



Department for Energy Security & Net Zero

Department for Energy Security and Net Zero

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(By e-mail only:

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Dear Rachael Devine,

PLANNING ACT 2008

EAST ANGLIA ONE NORTH OFFSHORE WIND FARM ORDER 2022

EAST ANGLIA TWO OFFSHORE WIND FARM ORDER 2022

DECISION ON THE KITTIWAKE IMPLEMENTATION AND MONITORING PLAN UNDER PARAGRAPH 3, PART 1 OF SCHEDULE 18 TO THE ORDERS.

1. The East Anglia ONE North (“EA1N”) and the East Anglia TWO (“EA2”) Offshore Wind Farm Orders 2022 (“the Orders”) contain requirements and conditions that the undertaker must comply with before certain works within the authorised developments as defined in the Orders can commence.
2. On 12 December 2022 ScottishPower Renewables (“the Applicant”) made a request to the Secretary of State for Energy Security & Net Zero (“the Secretary of State”) for approval of the Kittiwake compensation steering group (“KCSG”) Plan of Work for the compensation measures as required by paragraph 2 of Part 1 of Schedule 18 to the Orders.
3. On 16 January 2023 the Secretary of State approved the KCSG Plan of Work, which sets out the KCSG terms of reference, the membership, the schedule of meetings, timetables, reporting and review periods, and the dispute resolution mechanism.
4. On 12 June 2023, the Applicant submitted a joint request for the Kittiwake Implementation and Monitoring Plan (“KIMP”) for the Flamborough and Filey Coast Special Protection Area as required by paragraph 3 of Part 1 of Schedule 18 to the

Orders to the Secretary of State for approval (“the KIMP Approval Request”). The documents provided included the KIMP and Kittiwake Steering Group Agreement Log.

Requirements under paragraphs 3 of Part 1 of Schedule 18 to the Orders

5. Paragraph 3 of Part 1 of Schedule 18 to the Orders states that:

“Following consultation with the KCSG, the KIMP must be submitted to and approved by the Secretary of State (in consultation with the Marine Management Organisation (MMO), the local planning authority for the land containing the artificial nest site, and the relevant statutory nature conservation body). The KCSG must be consulted further as required during the approval process. The KIMP must be based on the strategy for kittiwake compensation set out in the kittiwake compensation plan and include-

- (a) details of the location where compensation measures will be deployed, why the location is appropriate ecologically and likely to support successful compensation, and details of agreements demonstrating how the land and/or rights will or have been secured to deliver the ecology objectives of the KIMP;
- (b) details of designs of the artificial nest site including the type of nesting structure; and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (c) an implementation timetable for delivery of the artificial nest structure that ensures relevant compensation measures are in place to allow four full kittiwake breeding seasons prior to the operation of any wind turbine generator forming part of the authorised development;
- (d) details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; recording of KCSG consultations and project reviews; adaptive management measures and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (e) details of the artificial nesting site maintenance schedule; and
- (f) provision for annual reporting to the Secretary of State, to include details of the number of birds colonising the site including: evidence of birds prospecting; nesting attempts; egg laying; hatching; and fledging, to identify barriers to breeding success and target alternative or adaptive management measures.”

Representations

6. On 11 July 2023, the Secretary of State invited comments from the East Suffolk Council, Great Yarmouth Borough Council, Natural England, the MMO, the Royal Society for the Protection of Birds, Norfolk Boreas Limited and Norfolk Vanguard Limited, in accordance with paragraph 3 of Part 1 of Schedule 18 to the Orders. The deadline for a response was 11.59pm on 11 August 2023.

7. East Suffolk Council responded on 17 July 2023 and stated that the Kittiwake Steering Group Agreement Log was an accurate reflection of their position on all matters in which it wished to engage on, it showed East Suffolk Council had no objections. East Suffolk Council had no comments on the number of bird nest spaces required but deferred to Natural England on the matter.
8. Natural England responded on 7 August 2023 and raised concerns on the scale of compensation proposed. They referred to the Secretary of State's Habitat Regulations Assessments ("HRA") on the Orders which asked for the provision of artificial nesting structures of sufficient size to support 100 breeding pairs. Natural England understood this to be 100 nest spaces per project and therefore 200 in total for both of the Orders.
9. The Applicant states in the KIMP the compensation required is 15 nest spaces in total, 7 for EA1N and 8 for EA2. The Applicant states this is sufficient based on applying the same calculation methods in the Norfolk Vanguard Offshore Wind Farm Order 2022 and Norfolk Boreas Offshore Wind Farm Order 2022.
10. On 3 October 2023, the Secretary of State questioned the Applicant further regarding the scale of compensation it proposed. The Applicant stated its belief that the proposed compensation required was 15 nest spaces, and the 100 breeding pairs referred to was for a minimum colony size rather than being a threshold for compensation. The Applicant stated that the 15 nest spaces would be provided at an existing artificial nesting site with over 100 breeding pairs which has spare capacity for 15 nest spaces.

Secretary of State's consideration of the Applications KIMP Approval Request and the Representations Received

11. Paragraph 3 of Part 1 of Schedule 18 to the Orders states that the KIMP must be based on the strategy for compensation set out in the kittiwake compensation plan. This kittiwake compensation plan was contained in Appendix 1 to the Offshore Ornithology Without Prejudice Compensation Measures Revision 5 dated 31 January 2022 ("the Without Prejudice Compensation Plan") which states the predicted kittiwake loss due to collision is a mean of 0.7 adults for EA1N and 0.8 for EA2 per year (1.5 in total) and the proposed compensation target is 100 breeding pairs.
12. The Secretary of State's EA1N HRA published alongside the decision states that:

"The Secretary of State also agrees that the recruitment of 0.7 adult kittiwake into the southern North Sea population per year would compensate for the effects of the Project. Furthermore, the provision artificial nesting structures of sufficient size to support 100 breeding pairs, would provide enough overcompensation to address any uncertainties around this compensation measure".
13. The EA2 HRA states the same as the above quotation however it required the recruitment of 0.8 adult kittiwake into the southern North Sea population per year.

14. The Secretary of State has carefully considered all the details provided by the Applicant in respect of the requirements related to the KIMP Approval Request and the comments from consultees.
15. The Secretary of State is of the view that the proposed KIMP is not currently based on the strategy for kittiwake compensation set out in the kittiwake compensation plan in regard to the number of nesting spaces. On all other matters in the KIMP Approval Request the Secretary of State is in agreement with the Applicant.
16. As stated in paragraph 11, the Without Prejudice Compensation Plan has a proposed target of 100 breeding pairs, and as stated in paragraph 12 and 13 the Secretary of State's HRA agrees 100 breeding pairs is required.
17. The calculations for the 100 nest spaces required in the Without Prejudice Compensation Plan state the following:

“It is important to consider that the requirement is to compensate for an estimated loss of up to 2 adult kittiwakes per year due to the Project. That equates to the equivalent of 4 fledglings per year (because a fledgling has a 0.49 probability of becoming a breeding adult. To estimate the number of nests required to produce the surplus recruits for the SPA population, it has been assumed that the artificial site productivity rate would be at least 1.0 and that 0.8 of that would be required to maintain the population. The excess of 0.2 chicks per pair is therefore available for recruitment elsewhere. To produce 2 breeding adults at FFC SPA this therefore requires 4 chicks, which at the excess productivity of 0.2 would be obtained from 20 nests. If this is scaled up to allow for over-compensation at a ratio of 1:3 this equates to 60 nests. This remains comfortably below the proposed target of a colony of 100 pairs (which represents an over-compensation ratio of 1:5)”.
18. In response to Natural England's comments regarding 200 nest spaces being required, the Without Prejudice Compensation Plan refers to a cumulative 100 nest spaces for EA1N and EA2 together because the Without Prejudice Compensation Plan covers both projects and the 100 nest spaces referred to provides an overcompensation to meet more than the predicted kittiwake loss of 1.5 in total for the Orders.
19. The Orders require the KIMP to be based on the Without Prejudice Compensation Plan which has a proposed target of 100 breeding pairs, and this is supported by calculations for the 100 figure as a threshold for compensation. The calculations used by the Applicant to get to the KIMP Approval Request of 15 nest spaces and those used in Norfolk Vanguard Offshore Wind Farm Order 2022 and Norfolk Boreas Offshore Wind Farm Order 2022, are different to those used in the Without Prejudice Compensation Plan. The 100 breeding pairs is the required compensation and consequently the Applicant's proposed 15 nest spaces in its KIMP does not provide sufficient nest spaces to meet the requirements of paragraph 3 of Part 1 of Schedule 18 to the Orders. The Secretary of State

therefore does not approve the Kittiwake Implementation and Monitoring Plan as currently proposed.

20. The Applicant may wish to consider whether it wishes to submit an application for a change to the order.

Yours sincerely,



David Wagstaff

Deputy Director, Energy Infrastructure Planning