



THE PLANNING ACT 2008  
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

HORNSEA PROJECT THREE OFFSHORE WIND FARM

Ørsted Power (UK) Ltd.

for:

The construction and operation of Hornsea Project Three Offshore Wind Farm, a 2,400 MW with up to 300 turbines wind farm located 121 km off the Norfolk coast and 160 km off the Yorkshire coast, covering an area of approximately 696 km<sup>2</sup>.

Planning Inspectorate Reference: EN10080

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**WRITTEN REPRESENTATIONS OF NATURAL ENGLAND**

7 November 2018

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# 1. INTRODUCTION

## 1.1. Purpose and structure of these representations

- 1.1.1. These Written Representations are submitted in pursuance of rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 ('ExPR') in relation to an application under the Planning Act 2008 for a Development Consent Order ('DCO') for the construction and operation of an offshore wind farm called Hornsea Project Three Offshore Wind Farm and associated infrastructure ('the Project') submitted by Ørsted Hornsea Project Three (UK) Ltd., on behalf of Ørsted Power (UK) Ltd., ('the Applicant') to the Secretary of State. The project refers to the construction and operation of an offshore wind farm of up to 2,400 MW with up to 300 turbines located 121 km to the north from the north Norfolk coast and 160 km to the east from the East Riding of Yorkshire, covering an area of approximately 696 km<sup>2</sup>. The export cable makes landfall at Weybourne in Norfolk, with the onshore cable route of approx. 53 km crossing north Norfolk to a proposed onshore substation in the vicinity of the existing Norwich Main substation.
- 1.1.2. Natural England has already provided its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate on 20 July 2018. This document comprises a further detailed statement of Natural England's views, as they have developed in view of the common ground discussions that have taken place with the Applicant to date. The document is structured as follows:
- Section 2 introduces the status and functions of Natural England.
  - Section 3 is an account of the legislative framework.
  - Section 4 is an account of the policy framework.
  - Section 5 describes the statutory nature conservation and landscape designations, features and interests that may be affected by the Project and need to be considered.
  - Section 6 comprises Natural England's submissions in respect of the issues that concern it. This submission cross-refers to, and is supported by, the evidence contained in the Annexes.
  - Annex A provides Natural England's responses to the first round of Examining Authority's written questions
  - Annexes B-E contain Natural England's detailed comments on various nature conservation topics
  - Annex F provides a list of additional documents supplied by the Applicant after submission of the Relevant Representations
  - Annex G contains the summary of Natural England's Relevant Representations
  - Annex H summarises Natural England's comments on the Relevant Representations submitted by other parties
  - Annex I contains the summary of Natural England's Written Representations.
- 1.1.3. In its letter of 9 October 2018 the Examining Authority asked the parties, including Natural England, a number of first written questions. The answers to those questions are contained within these Written Representations Annex A.

## 2. STATUS AND FUNCTIONS OF NATURAL ENGLAND AND JNCC

### 2.1. Natural England

2.1.1. Natural England is a statutory body established under the Natural Environment and Rural Communities Act 2006 ('NERC Act'). Natural England is the statutory advisor to Government on nature conservation in England and promotes the conservation of England's wildlife and natural features. It is financed by the Department for Environment, Food and Rural Affairs ('Defra') but is a Non-Departmental Public Body, which forms its own views based on the best scientific evidence available.

2.1.2. Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promoting access, recreation and public well-being, and contributing to the way natural resources are managed so that they can be enjoyed now and by future generations.

2.1.3. Section 2 of the NERC Act provides that Natural England's general statutory purpose is:

*'...to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.'*

2.1.4. Section 2(2) states that Natural England's general purpose includes

- a. promoting nature conservation and protecting biodiversity;
- b. conserving and enhancing the landscape;
- c. securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment;
- d. promoting access to the countryside and open spaces and encouraging open-air recreation; and
- e. contributing, in other ways, to social and economic well-being through management of the natural environment.

2.1.5. Natural England is required to keep under review all matters relating to its general purpose,<sup>1</sup> and to provide public authorities with advice where they request this.<sup>2</sup> Natural England's remit extends to the territorial sea adjacent to England, up to the 12 nautical mile limit from the coastline.<sup>3</sup>

2.1.6. Natural England is a statutory consultee in respect of (amongst other matters):

- a. all applications for consent for Nationally Significant Infrastructure Projects which are likely to affect land in England;<sup>4</sup> and
- b. the environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ('the EIA Regs').<sup>5</sup>

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<sup>1</sup> NERC Act, s.3(1).

<sup>2</sup> NERC Act, s.4(1).

<sup>3</sup> NERC Act, s.1(3).

<sup>4</sup> Planning Act s.42; Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, reg. 3 and sched.1

<sup>5</sup> Regs. 2(1), 8(6), 9(1), 13(2)(b), 17(3)(g), 18(3)(f), 19(3)(e) of the EIA Regs.

- c. plans or projects that are subject to the requirements of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') or the Conservation of Offshore Marine Habitats and Species Regulations 2017 ('Offshore Regulations') which are likely to have a significant effect on European protected sites – that is, sites designated as Special Areas of Conservation ('SACs') (and candidate SACs ('cSACs'))<sup>6</sup> and Special Protection Areas ('SPAs') and potential SPAs ('pSPAs')<sup>7</sup>.
  - d. proposals likely to damage any of the flora, fauna or geological or physiographical features for which a Site of Special Scientific Interest ('SSSI') has been notified pursuant to the Wildlife and Countryside Act 1981 (as amended) ('WCA 1981');<sup>8</sup>
  - e. proposals relating to the English territorial sea capable of affecting, other than insignificantly, any of the protected features of a Marine Conservation Zone ('MCZ') or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent, where the Examining Authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.<sup>9</sup>
- 2.1.7. It is also the Government's policy to consult Natural England in respect of sites listed for the purposes of the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2 February 1971 ('Ramsar sites'), as if they were European protected sites.<sup>10</sup>
- 2.1.8. In addition, Natural England performs duties relating to SSSIs under the WCA 1981, and in relation to European protected sites and species under the Habitats Regulations.

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<sup>6</sup> As a matter of law cSACs are protected as they are included within the definition of 'European site' set out at regulation 8 of the Habitats Regulations. A cSAC is the term given to sites which Member States have decided are Sites of Community Importance ('SCI') within their borders containing either species prescribed in Annex II of the Habitats Directive or which have Annex I habitat types. Sites containing priority habitats or species must be listed as SCIs and then designated as SACs. These sites are known as cSACs until such time as those sites are confirmed as SACs or a decision is taken that they should not be SACs.

<sup>7</sup> As a matter of policy, the Government expects public authorities to treat pSPAs as if they are fully designated European Sites, for the purpose of considering development proposals that may affect them. A potential SPA is a site on which Government has initiated public consultation on the scientific case for its classification. Revised National Planning Policy Framework (July 2018), para 176; PINS Advice Note 10: Habitats Regulation Assessment for nationally significant infrastructure projects, p.4.

<sup>8</sup> Section 28I of the 1981 Act.

<sup>9</sup> Marine and Coastal Access Act 2009, ss.126(2) and 147(1). The first MCZs are anticipated to be designated in the course of 2013. It is submitted that where an expanse of sea is under consideration for designation as an MCZ this is a material consideration.

<sup>10</sup> Revised National Planning Policy Framework (July 2018), para 176 PINS Advice Note 10: Habitats Regulation Assessment for nationally significant infrastructure projects, p.4.

## **2.2. Authorisation to delegate**

- 2.2.1. The Examination Authority should note that pursuant to an authorisation made on the 9<sup>th</sup> December 2013 by the JNCC under paragraph 17(c) of Schedule 4 to the Natural Environment and Rural Communities Act 2006, Natural England is authorised to exercise the JNCC's functions as a statutory consultee in respect of applications for offshore renewable energy installations in offshore waters (0-200nm) adjacent to England. This application was included in that authorisation and therefore Natural England will be providing statutory advice in respect of that delegated authority.

### 3. LEGISLATIVE FRAMEWORK

#### 3.1. Environmental Impact Assessment

- 3.1.1. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ('EIA Regs') transposed Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended). That directive and its amending instruments have since been repealed and replaced by consolidated Council Directive 2011/92/EU ('the EIAD'). Development consent cannot lawfully be granted for EIA development unless there has been substantial compliance with the EIA Regs.<sup>11</sup>
- 3.1.2. The descriptions in the schedules apply broadly, and are not to be interpreted as mutually exclusive 'pigeonholes'.<sup>12</sup> In assessing whether a development is likely to have a significant effect on the environment, the Planning Inspectorate must have regard to criteria in Schedule 3 of the EIA Regs.<sup>13</sup>
- 3.1.3. Where the Examining Authority is considering adopting a scoping opinion in which it specifies what information should be required in the environmental statement, it must consult Natural England in respect of proposed applications likely to affect land in England and the marine environment.<sup>14</sup>
- 3.1.4. The environmental statement must meet the requirements of Schedule 4 to the EIA Regulations. These include providing:
- a. an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects;
  - b. a description of the development, its construction and operation phases, its production processes, and an estimate by type and quantity of its emissions and residues;
  - c. a description of the aspects of the environment likely to be significantly affected by the development including air, water, soil, fauna and flora, and landscape;
  - d. a description of the likely significant effects of the development on the environment, including direct, indirect, secondary, cumulative, long- and short-term, temporary and permanent effects;
  - e. a description of the measures envisaged in order to prevent/avoid, reduce and remedy/offset the significant adverse effects on the environment;
  - f. the data required to identify and assess the main effects which the development is likely to have on the environment.
- 3.1.5. Regulation 3(2) of the EIA Regs provides that a DCO must not be made unless environmental information has been taken into consideration. 'Environmental information' means the required environmental statement, including any further

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<sup>11</sup> *Berkeley v SSE* [2001] 2 AC 603, HL which also concerned the materially identical Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999..

<sup>12</sup> *R(Warley) v Wealden DC* [2011] EWHC 2083 (Admin) at [41]-[44] and [63]-[64] per Singh J, in relation to the materially identical Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

<sup>13</sup> EIA Regs, reg 7(1).

<sup>14</sup> Regulation 8(6) of the EIA Regs.

information requested, any other relevant information, and any duly made representations made about the environmental effects of the development and of any associated development.<sup>15</sup> The environmental statement must meet the required standard before consent may be granted.<sup>16</sup> Consideration of the environmental information must be done conscientiously. Where the development qualifies as EIA Development consent will be unlawful if the decision ignores issues relating to the significance of environmental impacts or the effectiveness of mitigation.<sup>17</sup>

### **3.2. Duty to conserve biodiversity**

3.2.1. Section 40 of the NERC Act imposes a '*duty to conserve biodiversity*' on public authorities, including members of the Examining Authority and the Secretary of State. In pursuance of this, section 40(1) states:

*'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.'*

3.2.2. For the purposes of the NERC Act, conservation includes restoring or enhancing a habitat or population of organisms.<sup>18</sup> The Secretary of State must in particular have regard to the Convention on Biological Diversity when performing his duty.<sup>19</sup>

3.2.3. Section 41 of the NERC Act requires the Secretary of State to publish a list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal importance for the purpose of conserving biodiversity in England. Section 41(3) states:

'the Secretary of State must–

- (a) take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or
- (b) promote the taking by others of such steps.'

### **3.3. European Sites**

3.3.1. The Secretary of State and the individual members of the Examining Authority are each a 'competent authority' for the purposes of the Habitats Regulations, with a duty to have regard to the requirements of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds ('Wild Birds Directive').<sup>20</sup> So far as lies within their powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds.<sup>21</sup>

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<sup>15</sup> EIA Regs, reg. 2(1).

<sup>16</sup> *R v Cornwall CC, ex p Hardy* [2001] Env LR 25.

<sup>17</sup> *Smith v SSETR* [2003] EWCA Civ 262.

<sup>18</sup> NERC Act, s.40(3).

<sup>19</sup> NERC Act, s.40(2).

<sup>20</sup> Habitats Regulations, regs 7(1)(a), 3(1), and 9(3). Directive 2009/147/EC replaced Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

<sup>21</sup> Habitats Regulations, reg.9A(8).

- 3.3.2. The Secretary of State is also the ‘appropriate authority’ for the purposes of the Habitats Regulations.<sup>22</sup> He must accordingly exercise his functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directive and Wild Birds Directive.<sup>23</sup> He must furthermore take such steps as he considers appropriate to secure the objective of the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of article 2 of the Wild Birds Directive.<sup>24</sup>
- 3.3.3. The Wild Birds Directive applies to all species of naturally occurring birds in the wild state in the European territory of the UK, including their nests, eggs and habitats.<sup>25</sup> Article 2 of the Wild Birds Directive requires populations of wild birds to be maintained ‘at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements’.<sup>26</sup> Article 3 requires Member States, in the light of Article 2, to ‘take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats’. Article 5 requires Member States to take the requisite measures to establish a general system of protection for all their wild birds, prohibiting the deliberate killing or capture, deliberate destruction or removal of nests and eggs, and deliberate disturbance of the birds insofar as this is significant having regard to the objectives of the Directive. Article 4 requires SPAs to be established in respect of particular species, in order to ensure the survival and reproduction of these species in their area of distribution. In respect of SPAs, Article 4 requires that the Member States ‘shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article’. It requires that ‘[o]utside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.’ Article 13 provides that application of measures taken pursuant to the Directive may not lead to a deterioration in the present situation as regards the conservation of wild birds.
- 3.3.4. The Habitats Directive aims to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora. It provides that measures taken pursuant to the Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of community interest.<sup>27</sup> Member States, in consultation with the European Commission, must select and designate areas for protection as SACs pursuant to articles 3 and 4 of the Habitats Directive. Together with SPAs, these sites make up the Natura 2000 ecological network, which is supposed to be a coherent ecological European network that enables ‘the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range’.<sup>28</sup>

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<sup>22</sup> Habitats Regulations, reg.3(1).

<sup>23</sup> Habitats Regulations, reg. 9(1) and (2).

<sup>24</sup> Habitats Regulations, reg 9A(1), (3)

<sup>25</sup> Wild Birds Directive, art.1.

<sup>26</sup> Wild Birds Directive, article 2.

<sup>27</sup> Habitats Directive, art.2.

<sup>28</sup> Habitats Directive, art.3(1).

- 3.3.5. Article 6 of the Habitats Directive applies both to SACs and to SPAs.<sup>29</sup> Article 6(2) requires that Member States shall take appropriate steps to avoid, in the European sites, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive. Article 6(3) requires that any project not directly connected with or necessary to the management of the European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site the competent national authorities shall agree to the project only after having ascertained that it will not adversely affect the integrity of the site concerned, unless it meets the enumerated criteria for derogation.
- 3.3.6. If an adverse effect on the integrity of the site cannot be ruled out, then the effect of Article 6(4) is that the project may only be carried out where (i) there are no alternative solutions, (ii) it must go ahead for imperative reasons of overriding public interest, including reasons of a social or economic nature; and (iii) all compensatory measures necessary to protect the overall coherence of the Natura 2000 network are taken. Where the site concerned hosts a priority natural habitat type and/or a priority species (as defined in Annex I of the Habitats Directive), the only considerations which may be raised as 'imperative reasons of overriding public importance' are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or such other matters contained in an opinion of the European Commission.<sup>30</sup>
- 3.3.7. SACs and SPAs are protected as European sites in inshore waters off England (up to 12 nm) by the Habitats Regulations and in offshore waters (i.e. outside 12 nm) by the Offshore Regulations, which transpose the relevant parts of the Habitats Directive into domestic law. The provisions of Article 6 of the Habitats Directive which are noted above are found at regulations 63, 64 and 68 of the Habitats Regulations and regulations 28, 29 and 36 of the Offshore Regulations. In determining these applications, the Secretary of State will be acting as a competent authority for the purposes of those Regulations.
- 3.3.8. The Regulations describe a sequence of steps to be taken by the competent authority in respect of a European site when deciding whether to authorise a plan or project. Those steps are:
- Step 1** Consider whether the project is directly connected with or necessary to the management of the site?<sup>31</sup> If not—
- Step 2** Consider<sup>32</sup> whether the project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. If such an effect cannot be excluded –
- Step 3** Make an appropriate assessment of the implications for the site in view of its current conservation objectives.<sup>33</sup> In so doing, it is mandatory to

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<sup>29</sup> Habitats Directive, art. 6 applies to SACs and art.7 applies it to SPAs designated under the Wild Birds Directive.

<sup>30</sup> Regulations 64 and 68 of the Habitats Regulations, transposing Article 6(4) of the Habitats Directive.

<sup>31</sup> Under regulation 63(1)(b) of the Habitats Regulations or reg. 28(1)(c) of the Offshore Regulations.

<sup>32</sup> Under regulation 63(1)(a) of the Habitats Regulations or reg.28(1)(b) of the Offshore Regulations.

<sup>33</sup> Under regulations 63(1) of the Habitats Regulations.or 28(1) of the Offshore Regulations.

consult Natural England<sup>34</sup> and have regard to its representations, and optional to obtain the opinion of the general public.<sup>35</sup> The competent authority is empowered to require the Applicant to provide information for the purposes of the appropriate assessment, or to enable the authority to determine whether such an assessment is required.<sup>36</sup>

**Step 4** Consider<sup>37</sup> whether the project will adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the 'Integrity Test').

**Step 5** Reject the project, unless it is ascertained that the project will not adversely affect the integrity of the site.<sup>38</sup>

**Step 6** If the project fails the Integrity Test in respect of the site, consider, whether one is satisfied that there is no alternative solution.<sup>39</sup> If not so satisfied, reject the project; but if so satisfied, proceed to steps 7 and 8.

**Step 7** Consider whether one is satisfied that the project must be carried out for imperative reasons of overriding public interest.<sup>40</sup> If not, reject the application. If so, proceed to Step 8.

**Step 8** Consider whether one can secure that compensatory measures are taken which would be necessary to secure that the overall coherence of Natura 2000 is protected. If not, reject the application; if so, accept the application subject to requirements securing that the necessary compensatory measures will be implemented in the appropriate timeframe.<sup>41</sup>

- 3.3.9. The Directives are both to be construed purposively in the light of Article 191 of the Treaty on the Functioning of the European Union ('TFEU'). Article 191(1) TFEU provides that 'Union policy on the environment shall contribute to the pursuit of the...objectives [of] preserving, protecting and improving the quality of the environment'; and Article 191(2) provides that Union policy on the environment shall aim at a high level of protection, and shall be based on the precautionary principle and on the principle that preventive action should be taken.
- 3.3.10. The case law of the Court of Justice of the European Union has established the following points:
- a. Articles 6(2) and 6(3) are aimed at achieving the same level of protection. The Habitats Directive therefore requires that Member States take systematic and effective measures pursuant to Article 6(3) which guarantee the avoidance in fact of significant deterioration of the habitats or

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<sup>34</sup> under regulations 63(3) of the Habitats Regulations or 28(3)(b) of the Offshore Regulations.

<sup>35</sup> under regulation 63(4) of the Habitats Regulations or 28(3)(f) of the Offshore Regulations.

<sup>36</sup> By regulation 63(2) of the Habitats Regulations or 28(2) of the Offshore Regulations.

<sup>37</sup> Pursuant to regulation 63(5) and (6) of the Habitats Regulations or 28(4) and (5) of the Offshore Regulations.

<sup>38</sup> Applying regulation 63(5) of the Habitats Regulations, subject to regulation 64, or reg 28(4) of the Offshore Regulations subject to reg.26.

<sup>39</sup> in accordance with regulation 64(1) of the Habitats Regulations or 29(1) of the Offshore Regulations.

<sup>40</sup> in accordance with regulation 64(1) of the Habitats Regulations or 29(1) of the Offshore Regulations.

<sup>41</sup> As required by regulation 68 of the Habitats Regulations or 36 of the Offshore Regulations.

disturbance of the species for which SPAs and SACs have been designated.<sup>42</sup>

- b. 'Article 6(3) of [the] Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that that plan or project will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned... It follows that the Habitats Directive requires that any plan or project undergo an appropriate assessment of its implications if it cannot be excluded on the basis of objective information that that plan or project will have a significant effect on the site concerned'.<sup>43</sup>
- c. Under Article 6(3) of the Habitats Directive, 'an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field'.<sup>44</sup>
- d. 'An assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA concerned'.<sup>45</sup>
- e. In the context of priority habitats within SACs, 'a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal'.<sup>46</sup>
- f. In order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site<sup>47</sup>.

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<sup>42</sup> CJEU, Case C-241/08 *Commission v France* at paras 30-36; Case C-535/07 *Commission v Austria* at paras 57-58.

<sup>43</sup> CJEU Case C-418/04 *Commission v Ireland* at paras 226 to 227; Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee v Staatsecretaris van Landbouw, Natuurbeheer en Visserij* at paras 43-45

<sup>44</sup> CJEU Case C-127/02 *Waddenzee* at para 61.

<sup>45</sup> CJEU Case C-404/09 *Commission v Spain* at para 100; cf case C-304/05 *Commission v Italy* [2007] ECR I-7495, paras 58-59, 67-70.

<sup>46</sup> CJEU Case C-258/11 *Peter Sweetman and Others v An Bord Pleanála* [2013] ECR-000, para 48.

<sup>47</sup> CJEU Case C-323-17 *People Over Wind and Sweetman vs Coillte Teoranta*, para 40.

### **3.4. Ramsar Convention**

- 3.4.1. The UK is a party to the 1971 Convention on Wetlands of International Importance, done at Ramsar, Iran ('the Ramsar Convention').
- 3.4.2. Article 2(1) of the Convention provides that 'Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance'.
- 3.4.3. Article 4 of the Convention provides:
  - a. Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.
  - b. Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.
  - c. The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.
  - d. The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.'
- 3.4.4. The Government designates Ramsar sites in accordance with the criteria set out in the Convention, in recognition of the international importance of these sites as a wetland wildlife habitat.
- 3.4.5. In accordance with Government Circular: Biodiversity and Geological Conservation Statutory Obligations and their Impact within the Planning System (ODPM 06/2005), and the revised National Planning Policy Framework (2018), paragraph 176, Ramsar sites are subject to the same procedures described in the preceding section (in relation to European sites) as a matter of UK Government Policy, in order to assist the Government in fully meeting its obligations under the Ramsar Convention.

### **3.5. Sites of Special Scientific Interest (SSSIs)**

- 3.5.1. SSSIs are designated as such by Natural England under section 28 of the WCA 1981, where we are of the opinion that land is of special interest by reason of any of its flora, fauna, or geological or physiographical features.
- 3.5.2. Section 28G of the WCA 1981 places legal obligations on public authorities in relation to SSSIs. These authorities are known as 'section 28G authorities', and the definition given at s.28G(3) embraces all public office-holders including the Secretary of State and the Examining Authority.
- 3.5.3. An authority to whom section 28G applies has a duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest to:

*'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.'*
- 3.5.4. In addition, where the permission of a section 28G authority is needed before proposed operations may be carried out, the section 28G authority must, in

accordance with section 28I(5) of the WCA 1981, take any advice received from Natural England into account:

- a. in deciding whether or not to permit the proposed operations; and
- b. if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

3.5.5. 'Permission' is defined so as to include any kind of consent or authorisation.<sup>48</sup> As the Applicant requires development consent from the Secretary of State in order to proceed with its proposals, and as the Secretary of State is a section 28G authority, the duties under section 28I(5) apply to the Secretary of State.<sup>49</sup>

3.5.6. Section 35 of the WCA 1981 empowers Natural England to declare as a 'National Nature Reserve' ('NNR') any land which is managed as a nature reserve and is of national importance. There is no additional protection for these over and above SSSI, European or Ramsar site status.

### **3.6. European Protected Species**

3.6.1. Regulation 9(5) of the Habitats Regulations, headed 'Exercise of functions in accordance with the Habitats Directive', stipulates that:

*'a competent authority, in the exercising of any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions'.*

The Examining Authority and Secretary of State are both 'competent authorities' by virtue of reg.7(1), which includes any person holding a public office.

3.6.2. In relation to species of animals and plants listed in Annex IV of the Habitats Directive, article 12 of the Directive provides that the UK must take the requisite measures to ensure that they are subject to a system of strict protection.

3.6.3. In relation to the animal species, the system must in particular prevent the deliberate capture or killing of specimens of these species in the wild; deliberate disturbance of these species; deliberate destruction or taking of eggs from the wild; and deterioration or destruction of breeding sites or resting places. Disturbance or destruction may be indirect, for instance through noise or light pollution, or loss of habitat.<sup>50</sup>

3.6.4. The plant species must be protected in particular from deliberate picking, collecting, cutting, uprooting or destruction in their natural range in the wild.

3.6.5. Article 16 of the Habitats Directive provides that this strict protection may be derogated from only where (i) there is no satisfactory alternative, (ii) the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, and (iii) the purpose is (a) protecting wild fauna and flora and conserving natural habitats; (b) preventing serious damage to crops, livestock, forests, fisheries and water and other types of property; (c) public health and safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial

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<sup>48</sup> WCA 1981, s.28I(7).

<sup>49</sup> Natural England accepts that the notice requirements of section 28I(2) to (4) have been satisfied for the purposes of the Secretary of State's determination of the planning applications at issue here.

<sup>50</sup> CJEU Case C-103/00, *Commission v Greece*, judgment para 34 and Opinion of Léger AG delivered on 25 October 2001, paras 46, 56 and 57; *R(Morge) v Hampshire CC* [2010] EWCA Civ 608 at [49]. [2011] UKSC 2 at [19].

consequences of primary importance for the environment; (d) research, education, and repopulating and re-introducing these species; or (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

- 3.6.6. Regulation 43 of the Habitats Regulations and the provisions of the WCA 1981 make it a criminal offence to engage in the behaviour prohibited by the Habitats Directive. However, prohibitions enforced by penalties for infractions are not in themselves adequate to implement the Directive if they will not prevent significant destruction or disturbance taking place in fact: 'such protection requires that individuals be prevented in advance from engaging in potentially harmful activities'.<sup>51</sup>
- 3.6.7. The Court of Justice of the European Union has accordingly ruled that Member States must not only adopt a comprehensive legislative framework but also to implement concrete and specific protection measures that are coherent, co-ordinated and preventive in nature.<sup>52</sup> Such a system of strict protection must enable the effective avoidance of deterioration or destruction of breeding sites or resting places caused by development.<sup>53</sup> Strict protection must be enforced even if the population of the species is not declining.<sup>54</sup>
- 3.6.8. The Secretary of State should follow the guidance in paragraphs 99 and 116 of Circular 06/2005, and take care to ensure that any disturbance of protected species, including harm to their habitats, food-sources, resting-places or breeding sites, is avoided unless he considers that the derogation criteria are likely to be met, in which case he should require any necessary licence to be obtained before development commences.<sup>55</sup>

### **3.7. Nationally Protected Species**

- 3.7.1. Certain birds, other animals and plants which are listed in the schedules to the WCA 1981 are protected from disturbance, injury and capture or taking by the provisions of Part 1 that Act, which makes it a criminal offence to disturb, injure, capture or take them.
- 3.7.2. Under section 16 of the WCA 1981, licences may be issued to authorise these activities, provided that certain enumerated conditions are met. The enumerated conditions do **not** include derogation for the purpose of facilitating development, nor for general social or economic purposes.
- 3.7.3. Badgers and their setts are also protected under the Protection of Badgers Act 1992, which makes it illegal to kill, injure or take badgers or to interfere with a badger sett.

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<sup>51</sup> CJEU, Case C-418/04 *Commission v Ireland* at para 208.

<sup>52</sup> CJEU Case C-183/05, *Commission v Ireland*, paras 29-30.

<sup>53</sup> CJEU Case C-383/09 *Commission v France*, opinion of Advocate-General Kokott at para 89; judgment at paras 21, 35, 37.

<sup>54</sup> CJEU Case C-103/00 *Commission v Greece* para 31; CJEU Case C-518/04 *Commission v Greece*, para 21.

<sup>55</sup> That was the approach endorsed by the High Court in *R(Woolley) v East Cheshire DC* [2010] Env. L.R. 5 at [27]-[28]. In *Morge v Hampshire CC*, the Supreme Court appears to have thought that it would not be unlawful to grant permission for a development unconditionally, unless it were thought unlikely that the criteria would be met. This was on the premise that it was sufficient for the prohibited conduct to be subject to criminal penalties if no species licence were obtained. However, the CJEU authorities cited above – which the Supreme Court did not consider in that case – make it clear that a preventive approach must be taken by the planning authority. It would be unsafe for the Secretary of State to grant consent without ensuring, so far as he can, that the requirements of the Directive would be met.

There is provision within the legislation for Natural England to permit activities affecting badgers or their setts where there is suitable justification and the problem cannot be resolved by alternative means.

**3.8. Areas of Outstanding Natural Beauty ('AONBs')**

- 3.8.1. Section 85(1) of the Countryside and Rights of Way Act 2000 ('CRWA 2000') requires all persons holding public office, public bodies and Ministers of the Crown, when exercising or performing any functions so as to affect land in an AONB to 'have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'. By section 92(2) of the CRWA 2000, this includes having regard for conserving its fauna, flora and geological and physiographical features.

## **4. POLICY FRAMEWORK**

### **4.1. Introduction**

- 4.1.1. The documents referred to below are statements of overarching policy which are central and applicable to planning decisions affecting biodiversity, such that it is presumed that the Examining Authority has copies of them, and it has not been thought necessary to include them as Annexes to these Written Representations.

### **4.2. National Policy Statements**

- 4.2.1. EN-1: Overarching National Policy Statement for Energy & EN-3 National Policy Statement for Renewable Energy Infrastructure.

This section summarises the provisions of EN-1 and EN-3 that are most relevant to Natural England's case in relation to particular topics<sup>56</sup>. Bracketed references are made to the corresponding sections of each NPS.

#### **Environmental Statement**

- 4.2.2. When considering an application for a DCO, the Secretary of State and the Examining Authority should satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed [EN-1 at 4.24]. Where necessary, the Secretary of State and the Examining Authority should request further information where necessary to ensure compliance with the EIA Directive [EN-1 at 4.24].

#### **Habitats and Species Regulations**

- 4.2.3. Prior to granting a DCO, the Secretary of State must, under the Habitats Regulations, consider whether the project may have a significant effect on a European site (including Ramsar sites), either alone or in combination with other plans or projects [EN-1 at 4.3.1].
- 4.2.4. The Applicant should seek the advice of Natural England and provide the Examining Authority, with such information as it may reasonably require, to determine whether an Appropriate Assessment is required [EN-1 at 4.3.1]. In the event that an Appropriate Assessment is required, the Applicant must provide the Examining Authority with such information as may be reasonably be required to enable it to conduct the Appropriate Assessment [EN-1 at 4.3.1].

#### **National designations**

- 4.2.5. In sites with nationally recognised designations (including Sites of Special Scientific Interest and National Parks) consent for renewable energy projects should only be granted where it can be demonstrated that the objectives of designation of the area will not be compromised by the development, and any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the environmental, social and economic benefits [EN-3 at 2.5.33].

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<sup>56</sup> References to EN-1 and EN-3 are combined for purposes of this section for purposes of organising the section by topic. This is consistent with, eg, EN-1.3.1, which requires EN-1 to be read "in conjunction" with EN-3. The exact wording of any provision may have been modified in order to remove outdated or irrelevant references (e.g., "IPC" is replaced with "Secretary of State" or "Examining Authority" where relevant, or references to designations that are irrelevant to the facts of this case, such as AONBs have been removed) in order to adapt these provisions to the circumstances of this case for the purposes of these Written Representations.

## **Impacts on Biodiversity and Geological Conservation**

- 4.2.6. Where the development is subject to EIA, the Applicant should ensure that the environmental statement clearly sets out any effects on internationally, nationally, and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity [EN-1 at 5.3.3]. The Applicant should also show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests [EN-1 at 5.3.3].
- 4.2.7. As a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided, compensation measures should be sought [EN-1 at 5.3.7].
- 4.2.8. In taking decisions, the Secretary of State should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment [EN-1 at 5.3.8].
- 4.2.9. Where a development proposal is located outside of a SSSI and is likely to have an adverse effect on the SSSI (either individually or in combination with other developments), development should not normally be granted. Where an adverse effect, after mitigation, on the SSSI's notified special interest features is likely, an exception should only be made where the benefits (including need) clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs [EN-1 at 5.3.11]. The Secretary of State should use requirements and/or planning obligations to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest [EN-1 at 5.3.11].
- 4.2.10. For species and habitats that have been identified as being of principal importance for the conservation of biodiversity in England, the Secretary of State should ensure that these are protected from the adverse effects of development by using requirements or planning obligations [EN-1 at 5.3.17]. The Secretary of State should refuse consent where harm to the habitats or species would result, unless the benefits (including need) of the development outweigh that harm [EN-1 at 5.3.17]. In this context the Secretary of State should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from the proposed development [EN-1 at 5.3.17].
- 4.2.11. The applicant should include appropriate mitigation measures as an integral part of the development. These include measures that will minimise harm to species or habitats during the construction of the operation and, where practicable, restore habitats after construction work have finished [EN-1 at 5.3.18]. Where the applicant cannot demonstrate this, the Secretary of State (and the Examining Authority) should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into [EN-1 at 5.3.19].
- 4.2.12. The Secretary of State (and the Examining Authority) will need to take account of what mitigation measures may have been agreed between Natural England or the Marine Management Organisation, and whether these bodies have granted or refused or intends to grant or refuse, any relevant licences, including protected species mitigation licences [EN1 at 5.3.20].
- 4.2.13. The following provisions of EN-3 are of particular relevant to Natural England's case in relation to the topic of Biodiversity and Geological Conservation:

### **Impacts on Birds**

- 4.2.14. The Secretary of State (and the Examining Authority) will want to be satisfied that the collision risk assessment has been conducted to a satisfactory standard having had regard to the advice from the relevant statutory advisor [EN-3 at 2.6.104].
- 4.2.15. Subject to other constraints, wind turbines should be laid out within a site, in a way that minimises collision risk, where the collision risk assessment shows there is a significant risk of collision [EN-3 at 2.6.108].

### **Impacts on Marine Mammals**

- 4.2.16. If piling associated with an offshore windfarm is likely to lead to the commission of an offence (which would include deliberately disturbing, killing or capturing a European Protected Species), an application may have to be made for a wildlife licence (to the MMO) to allow the activity to take place [EN-3 at 2.6.91].
- 4.2.17. Where assessment shows that noise from offshore piling may reach noise levels likely to lead to such an offence, the applicant should look at possible alternatives or appropriate mitigation before applying for a licence [EN-3 at 2.6.93].
- 4.2.18. The Secretary of State (and the Examining Authority) should be satisfied that the preferred methods of construction, in particular the construction method needed for the proposed foundations and the preferred foundation type, where known at the time of application, are designed so as to reasonably minimise effects on marine mammals [EN-3 at 2.6.94]. Unless suitable noise mitigation measures can be imposed by requirements to any development consent the Secretary of State may refuse the application [EN-3 at 2.6.94].

### **Impacts on Fish, Intertidal and Subtidal Habitats**

- 4.2.19. The applicant's assessment should include relevant information about the impacts of development activities (including cabling) on the likely receptors, including the potential loss of habitats [EN-3 at 2.6.74, 2.6.81 and 2.6.113].
- 4.2.20. The Secretary of State (and the Examining Authority) should be satisfied that activities during the construction, operational and decommissioning phases (including cabling) have been appropriately designed, including in relation to the mitigation of adverse effects on fish and intertidal and subtidal habitats, to avoid or minimise harm to those features wherever possible in accordance with the relevant NPS policies on biodiversity [EN-3 at 2.6.72 to 2.6.89 and 2.6.111 to 2.6.119; see also EN-1 at 5.3.7 & 5.3.8]. Any consent that is granted by the Secretary of State should be flexible to allow for necessary micro-siting of elements of the proposed wind farm during its construction [EN-3 at 2.6.194].

### **Impacts on Physical Environment**

- 4.2.21. The assessment should include predictions of the physical effect that will result from the construction and operation of the required infrastructure and include effects such as the scouring that may result from the proposed development [EN-3 at 2.6.194].
- 4.2.22. The Secretary of State (and the Examining Authority) should be satisfied that the methods of construction, including use of materials, are such as to reasonably minimise the potential for impact on the physical environment [EN-3 at 2.6.196].
- 4.2.23. Mitigation measures which the Secretary of State (and the Examining Authority) should expect, include the burying of cables to a necessary depth and using scour protection techniques around offshore structures to prevent scour effects around them, and applicants should consult the statutory consultees appropriate mitigation [EN-3 at 2.6.197].

### **Future Monitoring of Environmental Impacts**

- 4.2.24. The Secretary of State (and the Examining Authority) should consider whether the applicant should be required to undertake monitoring prior to and during the development's construction, and during its operation, in order to measure and document the effects of the development. This enables an assessment of the accuracy of the original predictions and may inform the scope of future EIAs [EN-3 at 2.6.5.1].
- 4.2.25. The above ecological monitoring is also required so that, where appropriate, residual concerns can be addressed, and should any unpredicted adverse effects be identified these can then be mitigated and enable further useful information to be published relevant to future projects [EN-3 at 2.6.71].

### **4.3. National planning policy and guidance on protected sites and species**

#### **National Planning Policy Framework ("NPPF")**

- 4.3.1. Although the NPPF does not contain specific policies for NSIPs, and defers to the NPSs in this respect, it is submitted that the provisions of the NPPF, including those relevant to the conservation and enhancement of the natural environment, are both important and relevant considerations, and should be taken into account by the Secretary of State and the Examining Authority for purposes of assessing this DCO application<sup>57</sup>.
- 4.3.2. NPPF makes it clear that setting is an important consideration in relation to heritage assets. It notes that the significance of a heritage asset derives not only from its physical presence, but also from its setting (para 132 and 137).

#### **Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005)**

- 4.3.3. This Circular is relevant here, as indicated in EN-1 at, e.g., 5.3.2. Reference to certain provisions of that Circular has already been made in relation to Section 3 of these Written Representations (the Legislative Framework).
- 4.3.4. In addition, Natural England refers to the following provisions of the Circular that are relevant to Natural England's case for the purposes of this examination.
- 4.3.5. *European sites*. In relation to Step 2 of paragraph 3.3.8, *supra* (the 'likely significant effect' determination under the Habitats Regulations Assessment steps), the Circular provides:
- 4.3.6. 'The decision on whether an appropriate assessment is necessary should be made on a precautionary basis. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on the site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgement) which said '*any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects*'<sup>58</sup>.
- 4.3.7. If an appropriate assessment is required, '[it] is for the decision-taker to consider the likely and reasonably foreseeable effects and to ascertain that the proposal will not

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<sup>57</sup> See NPPF at paragraph 4.

<sup>58</sup> Circular 06/2005 at paragraph 13.

have an adverse effect on the integrity of the site before it may grant permission. If the proposal would adversely affect integrity, or the effects on integrity are uncertain, but could be significant the decision-taker should not grant permission, subject to the provisions of regulations' 64 and 68 of the Habitats Regulations (or regulations 28 and 36 of the Offshore Regulations).<sup>59</sup>

- 4.3.8. 'In the Waddenzee judgement, the European Court of Justice ruled that a plan or project may be authorised only if a competent authority has made **certain** that the plan or project will not adversely affect the integrity of the site. 'That is the case where no reasonable scientific doubt remains as to the absence of such effects.' Competent national authorities must be '**convinced**' that that there will not be an adverse effect.'<sup>60</sup>
- 4.3.9. *Protected Species.* With respect to wild plant and animal species (including all species of wild bird) protected under the 1981 Act or the Habitats Regulations:
- 4.3.10. 'It is essential that the presence [of] protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'<sup>61</sup>

#### **Advice note ten: Habitats Regulations Assessment**

- 4.3.11. The Examining Authority is also reminded of the Planning Inspectorate's own Advice note ten: Habitats Regulations Assessment (April 2012).

#### **4.4. European Commission guidance**

- 4.4.1. The European Commission has produced guidance on the protected sites and species procedures. This includes the following relevant guidance:
- Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000);
  - EC (2001) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC (November 2001);
  - Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC (2007);
  - The implementation of the Birds and Habitats Directives in estuaries and coastal zones (2011);
  - Wind energy developments and Natura 2000 (October 2010);
  - Non-energy mineral extraction and Natura 2000 (July 2010); and
  - Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (final version February 2007).

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<sup>59</sup> *Id* at paragraph 20; references to the Habitats Regulations and Offshore Regulations are as amended.

<sup>60</sup> *Id* at paragraph 21.

<sup>61</sup> *Id* at paragraph 99.

## 5. CONSERVATION DESIGNATIONS, FEATURES AND INTERESTS THAT COULD BE AFFECTED BY THE PROPOSED PROJECT

### 5.1. International Conservation Designations

- 5.1.1. Natural England has previously raised concerns around the staged approach to Likely Significant Effect (LSE) screening adopted within this application, whereby interactions that are deemed to be no LSE alone are not carried forward into an in-combination assessment.

Natural England is not in a position to undertake our own screening exercise, but based on our concerns around this approach, we are unable to confirm that section 5 provides a complete list of features and European sites that require consideration within the HRA.

#### Special Protection Areas (SPAs)

##### 5.1.2. Flamborough Head and Bempton Cliffs SPA

- a. The Flamborough Head and Bempton Cliffs SPA was classified by the UK Government as an SPA under the provisions of the Birds Directive in 1993.
- b. Flamborough Head and Bempton Cliffs SPA covers an area of 212.17 ha.
- c. Flamborough Head and Bempton Cliffs SPA is located 149 km from the project site.
- d. Flamborough Head is located on the central Yorkshire coast of eastern England. The cliffs project into the North Sea, rising to 135 m at Bempton Cliffs, and exposing a wide section of chalk strata. The cliff-top vegetation comprises maritime grassland vegetation growing alongside species more typical of chalk grassland. The site supports large numbers of breeding seabirds including Kittiwake *Rissa tridactyla* and auks, as well as the only mainland-breeding colony of Gannet *Morus bassanus* in the UK. The seabirds feed and raft in the waters around the cliffs, outside the SPA, as well as feeding more distantly in the North Sea. The intertidal chalk platforms are also used as roosting sites, particularly at low water and notably by juvenile Kittiwakes.
- e. This site qualifies under Article 4.2 of the Directive (79/409/EEC) by supporting populations of European importance of the following migratory species:
  - i. During the breeding season; black-legged kittiwake *Rissa tridactyla*, 83,370 pairs representing at least 2.6% of the breeding Eastern Atlantic - Breeding population (Count, as at 1987).
  - ii. Assemblage qualification: A seabird assemblage of international importance. The area qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 seabirds. During the breeding season, the area regularly supports 305,784 individual seabirds including: puffin *Fratercula arctica*, razorbill *Alca torda*, guillemot *Uria aalge*, herring gull *Larus argentatus*, gannet *Morus bassanus*, black-legged kittiwake *Rissa tridactyla*.
- f. The citation for the Flamborough Head and Bempton Cliffs SPA and other relevant documents can be found by following the link to the public consultation documents here:

<http://publications.naturalengland.org.uk/publication/5400434877399040?category=5758332488908800>

- g. Features for which outstanding concerns remain:
- Black-legged kittiwake (*Rissa tridactyla*)

### 5.1.3. Flamborough and Filey Coast pSPA

- a. The Flamborough and Filey Coast pSPA is currently in the process of being classified as an SPA under the provisions of the Birds Directive. The public consultation concluded in April 2014 and the minister publically noted the intention to classify the site as a SPA in summer 2018. Natural England and JNCC are currently going through required steps for formal notification regarding which includes EC registration.
- b. The pSPA covers 8039.60 ha across areas in East Riding of Yorkshire, North Yorkshire and Scarborough of which the marine extension covers 7471.78 hectares.
- c. Flamborough and Filey Coast pSPA is located 149 km from the project site.
- d. The pSPA is proposed to be classified under Article 4.2 of the Birds Directive by regularly supporting populations of the following species:
- i. On Migration: black-legged kittiwake *Rissa tridactyla*, northern gannet *Morus bassanus*, common guillemot *Uria aalge*, razorbill *Alca torda*.
  - ii. In the breeding season: 215,750 seabirds (5 year peak mean 2008 to 2012), including: black-legged kittiwake, northern gannet, common guillemot, razorbill, northern fulmar.
- e. The citation and draft conservation advice for the Flamborough and Filey Coast pSPA can be found by following the link to the public consultation documents here:
- <http://publications.naturalengland.org.uk/publication/5511099672690688>
- f. Features for which outstanding concerns remain:
- Black-legged kittiwake (*Rissa tridactyla*)
  - Northern gannet (*Morus bassanus*)
    - Razorbill (*Alca torda*) – as an individual feature and as part of the overall assemblage.
    - Fulmar (*Fulmarus glacialis*) – as part of the overall assemblage;
    - Atlantic puffin (*Fratercula artica*) – as part of the overall assemblage;
    - Herring gull (*Larus argentatus*) – as part of the overall assemblage;
    - Cormorant (*Phalacrocorax carbo*) – as part of the overall assemblage;
    - Shag (*Phalacrocorax aristotelis*) – as part of the overall assemblage.
- (N.B. Cormorant and Shag are included here due to Natural England’s overall concerns with the Applicant’s approach to LSE screening, although we anticipate that they can be screened out of this assessment.)

#### 5.1.4. The Greater Wash SPA

- a. The Greater Wash SPA was classified in 2018 and Natural England and JNCC are currently going through required steps for formal notification regarding which includes EC registration.
- b. The Greater Wash SPA lies along the east coast of England, predominantly in the coastal waters of the mid-southern North Sea between the counties of Yorkshire to the north and Suffolk to the south. It covers an area of c. 3,536 km<sup>2</sup>.
- c. The proposed Hornsea Project Three export cable route overlaps with the SPA.
- d. Water depth within the site ranges from mean high water to about 90m depth within the Wash approach channel; however, most of the site is in less than 30 m water depth.
- e. The Greater Wash SPA is classified for the protection of red-throated diver (*Gavia stellata*), common scoter (*Melanitta nigra*), and little gull (*Hydrocoloeus minutus*) during the non-breeding season, and for breeding Sandwich tern (*Sterna sandvicensis*), common tern (*Sterna hirundo*) and little tern (*Sternula albifrons*).
- f. This site protects important foraging areas for the largest breeding populations of little tern in the UK marine SPA network (798 pairs), and important areas used by the second largest non-breeding populations of red-throated diver (1,407 individuals) and little gull (1,255 individuals) within the UK SPA network. The boundary of the Greater Wash SPA extends beyond 12 nautical miles; hence it is a site for which both Natural England and JNCC have responsibility to provide statutory advice.
- g. The citation and Conservation Objectives Summary are provided by the following links detailed below.  
<http://publications.naturalengland.org.uk/publication/4597871528116224>
- h. Features for which outstanding concerns remain for the Hornsea Project Three are:
  - Red-throated diver (*Gavia stellata*);
  - Sandwich tern (*Thalasseus sandvicensis*);
  - Common tern (*Sterna hirundo*);
  - Little tern (*Sternula albifrons*); and
  - Common scoter (*Sterna hirundo*).

#### 5.1.5. North Norfolk Coast SPA

- a. The North Norfolk Coast SPA was designated in 1996. It is located east of The Wash on the northern coastline of Norfolk, eastern England. The SPA covers 7886.79 ha and extends 40 km from Holme to Weybourne and includes a great variety of coastal habitats; intertidal mudflats and sandflats, coastal waters, saltmarshes, shingle, sand dunes, freshwater grazing marshes and reedbeds.
- b. The site qualifies under Article 4.1 by supporting up to 4500 pairs of sandwich terns *Sterna sandvicensis* (12% of the EC breeding population and one-third of the British breeding population), up to 1000 pairs of

common terns *Sterna hirundo* (3% of the EC and 9% of the British breeding populations) and up to 400 pairs of little terns *Sterna albifrons* (9% of the, EC and 20% of the British breeding populations). The site qualifies also under Article 4(l) by supporting nationally important numbers of bitterns *Botaurus stellaris* (about 10% of the British breeding population), marsh harriers *Circus aeruginosus* (about 30%), Montagu's harrier *Circus pygargus*, and avocets *Recurvirostra avosetta* (about. 30%). Smaller proportions of the national breeding populations of other species listed on Annex 1 of the Directive, arctic tern *Sterna paradisaea*, kingfisher *Alcedo atthis* and short-eared owl *Asio flammeus* are also supported.

- c. The site qualifies under Article 4.2 as an internationally important wetland, regularly supporting, in winter, over 10,000 wildfowl (average over 20,000) and internationally important numbers of the following waterfowl species: 9000 dark-bellied Brent geese *Branta bernicla bernicla* (7% of the European wintering population), 6000 pink-footed-geese *Anser brachyrhynchus* (6%), 6000 knot *Calidris canutus* (2%) and 5600 wigeon *Anas penelope* (1%). Nationally important wintering numbers of the following species are also supported: 270 European white-fronted geese *Anser albifrons albifrons* (4% of the British wintering population), 450 pintails *Anas acuta* (2%), 2600 shelducks *Tadorna tadorna* (1%), 500 grey plovers *Pluvialis squatarola* (2%), 400 ringed plovers *Charadrius hiaticula* (2%), 5000 oyster catchers *Haematopus ostralegus* (2%) and 800 redshanks *Tringa totanus* (1%). In addition, many of the huge wader flocks which feed in The Wash regularly use the western parts of this site as a safe high-water roost. The site supports also nationally important breeding populations of rare species, including gadwall *Anas strepera*, shoveler *Anas clypeata*, garganey *Anas querquedula*, black-tailed godwit *Limosa limosa*, bearded tit *Panurus biarmicus* and parrot crossbill *Loxia pytyopsittacus*.
- d. Link to information on the North Norfolk Coast SPA conservation Advice, standard data form and citation:  
<https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK9009031&SiteName=northnorfolk&countyCode=&responsiblePerson=&SeaArea=&IFCAAarea=>
- e. The proposed export cable route is less than 0.5 km from the SPA.
- f. Features for which outstanding concerns remain:
- Sandwich tern (*Thalasseus sandvicensis*);
  - Common tern (*Sterna hirundo*), and
  - Little tern (*Sternula albifrons*).

#### 5.1.6. Forth Islands SPA

- a. Forth Island SPA covers an area of 9,797.01 ha and was classified on 25 April 1990. The classification was extended on 16 February 2004, marine extension classified on 25 September 2009. An amended citation adopted on 25 May 2018.
- b. Forth Islands SPA consists of a series of islands supporting the main seabird colonies in the Firth of Forth. The islands of Inchmickery, Isle of May, Fidra, The Lamb, Craigleith and Bass Rock were classified on 25 April 1990. The extension to the site, classified on the 16 February 2004 consists

of the island of Long Craig, which supports the largest colony of roseate tern in Scotland. It is the most northerly of only six regular British colonies. The seaward extension extends approximately 2 km into the marine environment to include the seabed, water column and surface.

- c. The boundary of the SPA overlaps with the boundaries of the following Sites of Special Scientific Interest: Long Craig, Inchmickery, Forth Islands, Bass Rock and the Isle of May. A small overlap also occurs with the Firth of Forth SPA.
- d. Qualifying Interest N.B All figures relate to numbers at the time of classification except where amended by the 2001 SPA Review and or subsequent surveys (roseate tern and common tern):
- e. Forth Islands SPA qualifies under Article 4.1 by regularly supporting populations of European importance of the Annex 1 species: Arctic tern *Sterna paradisaea* (mean between 1992 and 1996 of 540 pairs, 1.2% of the UK population); roseate tern *Sterna dougallii* (mean between 1997 and 2001 of 8 pairs, 13% of the UK population); common tern *Sterna hirundo* (mean between 1997 and 2001 of 334 pairs, 3% of the UK population) and sandwich tern *Sterna sandvicensis* (an average of 440 pairs, 3% of the GB population).
- f. Forth Islands SPA further qualifies under Article 4.2 by regularly supporting populations of European importance of the migratory species: northern gannet *Morus bassanus* (21,600 pairs, 8.2% of the world biogeographic population); European shag *Phalacrocorax aristotelis* (2,400 pairs, 1.9% of the North Europe biogeographic population); lesser black-backed gull *Larus fuscus* (1,500 pairs, 1.2% of total *L.f. graellsii* biogeographic population) and Atlantic puffin *Fratercula arctica* (14,000 pairs, 1.5% of the total *F. a. grabae* biogeographic population).
- g. Forth Islands SPA also qualifies under Article 4.2 by regularly supporting in excess of 20,000 individual seabirds. The site regularly supports 90,000 seabirds (three year mean, 1986 – 1988) including nationally important populations of the following species: razorbill *Alca torda* (1,400 pairs, 1.4% of the UK population); common guillemot *Uria aalge* (16,000 pairs, 2.2% of the UK population); black-legged kittiwake *Rissa tridactyla* (8,400 pairs, 1.7% of the UK population); herring gull *Larus argentatus* (6,600 pairs, 4.1% of the UK population); great cormorant *Phalacrocorax carbo* (200 pairs, 2.8% of the UK population); northern gannet (21,600 pairs, 13.6% of the UK population); lesser black-backed gull (1,500 pairs, 1.8% of the GB population); European shag (2,400 pairs, 6.6% of the GB population); Atlantic puffin (14,000 pairs, 3.1% of the UK population); Arctic tern (540 pairs); common tern (334 pairs); roseate tern (8 pairs), and sandwich tern (440 pairs).
- h. The citation, Standard Data Form, Conservation Objectives Summary, and boundary map of the SPA are provided by the following link: <https://sitelink.nature.scot/site/8500>
- i. Distance the SPA is from the project site is (indicative) 384 km.
- j. Features for which outstanding concerns remain Fulmar (*Fulmarus glacialis*) – as part of the overall assemblage.
- k. Please note that this is a Scottish SPA and as such representations may be required from Scottish Natural Heritage.

## Wetlands of international importance designated under the Ramsar Convention (Ramsar sites)

### 5.1.7. North Norfolk Coast Ramsar site

- a. The North Norfolk coast Ramsar was designated in 1976 and covers 7862.4 ha and lies approximately 45 km north-west of Norwich.
- b. This site is less than 0.5 km from the proposed cable route.
- c. This low-lying barrier coast site extends for 40 km from Holme to Weybourne and encompasses a variety of habitats including intertidal sands and muds, saltmarshes, shingle and sand dunes, together with areas of land-claimed freshwater grazing marsh and reedbed, which is developed in front of rising land. Both freshwater and marine habitats support internationally important numbers of wildfowl in winter and several nationally rare breeding birds. The sandflats, sand dune, saltmarsh, shingle and saline lagoons habitats are of international importance for their fauna, flora and geomorphology.
- d. The site is listed for the following criteria:

#### Ramsar criterion 1

The site is one of the largest expanses of undeveloped coastal habitat of its type in Europe. It is a particularly good example of a marshland coast with intertidal sand and mud, saltmarshes, shingle banks and sand dunes. There are a series of brackish-water lagoons and extensive areas of freshwater grazing marsh and reed beds.

#### Ramsar criterion 2

Supports at least three British Red Data Book and nine nationally scarce vascular plants, one British Red Data Book lichen and 38 British Red Data Book invertebrates.

#### Ramsar criterion 5

Assemblages of international importance: Species with peak counts in winter: 98462 waterfowl (5 year peak mean 1998/99-2002/2003).

#### Ramsar criterion 6

Species/populations occurring at levels of international importance. Qualifying Species/populations (as identified at designation):

Species regularly supported during the breeding season: Sandwich tern, *Sterna sandvicensis sandvicensis*, West Europe 4275 apparently occupied nests, representing an average of 7.7% of the breeding population (Seabird 2000 Census) Common tern, *Sterna hirundo hirundo*, North and East Europe 408 apparently occupied nests, representing an average of 4% of the UK population (Seabird 2000 Census) Little tern, *Sterna albifrons albifrons*, West Europe 291 apparently occupied nests, representing an average of 2.5% of the breeding population (Seabird 2000 Census).

Species with peak counts in spring/autumn: Red knot, *Calidris canutus islandica*, West & Southern Africa (wintering) 30781 individuals, representing an average of 6.8% of the population (5 year peak mean 1998/9-2002/3)

Species with peak counts in winter: Pink-footed goose, *Anser brachyrhynchus*, Greenland, Iceland/UK 16787 individuals, representing an average of 6.9% of the population (5 year peak mean 1998/9-2002/3) Dark-bellied brent goose, *Branta bernicla bernicla*, 8690 individuals, representing an average of 4% of the population (5 year peak mean 1998/9-2002/3) Eurasian wigeon, *Anas penelope*, Northwest Europe 17940 individuals,

representing an average of 1.1% of the population (5 year peak mean 1998/9-2002/3)  
Northern pintail, *Anas acuta*, Northwest Europe 1148 individuals, representing an average of 1.9% of the population (5 year peak mean 1998/9-2002/3).

Species/populations identified subsequent to designation for possible future consideration under criterion 6.

Species with peak counts in spring/autumn:

Ringed plover, *Charadrius hiaticula*, Europe/Northwest Africa, 1740 individuals, representing an average of 2.3% of the population (5 year peak mean 1998/9-2002/3) Sanderling, *Calidris alba*, Eastern Atlantic 1303 individuals, representing an average of 1% of the population (5 year peak mean 1998/9-2002/3) Bar-tailed godwit, *Limosa lapponica lapponica*, West Palearctic 3933 individuals, representing an average of 3.2% of the population (5 year peak mean 1998/9-2002/3).

- e. Contemporary data and information on waterbird trends at this site and their regional (sub-national) and national contexts can be found in the Wetland Bird Survey report, which is updated annually. See [www.bto.org/survey/webs/webs-alerts-index.htm](http://www.bto.org/survey/webs/webs-alerts-index.htm).
- f. The Information Sheet on Ramsar Wetlands (RIS) and the Regulation 33 document are provided by the following links detailed below.  
Information Sheet on Ramsar Wetlands (RIS):  
<http://jncc.defra.gov.uk/pdf/RIS/UK11048.pdf>  
Link to webpage containing Regulation 33 document and other relevant information:  
<http://publications.naturalengland.org.uk/publication/3244315>
- g. Features for which outstanding concerns remain: Pink-footed goose (*Anser brachyrhynchus*).

### **Special Areas of Conservation (SAC)**

#### **5.1.8. The Wash and North Norfolk Coast SAC**

- a. The Wash and North Norfolk Coast SAC was first classified by the UK Government as an SAC under the provisions of the EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora in 2005.
- b. The SAC covers 107761.28 ha in the counties of Lincolnshire and Norfolk.
- c. The proposed offshore wind farm's cable route overlaps with the site.
- d. The reasons for Notification:  
The site is designated under article 4.4 of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:
  - i. Sandbanks which are slightly covered by sea water all the time;
  - ii. Mudflats and sandflats not covered by seawater at low tide;
  - iii. Coastal lagoons;
  - iv. Large shallow inlets and bays;
  - v. Reefs;
  - vi. *Salicornia* and other annuals colonising mud and sand;
  - vii. *Spartina* swards (*Spartinion maritimae*);

- viii. Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*);
  - ix. Mediterranean and thermo-Atlantic halophilous scrubs (*Sarcocornetea frut*).
- e. The site is designated under article 4.4 of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:
- i. Common Otter, *Lutra lutra*
  - ii. Common or Harbour Seal, *Phoca vitulina*
- f. The Standard Data Form, Conservation Objectives Summary and Regulation 33 document of the SAC are provided by the following links detailed below.
- Standard Data Form:
- <http://jncc.defra.gov.uk/protectedsites/sacselection/n2kforms/UK0017075.pdf>
- Natural England Conservation Advice for the site:
- [https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK0017075&SiteName=wash\\_\\_\\_\\_\\_and\\_\\_\\_\\_\\_north\\_norfolk&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=](https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK0017075&SiteName=wash_____and_____north_norfolk&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=)
- g. Features for which outstanding concerns remain:
- Shallow Inlets and Bays
  - Sandbanks which are slightly covered by seawater all the time (Annex I sandbanks); and
  - Reefs.

#### 5.1.9. North Norfolk Sandbanks and Saturn Reef SAC

- a. The North Norfolk Sandbanks and Saturn Reef SAC was designated as an SAC in 2017.
- b. The SAC covers 360,341 ha in UK offshore waters.
- c. The proposed offshore cable route overlaps with the site
- d. The reasons for Notification:
- The site is proposed for designation under article 4.4 of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:
- Sandbanks which are slightly covered by sea water all the time
  - Reefs
- e. More detailed information, including conservation advice, in relation to the SAC is provided through the following link:
- <http://jncc.defra.gov.uk/page-6537>
- The boundary map of the SAC can be found here:
- <http://jncc.defra.gov.uk/default.aspx?page=5201&LAYERS=World%2CUKCS%2CReef%2CSandyRange%2CTwelveTS%2CSAC&zoom=8&Y=53.36211&X=2.16407>
- f. Features for which outstanding concerns remain:

- Sandbanks which are slightly covered by seawater all the time (Annex I sandbanks); and
- Reefs.

#### 5.1.10. Southern North Sea candidate SAC (cSAC) / Site of Community Importance (SCI)

- The Southern North Sea cSAC/SCI was submitted to the European Commission to become designated as a SAC. While it is in a process of being designated as a SAC, under the provisions of the EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora in 2009, the cSAC is legally afforded the same protection as a SAC.
- The cSAC covers an area of 36,958 km<sup>2</sup> stretching from the central North Sea north of the Dogger Bank southwards to the Strait of Dover.
- The proposed offshore wind farm is located within the Southern North Sea cSAC.
- The qualifying feature of the site is the Habitats Directive Annex II species:
  - harbour porpoise (*Phocoena phocoena*)
- The draft conservation objectives for the site are:
 

To avoid deterioration of the habitats of the harbour porpoise or significant disturbance to the harbour porpoise, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to maintaining Favourable Conservation Status (FCS) for the UK harbour porpoise (*Phocoena phocoena*). To ensure for harbour porpoise that, subject to natural change, the following attributes are maintained or restored in the long term:

  1. The species is a viable component of the site.
  2. There is no significant disturbance of the species.
  3. The supporting habitats and processes relevant to harbour porpoises and their prey are maintained.
- Links to further information on site selection, Standard Data Form, Draft Advice on Activities and Management Options Paper for the Southern North Sea cSAC can be found here:  
<http://jncc.defra.gov.uk/page-7243>
- Features for which outstanding concerns remain: Harbour porpoise (*Phocoena phocoena*).

#### 5.1.11. Norfolk Valley Fens SAC

- The Norfolk Valley Fen SAC was designated in 2005 and covers an area of 616.21 ha.
- Norfolk Valley Fens SAC is less than 0.5 km from the proposed cable route.
- Qualifying habitats: The site is designated under article 4.4 of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:
  - Alkaline fens. (Calcium-rich springwater-fed fens);

- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae). (Alder woodland on floodplains)\*;
- Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*. (Calcium-rich fen dominated by great fen sedge (saw sedge))\*;
- European dry heaths;
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) (Purple moor-grass meadows);
- Northern Atlantic wet heaths with *Erica tetralix* (Wet heathland with cross-leaved heath);
- Semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco-Brometalia*) (Dry grasslands and scrublands on chalk or limestone).

Annex I priority habitats are denoted by an asterisk (\*).

- d. Qualifying species: The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:
  - Narrow-mouthed whorl snail *Vertigo angustior*;
  - Desmoulin's whorl snail *Vertigo moulinsiana*
- e. Links to further information on the SAC, including the citation document and the conservation objectives, are provided by the following links detailed below.
 

<http://publications.naturalengland.org.uk/publication/6684666086031360>
- f. Features for which outstanding concerns remain: All qualifying features.

#### 5.1.12. River Wensum SAC

- a. The River Wensum SAC was designated in 2005 and covers an area of 381.74 ha.
- b. The proposed offshore wind farm's cable route overlaps with the site.
- c. Qualifying habitats. The site is designated under article 4.4 of the Directive (92/43/EEC) as it hosts the following habitat listed in Annex I:
  - Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation. (Rivers with floating vegetation often dominated by water-crowfoot).
- d. Qualifying species. The site is designated under article 4.4 of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:
  - White-clawed (or Atlantic stream) crayfish *Austropotamobius pallipes*;
  - Bullhead *Cottus gobio*;
  - Brook lamprey *Lampetra planeri*;
  - Desmoulin's whorl snail *Vertigo moulinsiana*.
- e. Links to further information on the SAC, including the citation document and the conservation objectives, are provided by the following links detailed below.
 

<http://publications.naturalengland.org.uk/publication/6039440396910592>
- f. Features for which outstanding concerns remain: All qualifying features.

## **5.2. European Protected Species**

### **Bats**

- 5.2.1. There is considerable evidence that all species of bat in Britain declined significantly during the last Century, particularly since the 1960s. The reasons for the decline include: loss of suitable roost sites, loss of feeding habitat, reduced availability of insect prey through pesticide use and mortality resulting from the use of highly toxic timber treatment chemicals in house roosts.
- 5.2.2. All bats and their roosts are strictly protected under the Wildlife and Countryside Act 1981 (as amended) and the Habitats Regulations. Deliberately capturing, disturbing, injuring and killing bats is prohibited, as is damaging or destroying their breeding sites and resting places (roosts). All bats are European protected species; Bechstein's bat and the barbastelle are Annex II species, for which Natura 2000 sites (SACs) have been declared.

### **Great crested newt**

- 5.2.3. Great crested newts underwent a huge decline in the last century, and are threatened by a wide range of land uses, including agriculture, forestry and development. It is an offence for anyone intentionally to kill, injure or disturb a great crested newt, to possess one (whether live or dead), or sell or offer for sale without a licence. It is also an offence to damage, destroy or obstruct access to any place used by great crested newt for shelter.

### **Harbour porpoise**

- 5.2.4. The harbour porpoise is a small, highly mobile species of cetacean that is common to all UK waters. Due to threats from pressures such as incidental fisheries by-catch, the species has been assessed as under threat / in decline in the Greater North Sea and Celtic Sea, resulting in its recognition as a species of conservation importance under several directives and conventions. This includes Annexes II and IV of the Habitats Directive, Appendix II of the Bonn Convention and the UK Biodiversity Action Plan. Protection under Annexes II and IV of the Habitats Directive gives Harbour Porpoise the status of a European marine protected species.
- 5.2.5. The Habitat Regulations (Habitats Regulations) for England and Wales (as amended) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2017 make it an offence to kill, injure or disturb European marine protected species.
- 5.2.6. In the second UK report on implementation of the Habitats Directive, the conservation status of harbour porpoise in UK waters was assessed as favourable with medium confidence, and the species is expected to survive and prosper under the current conservation approach.

### 5.3. National conservation designations

#### Sites of Special Scientific Interest (SSSI)

##### 5.3.1. Flamborough Head SSSI

- a. The Flamborough Head SSSI was first notified in 1952 and amended in 1986 under Section 28C of the Wildlife and Countryside Act 1981, as inserted by Schedule 9 to the Countryside & Rights of Way Act 2000.
- b. The Flamborough Head SSSI covers 315.2 ha in the counties Humberside and North Yorkshire.
- c. The Flamborough Head SSSI is located 149 km from the proposed offshore wind farm.
- c. The Reasons for Notification:

The site comprises the coastal cliffs of Flamborough Head between Reighton and Sewerby, composed of chalk and softer sedimentary rocks. The cliff line exposes a variety of geological features and the chalk, which reaches 130 m at Bempton, has been eroded to form impressive stacks and caves between North Cliff and Castlemere Hole. These rock exposures are also of interest in supporting important breeding bird colonies, whilst the cliff tops support interesting plant communities.
- d. The Flamborough Head SSSI citation and other relevant information can be found here:

Citation:  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1002289.pdf>

Designated sites:  
<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S1002289&SiteName=flamborough&countyCode=&responsiblePerson=&SeaArea=&IFCAAra=>
- f. Features for which outstanding concerns remain: Internationally important colonies of breeding seabirds, including: black-legged kittiwake (*Rissa tridactyla*), common guillemot (*Uria aalge*), razorbill (*Alca torda*), Atlantic puffin (*Fratercula artica*) and fulmar (*Fulmarus glacialis*).

##### 5.3.2. North Norfolk Coast SSSI

- a. Site of Special Scientific Interest (SSSI) notified in 1986 under Section 28 of the Wildlife and Countryside Act 1981 as amended.
- b. The North Norfolk Coast SSSI is comprised of 7,700 ha.
- c. The North Norfolk Coast SSSI is located less than 0.5 km from the proposed export cable route.
- d. Reasons for Notification:
  - i. The site comprises of The North Norfolk marshland with a wide range of coastal plant communities. There are also extensive intertidal areas are present along the entire coast. Intertidal flats mostly consist of sand or mud and shingle and are unvegetated. There is also mature saltmarsh, sand dune and lagoons that are important in their own right and supporting habitats for birds.

- ii. The whole coast is of great ornithological interest with nationally and internationally important breeding colonies of several species. The geographical position of the North Norfolk Coast and its range of habitats make it especially valuable for migratory birds and wintering waterfowl, particularly brent and pink-footed geese.
- e. Links to the citation, standard data form and further information on the designated sites web page are as follows:
 

Citation:  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1001342.pdf>

Standard Data Form  
<http://jncc.defra.gov.uk/protectedsites/sacselection/n2kforms/UK0019838.pdf>

Designated Sites Information:  
<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S1001342&SiteName=northnorfolk&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>
- f. Features for which outstanding concerns remain: Pink-footed goose (*Anser brachyrhynchus*).

### 5.3.3. Booton Common SSSI

- a. Site of Special Scientific Interest (SSSI) notified in 1984 under Section 28 of the Wildlife and Countryside Act 1981 as amended.
- b. Booton Common SSSI covers an area of 8.2 ha.
- c. Booton Common SSSI is located less than 0.5 km from the proposed offshore cable route.
- d. Reasons for Notification:
  - i. Booton Common lies in the valley of a tributary of the River Wensum, about 1 mile east of Reepham. The principal interest of the site is associated with a mosaic of wet calcareous fen grassland and acid heath communities which have developed due to the naturally undulating ground. Areas of tall fen and a strip of valley alder woodland occupy the lower ground adjacent to the stream.
  - ii. The wet hollows are floristically rich and support abundant Bog-rush *Schoenus nigricans* and Blunt-flowered Rush *Juncus subnodulosus*. Notable associated species include Grass of Parnassus *Parnassia palustris*, Common Cotton-grass *Eriophorum angustifolium*, Common Butterwort *Pinguicula vulgaris*, Marsh Helleborine *Epipactis palustris*, Fragrant Orchid *Gymnadenia conopsea*, Adder's Tongue Fern *Ophioglossum vulgatum* and the rare Marsh Fern *Thelypteris thelypteroides*.
  - iii. The ridges between the hollows support a type of wet heathland with Heather *Calluna vulgaris* and Purple Moor-grass *Molinia caerulea* as the principal species. Gorse *Ulex europaeus* and Tormentil *Potentilla erecta* are also present. Reed *Phragmites australis* dominates the tall fen vegetation and typical associates

include Hemp Agrimony *Eupatorium cannabinum*, Marsh Pennywort *Hydrocotyle vulgaris*, Yellow Iris *Iris pseudacorus* and Marsh Marigold *Caltha palustris*.

- iv. Additional interest is provided by the alder woodland. This contains some Ash with a ground flora of Yellow Iris, Bittersweet *Solanum dulcamara* and nettles.
  - v. A variety of breeding birds are present including Snipe, Woodcock, Grasshopper Warbler and Lesser Whitethroat.
- e. Links to the citation and further information on the designated sites web page are as follows:
- Citation:  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1000657.pdf>
- Designated Sites Link:  
<https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S1000657&SiteName=bootoncommon&countyCode=&responsiblePerson=&SeaArea=&IFCArea=>
- f. Features for which outstanding concerns remain: All qualifying features.

#### 5.3.4. Alderford Common SSSI

- a. Site of Special Scientific Interest (SSSI) notified in 1986 under Section 28 of the Wildlife and Countryside Act 1981 as amended.
- b. Alderford Common SSSI covers an area of 16.8 ha.
- c. The proposed offshore wind farm cable route lies adjacent to the site.
- d. Reasons for Notification:
  - i. Alderford Common is situated on gently undulating ground and supports a wide range of habitats developed in response to variations in soils and topography. A thin layer of glacial sands and gravels cover the underlying chalk which is exposed in abandoned marl workings. A diverse chalk flora has developed in the old pits and the site forms the only remaining example of species-rich chalk grassland in East Norfolk. A bat roost and an outstanding assemblage of breeding birds provide additional interest. The habitats represented include scrub, woodland, bracken heath, marshy grassland and ponds.
  - ii. Chalk grassland occurs in the bottom of the marl-pits and is dominated by Red Fescue *Festuca rubra*, Crested Hair-grass *Koeleria macrantha* and False Brome *Brachypodium sylvaticum*. Many herb-species are associated with the grassland and include Wild Basil *Clinopodium vulgare*, Burnet Saxifrage *Pimpinella saxifraga*, Dwarf thistle *Cirsium acaule*, Larger Wild Thyme *Thymus pulegoides*, Dropwort *Filipendula vulgaris* and Common Spotted Orchid *Dactylorhiza fuchsii*. Damp hollows, on low-lying ground, have a characteristic flora which includes Water Mint *Mentha aquatica*, Pennywort *Hydrocotyle vulgaris* and a large population of Adder's Tongue *Ophioglossum vulgatum*.

- iii. Secondary woodland dominated by Silver Birch *Betula pendula* and Pedunculate Oak *Quercus robur*, open Bracken heath and dense scrub surround the marl workings. Two ponds are also present and a small marshy area has developed around one with abundant Meadowseet *Filipendula ulmaria*.
  - iv. The thick Blackthorn *Prunus spinosa* and Hawthorn *Crataegus monogyna* scrub provides suitable nesting sites for a wide range of breeding birds including the largest population of Nightingales in East Norfolk. Other notable breeding birds are Lesser Whitethroat, Whitethroat, Turtle Dove, Woodcock and Hawfinch.
  - v. The ponds are used as breeding sites by several species of amphibians including a small population of the scarce Warty Newt *Triturus cristatus*.
  - vi. An old lime-kiln is used by bats both as a winter hibernating site and as a daytime roost during the summer months.
- e. Links to the citation and further information on the designated sites web page are as follows:
- Citation:
- <https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1000483.pdf>
- Designated Sites:
- <https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S1000483&SiteName=alderfordcommon&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>
- f. Features for which outstanding concerns remain: Bats (hibernation and roosting sites are identified on the SSSI citation)

## **Marine Conservation Zones (MCZ)**

### **5.3.5. Cromer Shoal Chalk Beds MCZ**

- a. This site was designated a Marine Conservation Zone (MCZ) in January 2016. Cromer Shoal Chalk Beds MCZ is an inshore site 200 metres off the North Norfolk Coast. It begins just west of Weybourne and ends at Happisborough, extending around 10 km out to sea and covering an area of 321 km<sup>2</sup>.
- b. The proposed export cable route overlaps with the site.
- c. The site protects seaweed-dominated infralittoral rock, which does not yet receive enough protection in this region. These rocks in shallow water are an important habitat, providing a home for a variety of small creatures which shelter and feed amongst seaweeds.
- d. Within a wider area that is predominantly sandy, the chalk beds provide stable surfaces for seaweeds and static animals to settle on and grow. The beds are nursery areas for juvenile species as well as being important in the food chain for animals such as the fish, tompot blenny and the small-spotted catshark. The chalk beds are home to lobsters and crabs which settle within the crevices and holes. The area supports the small-scale crab and lobster fishery vital to the character and economy of the area. Other

common species include sea squirts, hermit crabs and pipefish, a relative of the seahorse. The site has a maximum depth of about 20 metres.

e. Protected features of the site are:

- Moderate energy infralittoral rock;
- High energy infralittoral rock;
- Moderate energy circalittoral rock;
- High energy circalittoral rock;
- Subtidal chalk;
- Subtidal coarse sediment;
- Subtidal mixed sediments;
- Subtidal sand;
- Peat and clay exposures;
- North Norfolk Coast (subtidal) (Geological feature).

f. Link to information on the site including the conservation advice and objective:

<https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UKMCZ0031&SiteName=cromer&countyCode=&responsiblePerson=&SeaArea=&IFCAAarea=#hlco>

Designation Order:

[http://www.legislation.gov.uk/ukmo/2016/4/pdfs/ukmo\\_20160004\\_en.pdf](http://www.legislation.gov.uk/ukmo/2016/4/pdfs/ukmo_20160004_en.pdf)

g. Features for which outstanding concerns remain: all features.

#### 5.3.6. **Markham's Triangle pMCZ**

- a. Markham's Triangle proposed Marine Conservation Zone (pMCZ) is an offshore site covering an area of around 200 km<sup>2</sup>. The site is located in the Southern North Sea approximately 137 km from the Humberside coastline in the East of England. The site is bordered by a Dutch Special Area of Conservation known as Cleaver Bank.
- b. Markham's Triangle pMCZ overlaps with the proposed offshore array area.
- c. Markham's Triangle is composed of a mix of subtidal coarse sediment, subtidal sand, subtidal mud and subtidal mixed sediments. The varied nature of the seabed within this site means that it supports a wide range of animals such as polychaete worms, bivalves, starfish, and sea urchins. These species provide prey for crabs and flat fish on the surface of the sediment.
- d. The site is proposed for designation for to protect the following features:
  - Subtidal coarse sediment
  - Subtidal sand
  - Subtidal mud
  - Subtidal mixed sediments
- e. Links to information regarding Markham's Triangle pMCZ:

Markham's Triangle pMCZ Factsheet:

[https://consult.defra.gov.uk/marine/consultation-on-the-third-tranche-of-marine-conser/supporting\\_documents/Markhams%20Triangle%20factsheet.pdf](https://consult.defra.gov.uk/marine/consultation-on-the-third-tranche-of-marine-conser/supporting_documents/Markhams%20Triangle%20factsheet.pdf)

Natural England Information on pMCZ:

<http://publications.naturalengland.org.uk/publication/6079955233931264>

Site assessment for Markham's Triangle pMCZ:

[http://jncc.defra.gov.uk/pdf/JNCC\\_T3PreConsultationAdviceOnPossibleOfshoreMCZs\\_v3.0.pdf](http://jncc.defra.gov.uk/pdf/JNCC_T3PreConsultationAdviceOnPossibleOfshoreMCZs_v3.0.pdf)

f. Features for which outstanding concerns remain:

- Subtidal coarse sediment;
- Subtidal sand; and
- Subtidal mixed sediment.

### **Areas of Outstanding Natural Beauty (AONB)**

#### **5.3.7. Norfolk Coast AONB**

- a. The Norfolk Coast Area of Outstanding Natural Beauty was designated in 1968 under the National Parks and Access to the Countryside Act, 1949. The AONB was designated for its key special quality of 'Exceptionally important, varied and distinctive biodiversity, based on locally distinctive habitats'. The final area of 453 km<sup>2</sup> confirmed in 1990s includes the greater part of the remaining unspoiled coastal areas between the Wash and Great Yarmouth. Though there are minor instances where boundary features have changed or disappeared, the statutory boundary remains as originally designated.
- b. The western outlier, coming within two miles of King's Lynn, takes in part of Sandringham Estate including Sandringham House, and also about six miles of the south-eastern corner of the Wash. The holiday resort of Hunstanton, and the coast immediately to the south of it, is not included, but from nearby Old Hunstanton a continuous coastal strip, varying in depth between three to five miles (five to eight kilometres), extends eastwards to a point near Bacton, excluding the built-up areas of the resorts of Sheringham, Cromer, Overstrand and Mundesley. The eastern outlier stretches from Sea Palling to Winterton, including the magnificent dune system of Winterton Dunes.
- c. Statutory purpose of designation:  
  
The statutory purpose of designating an area of land as an Area of Outstanding Natural Beauty is to conserve and enhance the natural beauty of the area. This comprises the area's distinctive landscape character, biodiversity and geodiversity, historic and cultural environment.
- d. Two secondary non-statutory purposes of AONBs are also recognised:
  - To take account of the needs of agriculture, forestry, fishing and other local rural industries and of the economic and social needs of local communities, paying particular regard to promoting sustainable forms of social and economic development that in themselves conserve and enhance the area's natural beauty; and

- To seek to meet the demand for recreation so far as this is consistent with the statutory purpose of conserving and enhancing the area's natural beauty – and which preferably supports this purpose by increasing understanding, valuation and care for the area - and is also consistent with the needs of rural industries.
- e. Link to Norfolk Coast AONB Management Plan  
<http://www.norfolkcoastaonb.org.uk/mediaps/pdfuploads/pd001159.pdf>
- f. The Hornsea Project Three export cable corridor is within the setting of the Norfolk Coast AONB.

#### **5.4. Nationally Protected Species**

- 5.4.1. The applicant has determined that no Nationally Protected Species (NPS) will be impacted from the project. However should any NPS be detected from pre-construction surveys which could be impacted from the project a licence may be required.

## **6. NATURAL ENGLAND'S CONCERNS AND ADVICE**

### **6.1. Introduction**

6.1.1. In this section Natural England will set out its concerns and advice regarding the Project at the time of submission of these Representations. In some instances more detailed advice is provided in the Annexes.

### **6.2. The principal issues**

6.2.1. Natural England highlighted the following overarching issues in our relevant representations which were submitted to PINS on 20<sup>th</sup> July 2018.

#### **6.2.2. Evidence**

Natural England raised considerable concerns with the standard of evidence provided in support of the application. Natural England is not satisfied that there was insufficient project specific information / evidence presented to characterise the development site in order to fully understand the impacts of this project, or that the best available evidence is being used throughout the application to determine the nature of impacts. Consequently Natural England is unable to reach conclusions beyond reasonable scientific doubt in a number of areas.

#### **6.2.3. Project Proposals**

Natural England is not satisfied that the project parameters have been clearly defined to enable the impacts of a development to be fully assessed against a realistic Worst Case Scenario (WCS). Consequently Natural England is unable to agree with a number of the conclusions outlined.

#### **6.2.4. Assessment of Impacts**

Natural England is not satisfied that sufficient precaution has been built into the analysis to address the uncertainties arising from a lack of site specific data and detailed proposals.

Natural England does not agree with the approach taken for the assessment of the impacts over the lifetime of the project and do not consider that the implications of a 'phased build' scenario had been fully considered.

#### **6.2.5. Cumulative / in-combination assessment**

Natural England is not able to reach a conclusion on the significance of effects of the project alone and in-combination as a result of the uncertainties arising from the lack of site specific data and approach to data analysis.

6.2.6. As a result of the fundamental concerns raised above, Natural England is unable to state beyond reasonable scientific doubt that there will be no adverse effect on site integrity for the relevant SPAs and SACs, or that the conservation objectives of the relevant MCZs will not be hindered.

6.2.7. Natural England has also set out a number of additional issues within our relevant representation which are explored further within this representation in the sections below and within the annexes. As many of Natural England concerns are fundamental in nature, much of our advice remains at a high level. Consequently we have not been able to identify every element of the application and the ES that we may disagree with within this representation. Therefore, a lack of reference to a specific point or issue should not necessarily be taken to indicate agreement from Natural England.

### **6.3. Progress since the Relevant Representations**

- 6.3.1. Since the Relevant Representations were submitted to PINs on 20<sup>th</sup> July 2018 Natural England has had further communications with the Applicant to discuss our submission and outstanding points of concern. During this period Natural England has also engaged with the Applicant to set out matters of agreement and disagreement on topics other than offshore ornithology and benthic ecology. The full details of these matters are set out in the draft All Other Matters Statements of Common Ground (SoCG) which are to be submitted by the Applicant at Deadline 1. The topics, where agreement in-principle has been reached, include: fish and shellfish ecology and seascape and visual resources
- 6.3.2. A schedule of meetings that took place after the Relevant Representations is provided below:
- 25<sup>th</sup> July 2018 – A teleconference call to clarify points included in Natural England’s relevant Representations;
  - 6<sup>th</sup> September 2018 – A call to discuss further engagement on drafting the SoCGs;
  - 2<sup>nd</sup> October 2018 – A meeting, where the Applicant provided an update on the information included in the additional documents prepared on the topics of: marine mammals, benthic ecology and offshore ornithology;
  - 25<sup>th</sup> October 2018 – A teleconference call on the contents of the All Other Matters SoCG (with a focus on marine mammals);
  - 26<sup>th</sup> October 2018 - A teleconference call on the contents of the All Other Matters SoCG (with a focus on onshore ecology).
- 6.3.3. During these discussions, the Applicant has supplied a number of ‘clarification notes.’ Natural England and the full list of documents provided is included in Annex F. It is Natural England’s view that the contents of some of those documents is far more technical than just a ‘clarification note’ and it is our view that a major part of that information should have been submitted as part of the DCO Application to support the ES.
- 6.3.4. Natural England has made every effort to review the additional documents and incorporate the information into the Written Representations. However, this has not been possible for all the topics due to when the documents have been received and the volume and content of the documents supplied. Relevant sections and Annexes of the Written Representations clearly state whether new information has been taken into account in formulating our comments. Natural England encourages the Applicant to submit these additional documents to PINS as part of the examination.

### **6.4. Development Consent Order and Deemed Marine Licenses**

- 6.4.1. While there has been significant progress on some of the issues raised in our relevant representation, a number of Natural England’s concerns on the Development Consent Order (DCO) and Deemed Marine Licenses (DMLs) still remain.
- 6.4.2. It is our view that significant changes are still required to ensure that the DCO and DMLs are fit for purpose and acceptable. The main outstanding areas of concern are:
- The arbitration articles, related dML conditions and Schedule 13.
  - The outstanding discrepancies between project values in the DCO, DML and ES Project description.

- The timing for pre-construction document submission.

6.4.3. In addition, we have requested additional changes and further clarifications subsequent to our Relevant Representations. Natural England's detailed comments on the DCO and DML can be found in Annex B.

## **6.5. Ornithology**

6.5.1. Natural England does not consider that the data provided in support of this application are sufficient to adequately characterise bird abundance and density in the Hornsea Three Project Area and are consequently unable to form any conclusions about the significance of the impacts presented by the applicant that are dependent on these data.

6.5.2. Natural England also has a number of concerns with the approach to various different aspects of the analyses of impacts, which further reduces the confidence in the applicant's conclusions.

6.5.3. Consequently, Natural England is unable to conclude beyond reasonable scientific doubt that the conservation objectives of designated sites will not be hindered as a result of the proposals outlined in this application.

6.5.4. The main areas of concern relate to:

- Baseline Data Collection and Analysis Methodology;
- Collision Risk Modelling (CRM);
- Assessment of Displacement Impacts;
- Assessment of Cumulative and In-combination Effects;
- Population Modelling Approaches and Population Impacts;
- Phenology, Population Scales and Apportioning to individual SPAs;
- HRA Screening and LSE conclusions;
- Habitats Regulations Assessment (HRA);
- Environmental Impact Assessment (EIA);
- Inaccurate and missing information and data presentation in Application documentation;
- The need to present data and predicted impacts in a way that allows the full range of uncertainty (e.g. around input data, analysis, methodology) to be understood and evaluated;
- Migratory Bird Analysis.

6.5.5. Detailed comments on all of these areas can be found in Annex C.

## **6.6. Benthic ecology and protected sites**

6.6.1. Natural England continues to disagree with the conclusions of the Habitats Regulations and Marine Conservation Zone assessments for North Norfolk Sandbanks and Saturn Reef SAC, The Wash and North Norfolk Coast SAC, Cromer Shoal Chalk Beds MCZ and Markham's Triangle pMCZ.

6.6.2. It is our view that there is sufficient uncertainty (reasonable scientific doubt) in relation to the impact assessments on the features, and recoverability of the features, to have limited confidence in HRA conclusions and the Stage 1 conclusion. It is our view that there is a risk of Hornsea Project Three hindering the achievement of the conservation objectives for the designated sites.

6.6.3. The main areas of concern relate to:

- Evidence presented to support cables being buried to the appropriate burial depth;
- Cable protection – including (but not exclusively) the ability to use ‘sensitive’ cable protection, the ability to remove at the time of decommissioning and therefore the assessment that the impacts will be ‘temporary long term’;
- Cable installation proposals such as cofferdams and the associated impacts within the Cromer Shoal MCZ;
- Habitat classification and recognition that not just reef features are Annex I/ Sensitive Ecological important habitats;
- The recoverability of Annex I sandbanks and associated subfeatures;
- Ability to micro-route cables around Annex I *Sabellaria spinulosa* Reef.

6.6.4. The detailed comments can be found in the following annexes:

- Annex D1: Natural England’s comments on The Wash and North Norfolk Coast SAC additional clarification note.
- Annex D2: Natural England and JNCC’s advice on cable protection additional clarification note.
- Annex D3: Natural England and JNCC’s advice on sandwave levelling clarification note and other relevant documents.
- Annex D4: Natural England and JNCC’s detailed advice on offshore benthic ecology.
- Annex D5: Natural England and JNCC’s detailed advice on benthic sections of the HRA.
- Annex D6: Natural England and JNCC’s detailed comments on the Hornsea Three Vol. 5 Annex 2.3 – MCZ assessment.
- Annex D7: Natural England advice on the benthic characterisation of the nearshore section of the cable corridor.

## **6.7. Marine processes**

6.7.1. At the Relevant Representations stage Natural England raised several overarching issues regarding marine processes, these comments remain valid.

6.7.2. Please note that there is further reference to marine processes in the context of designated sites within Annexes D1-D7 of this Written Representation.

## **6.8. Marine mammals**

6.8.1. At the Relevant Representations stage Natural England raised a number of issues regarding potential impacts to marine mammals. We have since had discussions with the Applicant regarding some of those points. Areas of agreement between Natural England and the Applicant are included in the draft All Other Matters SoCG provided by the Applicant.

6.8.2. For any points not agreed in the SoCG, the submissions made in the Relevant Representations are still valid and should be considered as outstanding points of concern. These relate to:

- Cumulative effect assessment of all noisy activities (inc. unexploded ordnance clearance);

- Southern North Sea cSAC/SCI HRA assessment in combination with other plans or projects;
  - Natural England currently cannot agree that the Site Integrity Plan (SIP) is the appropriate control measure to manage concerns relating to in-combination disturbance effects on marine mammals. It is our view that agreement on the HRA conclusions needs to be achieved in the first instance, as those are carried over into the SIP.
- 6.8.3. Additional minor comments on the ES Vol. 2 Ch. 4 – Marine Mammals, that were not included in the Relevant Representations, are provided in Annex E.
- 6.8.4. Natural England has received three additional documents from the Applicant since submission of the Relevant Representations and will review them in due course.
- In-Principle Southern North Sea SCI Site Integrity Plan
  - In-Principle Monitoring Plan
  - A review of precaution in the marine mammal assessment – Clarification Note
- We suggest the Applicant submits these documents as part of the examination.
- 6.8.5. A European Protected Species (EPS) licence will be required to cover the risk of disturbance to all cetacean species identified as likely to be in the area under the Offshore Regulations 2017. Natural England can confirm that we have received a draft EPS licence provided by the Applicant and we do not have any further comments to make.

## **6.9. Onshore ecology**

- 6.9.1. At the Relevant Representations stage Natural England raised a number of issues regarding potential impacts to onshore ecology. We have since had discussions with the Applicant regarding some of those points. Areas of agreement between Natural England and the Applicant are included in the draft All Other Matters SoCG provided by the Applicant.
- 6.9.2. For any points not agreed in the SoCG, the submissions made in the Relevant Representations are still valid and should be considered as outstanding points of concern. These relate to:
- Potential impacts on pink-footed goose associated with the North Norfolk Coast SPA – Natural England would like to be consulted on the mitigation plan issued at least 12 months in advance of any construction activities;
  - Potential impacts on groundwater flows and hydroecology from the onshore cable – Natural England would like to be consulted on pre-construction site-specific cable installation method statements post consent, should a DCO be granted;
  - Protected species licensing – no draft licences for any terrestrial species had been submitted to Natural England prior to the application submission. We note that other OWF NSIP Applicants have obtained a Letter of No Impediment (LONI) to reassure the Examining Authority that a licence will be granted.

## **6.10. Landscape and visual impact assessment**

- 6.10.1. Natural England raised several issues regarding potential impacts to landscape and visual resources. We have since had discussions with the Applicant regarding some of those points. Areas of agreement between Natural England and the Applicant are included in the draft All Other Matters SoCG provided by the Applicant.

6.10.2. Outstanding points of concerns relate to:

- Potential visual impacts of the cable route on the setting of the Norfolk Coast AONB;
- Potential effects on the users of the England Coast Path near Weybourne during construction works at landfall.

### **6.11. Decommissioning**

6.11.1. Natural England acknowledges that a decommissioning plan will be required post consent and that this will be agreed at the relevant time under the provisions of the Energy Act 2004. The decommissioning plan should include an assessment on whether in-combination decommissioning impacts have been assessed fully and, if not, request additional information on the impact assessment. Natural England would welcome a discussion with the Applicant on the potential for in-combination impacts at that time.

6.11.2. Furthermore, Natural England recommends that removal of scour protection and cables where scour is severe is essential in order for the seabed to return to its natural state as required under OSPAR. These matters should be subject to consideration at the time of decommissioning.

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## **8. EXECUTIVE SUMMARY**

(Also available separately as Annex I)

### **1. Summary**

- 1.1. Natural England's (NE) Written Representations provide NE's statutory advice in respect of the potential impacts of the proposed development on the natural environment. NE's Written Representations expand upon the issues outlined in NE's Relevant Representations, in view of statement of common ground discussions that have taken place with the Applicant to date and the information that has been submitted by the Applicant to address certain issues.
- 1.2. In its letter of 9<sup>th</sup> October 2018 the Examining Authority asked the parties, including NE, a number of written questions. The answers to those questions are contained within a separate document submitted alongside our Written Representations.

### **2. Overview of the sections of Natural England's Written Representations**

- 2.1. Section one sets out the introduction and background sections of the Written Representations.
- 2.2. Section 2 sets out the status and functions of NE.
- 2.3. Section 3 provides information on the legislative framework which applies in this case, with reference to the relevant pieces of environmental law and policy.
- 2.4. Section 4 provides an account of the policy framework that can provide assistance to competent authorities when considering the legal steps sets out in section 3 in respect of European sites and SSSIs.
- 2.5. Section 5 introduces the statutory nature conservation designations and interests in the area of the proposed development. It provides links to designation citations and boundary maps. The relevant protected sites potentially affected by the proposed development are as follows:
  - The Flamborough Head and Bempton Cliffs Special Protection Area (SPA).
  - The Flamborough and Filey Coast proposed SPA.
  - The Greater Wash SPA.
  - North Norfolk Coast SPA
  - Forth Island SPA
  - North Norfolk Coast Ramsar site
  - The Wash and North Norfolk Coast Special Area of Conservation (SAC)
  - North Norfolk Sandbanks and Saturn Reef SAC
  - Southern North Sea candidate SAC (cSAC)
  - North Valley Fens SAC
  - River Wensum SAC
  - Flamborough Head Sites of Special Scientific Interest (SSSI)
  - North Norfolk Coast SSSI
  - Booton Common SSSI
  - Alderford Common SSSI

- Cromer Shoal Chalk Beds Marine Conservation Zone (MCZ)
- Markham's Triangle proposed MCZ
- North Norfolk Coast Area of Outstanding Natural Beauty (AONB)

2.6. Section 5 also introduces the relevant European Protected Species :

- Bats
- Great Crested Newt
- Harbour Porpoise.

2.7. Section 6 contains the statutory advice of NE with regard to the issues of concern arising as a result of the proposed development. In its Relevant Representations, NE identified the main principle issues of concern which are dealt with in the Written Representation. Detailed comments on all principle issues are supplied in supporting annexes.

### **3. Principal Issues**

#### **3.1. Evidence**

NE has considerable concerns with the standard of evidence provided in support of this application. Natural England is not satisfied that there was insufficient project specific information / evidence presented to characterise the development site in order to fully understand the impacts of this project, or that the best available evidence is being used throughout the application to determine the nature of impacts.

#### **3.2. Project Proposals**

Natural England is not satisfied that the project parameters have been clearly defined to enable the impacts of a development to be fully assessed against a realistic Worst Case Scenario (WCS).

#### **3.3. Assessment of Impacts**

NE's view is that that sufficient precaution has *not* been built into the analysis to address the uncertainties arising from a lack of site specific data and detailed proposals.

Additionally, we do not agree with the approach taken for the assessment of impacts over the lifetime of the project. The Applicant has considered each phase of the project (construction, operation and maintenance and decommissioning) in isolation, thereby failing to consider cumulative impacts over time. The implications of a 'phased build' over a number of years have not been fully considered and it is also unclear whether any particular impact is considered to be temporary or long term / persistent.

#### **3.4. Cumulative / in-combination assessment**

Currently it is not feasible to reach a conclusion on the significance of effects of the project alone and in-combination as a result of the uncertainties arising from the lack of site specific data.

#### **3.5. Habitats Regulation Assessment/ Report to Inform Appropriate Assessment**

NE is unable to agree with the conclusions set out in the HRA/RIAA due to the reasons set out within the written representations.

#### **3.6. Progress since the Relevant Representations**

Since the submission of our relevant Representations NE has engaged with the applicant. This has included through meetings and work on a joint Statement of Common Ground (SoCG), which will be submitted by the Applicant at Deadline 1. This

section outlines those meetings and notes that the Applicant has provided updated information and documents, some of which NE has not has sufficient time to review to provide comment within the Written Representation and will provide response later.

### **3.7. DCO and DML**

Significant progress has been made on several of the issues raised within our relevant reps. However, there are still several outstanding issues of principle concern:

- The arbitration articles, related dML conditions and Schedule 13.
- The outstanding discrepancies between project values in the DCO, DML and ES Project description.
- The timing for pre-construction document submission.

### **3.8. Ornithology**

NE does not consider that the data provided in support of this application are sufficient to adequately characterise bird abundance and density in the Hornsea Three Project Area and are consequently unable to form any conclusions about the significance of the impacts presented by the applicant that are dependent on these data.

NE also has a number of concerns with the approach to various different aspects of the analyses of impacts, which further reduces the confidence in the applicant's conclusions.

NE is unable to conclude beyond reasonable scientific doubt that the conservation objectives of designated sites will not be hindered as a result of the proposals outlined in this application.

### **3.9. Benthic ecology and protected sites**

NE are concerned with the potential impacts upon designated sites, which are either adjacent to or within the red line boundary of the proposed development. These include:

- North Norfolk Sandbanks and Saturn Reef (NNSSR) SAC;
- The Wash and North Norfolk Coast SAC (W&NNC);
- Cromer Shoal Chalk Beds MCZ and
- Markham's Triangle pMCz.

### **3.10. Marine processes**

At the Relevant Representations stage NE raised several overarching issues regarding marine processes, these comments remain unresolved.

### **3.11. Marine mammals**

At the Relevant Representations stage NE raised a number of issues regarding potential impacts to marine mammals. We have since had discussions with the Applicant regarding some of those points. Areas of agreement between NE and the Applicant are included in the draft All Other Matters SoCG provided by the Applicant

The matters not agreed largely relate to matters raised in NE's relevant representation. However, some new minor issues have been raised and are summarised in Annex E. The outstanding points of concern relate to:

- Cumulative effect assessment of all noisy activities (inc. unexploded ordnance clearance);
- Southern North Sea cSAC/SCI HRA assessment in combination with other plans or projects;

- NE cannot agree to the Site Integrity Plan (SIP) until agreement is reached on HRA conclusions.

NE confirmed receipt of several additional support documents. A draft SIP, an updated In-Principle Monitoring Plan and a clarification note reviewing precaution in the marine mammal assessment. Which we will review and advise on any change of position.

### **3.12. Onshore ecology**

Within our relevant representations NE raised a number of issues related to onshore ecology. Significant progress has been made with the applicant and some issues resolved. Those resolved issues are outlined in the agreed SoCG with the applicant.

Outstanding points of concern are;

- NE need to be consulted on a mitigation plan for pink-footed goose 12 months prior to any construction;
- NE need to be consulted on site specific cable installation methods to ensure impacts to groundwater flows and hydroecology is appropriately protected; and
- NE has not received any draft applications for terrestrial protected species. This prevents the granting of a Letter of No Impediment.

### **3.13. Landscape and visual impact assessment**

Within our relevant representations NE raised several issues regarding potential impacts to landscape and visual resources. Agreement on some areas have been made as detailed in the agreed SoCG. The outstanding points of concern relate to:

- Visual impacts to the Norfolk Coast AONB from the cable; and
- Potential effects on users of the England Coast Path near Weybourne during construction works.

### **3.14. Decommissioning**

NE acknowledges that a decommissioning programme will be required post consent and that this will be agreed at the relevant time under the provisions of the Energy Act 2004. The decommissioning plan should include an assessment on whether in-combination decommissioning impacts have been assessed fully and, if not, request additional information on the impact assessment. NE would welcome a discussion with the Applicant on the potential for in-combination impacts at that time.

Furthermore, NE advises that scour prevention and cable protection is removed at the time of decommissioning in order for the seabed to return to its natural state as required under OSPAR.

## **9. LIST OF ANNEXES**

Annex A – Schedule of Natural England’s responses to Examining Authority’s first round of written questions.

Annex B – Natural England’s detailed comments on the Development Consent Order and Deemed Marine Licenses

Annex C – Natural England’s detailed advice on ornithology

Annex D – Benthic ecology annexes

Annex D1 – Natural England advice on The Wash and North Norfolk Coast SAC Clarification Note

Annex D2 – Natural England and the JNCC advice on the cable protection clarification note

Annex D3 - NE and JNCC advice on Sandwave Clearance Clarification Note and other relevant documentation on sandwave levelling

Annex D4 - JNCC and Natural England advice on offshore benthic ecology

Annex D5 - NE and JNCC comments on the Benthic sections of the HRA revised in light of further information

Annex D6 - NE and JNCC detailed comments on Vol. 5 Annex 2.3 - MCZ Assessment

Annex D7 - Natural England detailed comments on ES benthic characterisation of the nearshore cable corridor

Annex E - Natural England’s additional detailed comments on marine mammals

Annex F - Documentation submitted by the Applicant to Natural England post submission of the Relevant Representation

Annex G - Summary of Natural England Relevant Representations

Annex H - Natural England’s Response to Relevant Representations submitted by other parties

Annex I - Summary of NE Written Representations