 3 are set out in Deadline 12 Appendix A16c.	
	35	4.2.77	EA2		
15.	38	4.2.87	EA1N	Natural England's position on NMCs is outlined in REP11-121 and at Deadline 12 Appendix A16c (please also see NE answers to R17QF.2 at Deadline 12 in Appendix K11). 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.	
	36	4.2.85	EA2		
16.	39	4.2.95	EA1N	Natural England has now considered the implications of the Hornsea Project Three decision	



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
	37	4.2.93	EA2	and in-combination collision totals when this project is included. Natural England can now advise that an adverse effect on integrity (AEol) of the gannet feature of the FFC SPA can be ruled out for in-combination collision impacts, in-combination displacement impacts and in-combination collision plus displacement impacts when all projects up to and including Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two are included in the in-combination totals (i.e. if the Hornsea 4, DEP and SEP projects are excluded from the in-combination totals).	
17.	41	4.2.102	EA1N	The baseline data has now been revised to include Hornsea Project Three. Natural England advises that an adverse effect on integrity (AEol) on gannet, guillemot, and razorbill from FFC SPA can be ruled out from displacement in-combination with other plans and projects when all projects up to and including Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two are included in the in-combination totals (i.e. if the Hornsea 4, DEP and SEP projects are excluded from the in-combination totals).	
	38	4.2.100	EA2		
18.	43	4.2.111	EA1N	“...LBBG was included for FFC SPA...” is an error and should be Alde-Ore Estuary SPA.	
	41	4.2.109	EA2		
19.	44	4.2.117	EA1N	LBBG is not a feature of FFC SPA and should be Alde-Ore Estuary SPA. As regards Alde-Ore Estuary SPA, Natural England has advised an AEOI cannot be ruled out irrespective of whether Hornsea 3 and Hornsea 4 are included. It is not clear what the section feature of FFC SPA being referred to is.	
	42	4.2.116	EA2		



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
20.	44	4.2.120	EA1N	Please see Natural England's Deadline 12 Appendix A16c submission in relation to guillemot and razorbill.	Green
	42	4.2.119	EA2		
21.	45	4.2.124	EA1N	It would be helpful to the reader to note that Natural England's advice is that we do not consider Non-Material Changes (NMCs) legally secure the 'as built' (actual or potential) impacts of the project, and therefore do not secure 'headroom'. Natural England's position on NMCs is outlined in REP11-121 and at Deadline 12 Appendix A16c (please also see NE answers to R17QF.2 at Deadline 12 in Appendix K11).	Yellow
	42 & 43	4.2.123	EA2		
22.	47	4.2.132	EA1N	This section should refer to LBBG rather than Gannet.	Purple
	44	4.2.131	EA2		
23.	74	6.0.26	EA1N	Natural England's advice is not adequately represented here. In our ExA3 response [REP11-123] we stated: <i>'...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.'</i> This is misrepresented in the updated RIES, which instead states <i>'NE also advises that Schedule 18 could be drafted to allow timely implementation without necessarily requiring implementation in advance of operation'</i> . Natural England requests that the RIES is e amended to accurately reflect our advice.	Yellow
	68		EA2		



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
24.	77	6.0.43	EA1N	It is unfortunate that the RIES does not provide Natural England's advice to the Applicant's assertions around Gannet and Favourable Conservation Status. Please see REP9-065 for our advice on this matter.	Yellow
	71		EA2		
25.	78 & 79	6.0.49	EA1N	Natural England highlights its concern that key elements of the compensation package are not secured, for example landowner agreements, as landowner participation and agreement is key to successful delivery of the LBBG compensation measures. Please see our derogations and compensation feedback at Deadline 10 [REP10-051] and our Deadline 12 response Appendix A15d.	Red
	72		EA2		
26.	80 & 81	7.0.6	EA1N	Following the inclusion of Hornsea Project Three figures to the in-combination assessments with regard to gannet, guillemot, razorbill and seabird assemblage have been updated. Natural England advises that an adverse effect on integrity (AEol) on gannet, guillemot, and razorbill from FFC SPA can be ruled out in-combination with other plans and projects when all projects up to and including Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two are included in the in-combination totals (i.e. if the Hornsea 4, DEP and SEP projects are excluded from the in-combination totals).	Green
	74		EA2		
27.	84	Table 7.1	EA1N	Summary table can be updated to reflect that an adverse effect on integrity (AEol) on Gannet, Guillemot, and Razorbill from FFC SPA can be ruled out in-combination with other	Green



	Pg	Section	EA1N	NE Comments	RAG Status
			EA2		
	77		EA2	plans and projects when all projects up to and including Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two are included in the in-combination totals (i.e. if the Hornsea 4, DEP and SEP projects are excluded from the in-combination totals).	
28.	102	Stage 2 Matrix 1	EA1N	Natural England highlights that the additional text included for LBBG requires further clarity. As read, it is implied that our inability to rule out AEOI is because of uncertainties around other projects. However, our integrity judgement is on the basis of what we consider to be the in-combination totals and the implications of this level of mortality on a site which has a restore Conservation Objective.	
	94		EA2		

Natural England's key to RAG status	Risk
<p>Purple</p> <p>Note for Examiners and/or competent authority. May relate to DCO/DML.</p>	
<p>Red</p> <p>Natural England considers that unless these issues are resolved it will have to advise that (in relation to any one of them, and as appropriate) it is not possible to ascertain that the project will not affect the integrity of an SAC/SPA and/or comply fully with the Environmental Impact Assessment requirements and/or avoid significant adverse effect on landscape/seascape, unless the following are satisfactorily provided:</p> <ul style="list-style-type: none"> new baseline data; significant design changes; and/or significant mitigation; <p>Natural England feels that issues given Red status are so complex, or require the provision of so much outstanding information, that they are unlikely to be resolved during examination, and respectfully suggests that they be addressed beforehand.</p>	
<p>Amber</p> <p>Natural England considers that if these issues are not addressed or resolved by the end of examination then they would become a Red risk as set out above. Likely to relate to fundamental issues with assessment or methodology which could be rectified; preferably before examination.</p>	
<p>Yellow</p> <p>These are issues/comments where Natural England doesn't agree with the Applicant's position or approach. We would flag these at the PEI stage with the view that they would be addressed in the Application. But otherwise we are satisfied for <u>this particular project</u> that it will not make a material difference to our advice or the outcome of the decision-making process. However, it should be noted that this may not be the case for other projects. Therefore it should be noted by interested parties that just because these issues/comments are not raised as part of our Relevant Representations in this instance it should not be understood or inferred that in other cases or circumstances Natural England will take this approach. Furthermore, these may become issues should further evidence be presented.</p>	
<p>Green</p> <p>Natural England supports the Applicant's approach.</p>	