

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 27 to Deadline 1 Submission: Response
to ExA Action Points arising from Issue Specific
Hearing 1

Relevant Examination Deadline: 1

Submitted by Vattenfall Wind Power Ltd

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Revision A

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Annexes referred to

Annex A	Translation of Regulation 32 Relevant Representation by Ministere de la Transition Ecologique et Solidaire dated 10/10/2018
Annex B	A French SPA location plan, showing distances to the application site;
Annex C	A matrix of relevant French, English and Latin species names
Annex D	A location plan for the French Offshore Wind Farm projects with confirmation of project names and status.
Annex E	Defining "Competent Authority" in relation to Transboundary HRA issues"

1 Introduction

- 1 This note has been drafted in response to requests by the Examining Authority (ExA) during Issue Specific Hearing 1 (ISH1) on 11/12/2018 and through reference to the ISH1 Action Points document PINS Ref EV-002.
- 2 The ExA, in EV-002, provide five Action Points as follows:
 - Action Point 1 – Reasoned Response to French Government Correspondence;
 - Action Point 2 – legal submissions on the question of competent authority for HRA matters in France;
 - Action Point 3 – Audit trail of requests to French authorities for the purposes of commercial fisheries data acquisition;
 - Action Point 4 – Applicant explanation of why the data used for the purposes of characterising the French fisheries is adequate; and
 - Action Point 5 - MCA submissions on shipping in French Waters.
- 3 Action Points 1, 3, and 4 form the basis of the main body of this document. Action Point 2 is addressed in Annex E to this document. Action 5 is noted specifically for the MCA but the Applicant would note that within the received French representations it is made clear that the assessment as stands is considered adequate and as such the Applicant considers that the implications for international shipping in French waters to be understood and adequately accounted for within the Application documents.
- 4 This document reflects the structure of the request and as such the document is laid out in the following way:
 - Section 1: Introduction
 - Section 2: Habitats Regulations Assessment (HRA) – sites, features and species in France, including observations about whether there are likely significant effects on these, alone or in-combination; Responses to concerns about biodiversity effects within France;
 - Section 3: Responses to concerns about effects on fisheries and fishing in French waters;
 - Section 4: Responses to concerns about navigation in French waters; and
 - Section 5: Whether there is any case for specific post-construction monitoring within France or relevant to species present in France.

2 Action Point 1 - HRA and Biodiversity

5 The ExA Action Point identified in EV-002 is:

[...] provide a reasoned response to matters raised in correspondence to the ExA from the French Government [0D009] [AS-006], appending relevant plans and links to evidence (supporting documents). The response is to address:

- ***Habitats Regulations Assessment (HRA) – sites, features and species in France, including observations about whether there are likely significant effects on these, alone or in-combination;***
- ***Responses to concerns about biodiversity effects within France;***
- ***Responses to concerns about effects on fisheries and fishing in French waters;***
- ***Responses to concerns about navigation in French waters; and***
- ***Whether there is any case for specific post-construction monitoring within France or relevant to species present in France.***

The ExA further noted that supporting documents in providing the above response are to include:

- ***A French SPA location plan, showing distances to the application site;***
- ***A matrix of relevant French, English and Latin species names; and***
- ***A location plan for the French Offshore Wind Farm projects with confirmation of project names and status.***

6 The following section responds specifically to those bullets of relevance to HRA and biodiversity matters. Subsequent sections address matters in relation to commercial fisheries and marine navigation.

2.2 Background

7 The ExA action point relates specifically to the following letters issued by the French Ministère de la Transition Ecologique et Solidaire:

- Regulation 32 Relevant Representation by Ministère de la Transition Ecologique et Solidaire dated 10/10/2018¹; and
- Response to Rule 6 letter by Ministère de la Transition Ecologique et Solidaire dated 11/12/2018².

¹ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000796-Regulation%2032%20Response%20from%20France%20\(17%20October%202018\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000796-Regulation%2032%20Response%20from%20France%20(17%20October%202018).pdf)

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000886-Response%20to%20rule%206.pdf>

- 8 The first of these letters was provided in French, with a translation of that letter provided in Annex A to this document for information. The second letter was provided in English.
- 9 The purpose of this section is to provide a written response to the above letters and ExA Action point, specifically in relation to comments made in connection to the HRA process and biodiversity. Initially matters concerning marine mammals are described before consideration of offshore ornithological matters.

2.3 Marine Mammals

- 10 The key biodiversity issues as regards marine mammals raised in the Regulation 32 letter are as follows:
- The Habitat Regulation Assessment (HRA);
 - SIC FR3102002 Bancs des Flandres (specifically grey seal, harbour seal and harbour porpoise);
 - SIC FR3102004 Ridens et dunes hydrauliques (specifically grey seal, harbour seal and harbour porpoise);
 - SIC FR3102003 Recifs Gris Nez Blanc Nez (specifically grey seal, harbour seal and harbour porpoise);
 - Underwater noise during construction – specifically the differences in assessment according to species, with those differences meaning that harbour porpoise are only assessed at Bancs des Flandres; and
 - In-combination issues in relation to Fecamp, Courseulles-sur-mer, le Treport.
- 11 The key biodiversity issues as regards marine mammals raised in the Rule 6 letter are as follows:
- Noted the French SCIs included in the RIAA as being Bancs des Flandres, Ridens et dunes hydrauliques, Recifs Gris Nez Blanc Nez and Estuaires et littoral picards: baie de Somme et d'Authie;
 - Noted that harbour porpoise is only assessed at the Bancs des Flandres, according to the 26km range (noting that the range is recommended by JNCC);
 - Grey seal and harbour seal are assessed at all the remaining sites;
 - Note that one of the Marine Strategy Framework Directive (MSFD) objectives relates to the risk of disturbance and mortality of marine mammals in relation to offshore wind farms;
 - Provision of additional marine mammal data for the English Channel;

- Questioning the different screening ranges applied to different species, specifically why harbour porpoise is only retained for assessment at one site in French waters; and
 - In-combination issues in relation to Fecamp, Courseulles-sur-mer, le Treport.
- 12 Effectively, all the above issues can be addressed under the following headings:
- The 26km screening distance for harbour porpoise;
 - MSFD objectives;
 - Additional baseline data; and
 - In-combination issues.
- 13 Each of these issues are addressed in turn below.
- 14 For information, species naming of relevance to marine mammals is summarised below. A full account of all relevant marine mammal and ornithology species is presented in Annex C to this document.

English Name (common)	Latin Name	French Name (common)
Harbour porpoise	<i>Phocoena phocoena</i>	Marsouin commun
Harbour seal	<i>Phoca vitulina</i>	Phoque commun
Grey seal	<i>Halichoerus grypus</i>	Phoque gris

- 15 For information, the French offshore wind farm projects (including alternative names and distances to Thanet Extension) are provided below.

Project (as referred to in consultation)	Alternative names	Distance to Thanet Extension Array Boundary
Fecamp	Parc éolien en mer de Fécamp	195km
Courseulles-sur-mer	Eoliennes Offshore du Calvados Parc éolien en mer du Calvados	263km
le Treport	Parc éolien en mer de Dieppe - Le Tréport	141km

The 26km Screening Range

- 16 The application of the 26km screening range, which is standard practice in the UK for sites designated for harbour porpoise when considering underwater noise, that resulted in all but one transboundary site being screened out of LSE for harbour porpoise, with just Bancs des Flandres (some 23km distant at its nearest point) remaining screened in. All of the French SCIs referenced in the consultation by the Ministere de la Transition Ecologique et Solidaire were screened in for assessment in relation to grey seal and harbour seal. Therefore, of the designated sites and species referenced in the consultation, all sites have been considered for assessment together with all marine mammal species referenced by the Ministere de la Transition Ecologique et Solidaire, with the exception of harbour porpoise which was assessed at Bancs des Flandres only. It is the justification for that screening that is discussed here.
- 17 The UK approach to screening (and subsequent assessment) for sites where harbour porpoise is a feature was applied to all sites considered, regardless of the member state within which the site occurred. The need to an approach for the French sites was driven by the lack of conservation objectives at all relevant Natura 2000 sites in French waters (none of the three SCIs referenced by the Ministere de la Transition Ecologique et Solidaire have conservation objectives attached to them³). Similarly, no published methodology for assessment of effect in relation to harbour porpoise in French waters has been sourced through enquiries with French colleagues.
- 18 The 26km screening range, as applied to harbour porpoise, has been derived from Table 2 of the 'Draft Conservation Objectives and Advice on Activities'⁴ prepared for the Southern North Sea cSAC (JNCC, 2016), which in turn draws on published literature (eg Dahne et al 2013 and Tougaard et al, 2014). That published literature draws on monitoring of harbour porpoise undertaken during construction of a number of offshore wind farms across Europe. Table 2 within JNCC (2016) found that:
- 'A Habitats Regulations Assessment (HRA) will be considered for all new developments (coastal and marine) using pile driving within the site or within 26km'.*
- 19 In practice, that means that any piling activity located beyond 26km is not included within the assessment for harbour porpoise. The 26km screening distance has been applied, in agreement with Natural England during the Evidence Plan Process, as a maximum screening range from all noisy activities at Thanet Extension in relation to sites designated to harbour porpoise and therefore resulted in Bancs des Flandres being the only site in French waters screened in for assessment for that species.

³ <http://reseau-manchemerdunord.n2000.fr/>

⁴ <http://jncc.defra.gov.uk/pdf/SouthernNorthSeaConservationObjectivesAndAdviceOnActivities.pdf>

- 20 Harbour porpoise are a highly mobile species. The purpose behind the screening range is to ensure that disturbance from underwater noise within a designated site, which is presumed to provide preferential habitat for harbour porpoise at least some of the time, does not result in harbour porpoise being excluded from a significant portion of that site for a significant period of time. Effectively it is a screening range that focuses on enabling access to habitat through managing potential displacement that may arise from underwater noise.

Additional Baseline Data

- 21 The provision of additional baseline data in relation to further understanding of ornithological and marine mammal receptors is welcome; the Applicant would also welcome provision of full references to enable it to access the information in its original form. From the references the Applicant has accessed, the new data does not change the assessments made or the conclusions drawn as the receptors identified, and populations brought forward are, in essence, the same as those already under consideration.

- 22 The Applicant wishes to note that in the French response there is an assertion, in relation to the shift in harbour porpoise distribution between SCANS surveys that *'probably causes are: ...and the installation of offshore wind farms without preliminary studies and without particular precautions carried out on the cetaceans'*. The Applicant is unable to corroborate the pers. comm. with Dabin that is referred to within the French representation (PINS Ref OD-009). The Applicant is similarly unable to corroborate the Morizur et al (2011) reference, since all 2011 papers by that author⁵ are not publicly accessible, or relate more specifically to other matters such as bycatch of marine mammals during commercial fishing activities. However, the Vincent et al (2017) reference is available in English but relates purely to grey seal and harbour seals⁶ – the reference is therefore not considered relevant in the context applied (namely distribution of harbour porpoise). Hammond et al (2017)⁷ does highlight the shift in harbour porpoise distribution between SCANS surveys, with greater numbers occurring in the English Channel than previously, but no reason is attributed. From the results, it can be seen that a shift in harbour porpoise distribution from the northwest North Sea to the south has occurred since SCANS I (1994), with highest densities found in the southwestern North Sea, and north and east of Denmark. It should be noted that the majority of offshore wind farms constructed to date (and certainly in the timeframe since 1994) in the North Sea have been along the east coast of the UK and the coastline of Belgium, Netherlands, Germany and Denmark. Therefore the location of offshore wind farms does not correlate to the assertion that construction at these has resulted in the shift in harbour porpoise distribution – since the location of both (i.e. the locations of offshore wind farm construction and the location of harbour porpoise since 1994) appears similar.

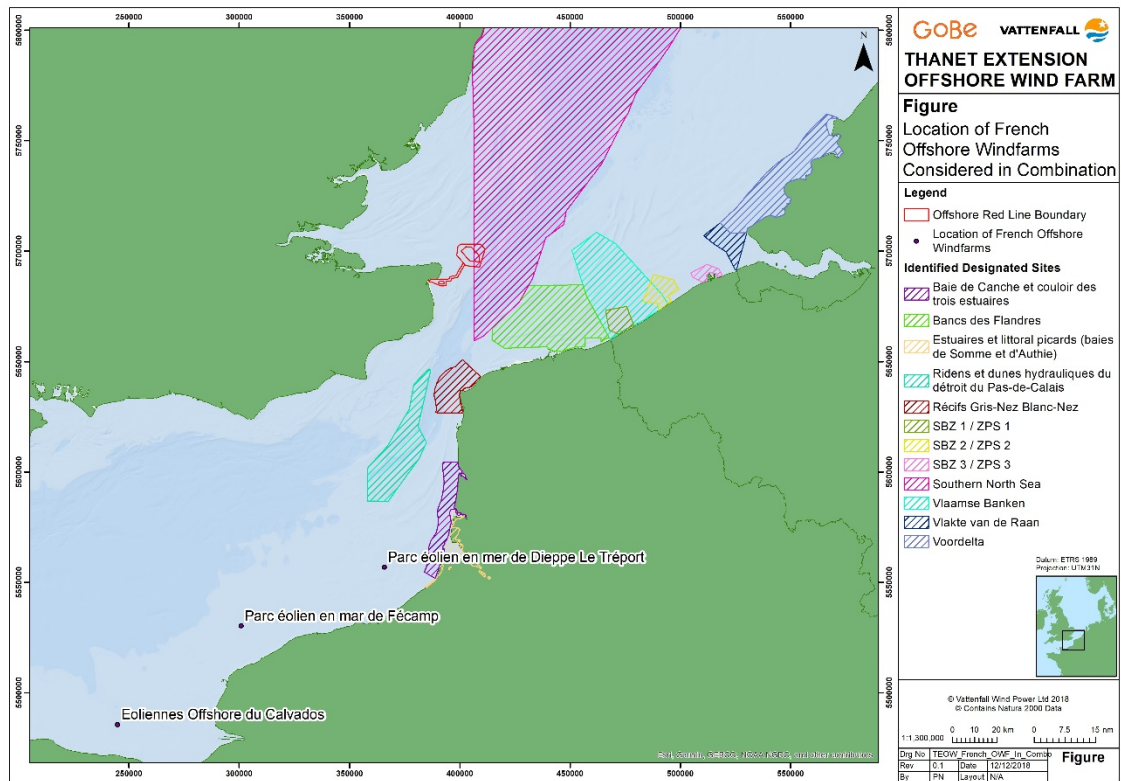
In-combination Matters

- 23 The final aspect to consider is in-combination. The French Ministere de la Transition Ecologique et Solidaire raised specific projects to be addressed in-combination, as follows:
- Fecamp;
 - Courseulles-sur-mer; and
 - le Treport.
- 24 These projects are shown in the figure below, in addition to the location of all Natura 2000 sites screened in for assessment for marine mammals and the location of Thanet Extension.

⁵ <https://annuaire.ifremer.fr/cv/16426/>

⁶ <https://www.sciencedirect.com/science/article/pii/S0967064517301157>

⁷ <https://synergy.st-andrews.ac.uk/scans3/files/2017/04/SCANS-III-design-based-estimates-2017-04-28-final.pdf>



- 25 All projects considered in-combination were assessed on the same basis, regardless of the member state within which they were located. The assessment for marine mammals is presented in the RIAA in section 12.3, with screening in-combination presented in Section 8.3. The screening process took into account the following:
- Timing of the works; and
 - Range to the designated site(s).
- 26 For the three projects identified by the French Ministère de la Transition Ecologique et Solidaire for consideration in-combination, all have been considered according to the criteria applied (notably in Table 8.2 of the RIAA, although Courseulles-sur-mer/Calvados is not included within the table due to its range, as it falls beyond the maximum screening range of 145km from any of the Natura 2000 sites considered for marine mammals). The inclusion of each project within the in-combination assessment of the RIAA is discussed in turn below.

- 27 The RIAA (in Table 8.2 and Table 12.2) found that construction at Fecamp had potential to overlap in time with construction at Thanet Extension, although no specific information on the timeframe is available for inclusion within the assessment. The range of the project from the relevant Natura 2000 sites is such that it was screened in for potential in-combination effects on transboundary grey seal and harbour seal sites only. In all cases, a conclusion of no adverse effect on integrity was drawn.
- 28 The RIAA (in Table 8.2 and Table 12.2) found that le Treport (referred to in the RIAA as Dieppe le Treport) had an unknown timeframe for construction but, based on the screening ranges, had the potential to contribute to an in-combination effect at some but not all of the grey seal and harbour seal transboundary sites screened in only. It was therefore screened in.
- 29 The RIAA (in Table 8.2 and Table 12.2) found that Courseulles-sur-mer (also referred to as Calvados or Parc eoliennes courseulles sur mer) is located in excess of 145km (the maximum screening distance applied for any marine mammal species) from all marine mammal transboundary sites screened in and Courseulles-sur-mer was therefore screened out from the in-combination assessment.
- 30 Table 12.2 of the RIAA then goes on to determine the effects to consider in-combination. For marine mammals, the timeframe for construction at Fecamp and le Treport meant these projects were screened out from further consideration – essentially because no construction timeframe was available on which to make an assessment at that time (June 2018). Timeframe of construction is a key point for assessments of underwater noise. The approach, which is followed through in the tiering of projects (in Section 8 of the RIAA), is a standard approach to screening for in-combination projects in the UK.
- 31 Subsequent to ISH1, the project websites for Fecamp⁸ and le Treport⁹ have been revisited. This revealed the following points which confirm that no change is required to the existing in-combination assessment within the RIAA. With regards Courseulles-sur-mer the hat screening distance remains in place and therefore no change or update to the assessment for that project is required.
- 32 The following paragraphs consider the potential implications of Fecamp and le Treport.

⁸ <http://parc-eolien-en-mer-de-fecamp.fr/>

⁹ https://dieppe-le-treport.eoliennes-mer.fr/?gclid=EAlaIqObChMlrs-Z5q2a3wIVjs13Ch3_PgnKEAAYASAAEgKa_PD_BwE

- 33 Fecamp (also known as Parc éolien en mer de Fécampe Offshore Wind Farm and Fécamp Offshore) published a newsletter in September 2018, confirming that the project is subject to legal challenges that are delaying construction. This means that the construction window remains uncertain and, although a developer is attached to the project and consent authorised, aspects of the project including timing of construction remain uncertain. Therefore even if the project did move ‘tiers’ in the in-combination assessment (see section 8 of the RIAA), the uncertainty posed by the ongoing legal challenges mean that significant uncertainty remains regarding the final project and construction window; therefore the treatment of this project within the in-combination assessment in the RIAA does not change.
- 34 Le Treport (also known as Parc éoline en mer de Dieppe – Le Tréport) has a construction timeframe that provides for construction to commence in 2019, with commissioning in 2021. It is therefore considered that installation of foundations will be completed prior to construction of Thanet Extension commencing, as foundations will need to be installed in advance of the later project stages to enable commissioning in 2021 and therefore are not expected to occur within the same timeframe as piling at Thanet Extension, which is scheduled to occur in 2021 at the earliest. There is therefore no need to amend how le Treport is included within the in-combination assessment within the RIAA.

2.4 MSFD Objectives

Marine Mammals

- 35 The reference by the Ministère de la Transition Ecologique et Solidaire to the Marine Strategy Framework Directive (MSFD) in both the letters under consideration is noted. The aim of the MSFD is for EU member states to put in place measures to achieve Good Ecological Status (GES) in their marine waters by 2020. In the UK, the UK Marine Strategy is aimed towards achieving GES in UK seas. Underwater noise is included as Descriptor 11 – and in the UK, the Marine Noise Registry (MNR) is the forum for recording relevant human activity as part of the commitments made in the UK Marine Strategy. The draft Development Consent Order for Thanet Extension includes a commitment to provide information on piling activity to the MNR. That commitment is in addition to the full consideration of the Habitats and Birds Directives with respect to potential impacts on the Natura 2000 sites within the Report to Inform Appropriate Assessment (RIAA) (including issues for underwater noise) together with consideration of other relevant and inter connected legislation (such as the Water Framework Directive) within the Environmental Statement (again including issues for underwater noise among wider environmental issues).

- 36 It is therefore considered that the Regulation 32 concern regarding Ecological Status, which specifically relates to ‘the protection and conservation of biodiversity under framework directive n92/43CCE (Bird directive) and directive n2009/147/CE (Habitat/fauna/flora directive)’ is fully addressed within the RIAA and wider application documents.
- 37 As regards the concern noted in the Response to the Rule 6 letter, where the following objective is noted ‘reduce the noise level related to impulsive emissions with regard to the risks of disturbance and mortality of marine mammals’, we draw attention to the draft Marine Mammal Mitigation Protocol¹⁰ (Document Reference 8.11), submitted with the application and to be finalised in consultation with Natural England.
- 38 The primary aim of the MMMP is to reduce to negligible the risk of permanent threshold shift (PTS) auditory injury to any marine mammal species in close proximity of the pile driving for the foundation structures. The measures contained within the MMMP are considered sufficient to address the issue for all marine mammal species.
- 39 As regards disturbance, the Applicant would draw the attention of the reader to the assessments within the RIAA¹¹, specifically in relation to the risk of disturbance of harbour porpoise at the Bancs des Flandres site (as measured through the 26km range) but also the risk of disturbance of grey and harbour seal (as measured through the definition of Favourable Conservation Status). All these assessments conclude no adverse effect in relation to the level, frequency and duration of impulsive noise associated with construction at Thanet Extension.

Ornithological receptors

- 40 The relevant section of the French submission (PINS Ref AS-006) for ornithology reiterates that this region of the French side of the England Channel (between Belgium border and SPA Littoral Seine-Marine) is of national (French) and international interest for seabirds during winter. It also references important national (French) numbers of breeding seabirds in this region including kittiwake, common tern, little tern and northern fulmar. This is more a statement that the French Government and its Agencies are placing some level of importance on the conservation of species within these waters rather than a request for a re-assessment of the impacts of Thanet Extension.

¹⁰ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000699-8.11_TEOW_MMMP.pdf

¹¹ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010084/EN010084-000586-5.2_TEOW_RIAA.pdf

- 41 The Applicant recognises that Thanet Extension lies towards the outer reaches, or outside, of the mean max foraging range (defined by Thaxter et al, 2012) for most seabirds at colonies within the four French SPAs referred to in the French submission (PINS Ref AS-006). The Applicant estimated that collision mortality rates are very low during the breeding season for all seabirds, so therefore it has concluded that there are no significant adverse effects on UK or French seabird populations.
- 42 The French submission (PINS Ref AS-006) recognises this area as being of importance by the French Agencies during the migratory or wintering periods. The Applicant recognises that understanding the risks from French OWFs would be relevant to the continuing conservation objectives of each of the four SPAs and region overall, but not necessarily a requirement for the assessment of Thanet Extension. The Applicant's conclusions from impact assessments for Thanet Extension identify no significant negative effects on seabirds that are interest features of those UK sites assessed in the RIAA (PINS Ref 031/ Application Ref 5.2), with such a conclusion also being applicable for seabirds moving between the North Sea and English Channel to French SPAs and regions as defined by the French Government as part of their commitment to the MSFD.

2.5 Ornithology clarification

- 43 The following three sub-sections have been compiled in response to the ExA action points relating specifically to matters raised by the French Ministère de la Transition Ecologique et Solidaire:
- Generic points made at ISH1 to the Examining Authority by the Applicant
 - Specific points in response to the submission from the French Ministère de la Transition Ecologique et Solidaire (PINS Ref OD-009)
 - Specific points in response to the submission from the French Ministère de la Transition Ecologique et Solidaire (PINS Ref AS-006)

Generic Ornithology Points Made by the Applicant at ISH1

- 44 As noted at ISH1 it is the Applicant's position that the assessment has adequately considered all ornithological receptors of relevance to the project.

- 45 The determination of the bird species to include in the Offshore Ornithology Baseline Technical Report (PINS Ref APP-077/ Application Ref 6.4.4.1) was based on the 26 consecutive months of offshore survey data available. In order to provide the Examining Authority with clarification (following on from the brief verbal explanation provided during ISH1) on the approach taken to filter bird species for inclusion in the detailed accounts in the Offshore Ornithology Baseline Technical Report (PINS Ref APP-077/ Application Ref 6.4.4.1) the following criteria/thresholds were applied:
- All species only recorded on a single occasion within the Array Area were omitted
 - All species only recorded within the 4 km buffer (and not the Array Area) on three or less occasions were omitted
 - All species only recorded on a single occasion within the Thanet OWF were omitted
- 46 The list of birds occurring in very small numbers or very infrequently (in accordance to the criteria / thresholds set out in the above bullets) is given in Section 5.2 of the Offshore Ornithology Baseline Technical Report (PINS Ref APP-077/ Application Ref 6.4.4.1). The raw counts, abundance estimates and densities of all those species omitted from detailed species accounts within the main text of the Offshore Ornithology Baseline Technical Report (PINS Ref APP-077/ Application Ref 6.4.4.1) were included within the appendices of the same document. The logic of this part of the screening process that was being applied was that if a species occurred in very small numbers or very infrequently then the assessment of potential impacts at an EIA and HRA level could be no more than negligible.
- 47 After this initial step a series of screening criteria were applied, which is given in Section 7.2 and Table 7.1 of the Report to Inform Appropriate Assessment (PINS Ref APP-031/ Application Ref 5.2). The five criteria that were applied to SPA or Ramsar sites with bird interest features were:
- SPA or Ramsar site overlaps with Thanet Extension boundary
 - SPA or Ramsar site overlaps with the potential extent of impacts associated with/ emanating from Thanet Extension
 - SPA or Ramsar site has interest features that nest and raise their young within that protected site during the breeding season and forage offshore during the breeding season to feed their young
 - SPA or Ramsar site has interest features that nest and raise their young within that protected site during the breeding season and subsequently occur in the region of Thanet Extension outside of the breeding season, either on migration (passage) or throughout the winter

- SPA or Ramsar site has interest features that use that protected site in the non-breeding season (i.e. they are not breeding interest features) and subsequently occur in the region of Thanet Extension on migration (passage)
- 48 Following this stepwise approach all relevant sites were considered to either be 'screened in' or 'screened out'.
- 49 As regards French designated sites the two closest sites, Bancs des Flandres SPA and Cap Gris Nez SPA, were screened out on the basis of the screening process described above. The other two sites, Estuaire de la Canche SPA and Littoral Seino-marin SPA, are further away from the Thanet Extension Array Area than either Bancs des Flandres SPA or Cap Gris Nez SPA at ~100 km and ~160 km respectively, measured from the Thanet Extension Array Area as that is the source of the potential impact types – displacement and disturbance. As described above in the screening process, if a closer transboundary site with the same interest feature(s) have been screened out then any transboundary sites further away are, by logical extension, also screened out. For this reason the Estuaire de la Canche SPA and Littoral Seino-marin SPA have been screened out.
- 50 It is the Applicant's position that following this method all relevant species have been accounted for, and all relevant sites 'screened in/out' appropriately.

Specific points in Response to French Submission PINS Ref - 0D-009

- 51 The Regulation 32 response from the French Ministere de la Transition Ecologique et Solitaire was submitted on 10th October 2018 (PINS Ref 0D-009).
- 52 The core of their representation in relation to SPAs in France was that they were not satisfied with scientific rigour of the appropriate assessment and that they sought the screening for LSE to be carried out again. This was in relation to the following four SPAs:
- Cap Gris Nez SPA
 - Bancs des Flandres SPA
 - Estuaire de la Canche SPA
 - Littoral Seino-marin SPA
- 53 The detail of the response considered that revisions were required to the impact assessments for the following species: gannet, red-throated diver, herring gull, lesser black-backed gull, great black-backed gull, kittiwake, razorbill and guillemot.
- 54 The response within the submission document (PINS Ref 0D-009) identified the following in relation to each SPA:

Cap Gris Nez SPA

- The presence of lesser black-backed gull, great black-backed gull, gannet and kittiwake justify its classification;
- It hosts the largest kittiwake colony in France;
- Fulmar uses the SPA; and
- It is a site of national [French] importance for wintering red-throated diver and during migratory periods for gannet, razorbill and common guillemot.

Bancs des Flandres SPA

- The presence of gannet, kittiwake, red-throated diver and guillemot justify its classification;
- The SPA forms important functional role (feeding) for kittiwake and Mediterranean gull;
- It hosts an important (in French context) colony of common gull; and
- The site is also characterised by autumn migratory movements of gannet, red-throated loon, razorbill and common guillemot.

Littoral Seine-Marine SPA

- The presence of gannet, red-throated diver, kittiwake, lesser black-backed gull, great black-backed gull, herring gull, razorbill and guillemot, justify its classification.

Estuaire de la Canche SPA

55 The presence of red-throated diver justifies its classification.

The Applicant's Response to Submission Document (PINS Ref OD-009)

56 The screening stage assessment is considered sufficiently rigorous, having accounted for:

- Very low bird abundances within Thanet Extension during the breeding season as set out in Section 5.2 of Annex 4-1 Baseline Technical Report - Offshore Ornithology of Volume 2, Chapter 4 (PINS Ref App-077/ Applicant Ref No. 6.4.4.1) of the Environmental Statement. This rules out potential transboundary impacts from collision risk and displacement on all species during the breeding season as only a small proportion of the low seabird abundances can be connected and apportioned to French SPAs;
- Potential impacts from collision risk assessed for Thanet Extension during migratory periods (spring and autumn) were low for all species as set out in Annex 4-4 Collision Risk Modelling Report Ornithology Offshore of Volume 2, Chapter 4 (PINS Ref APP-080/ Applicant Ref 6.2.4.4) of the Environmental Statement. Therefore, when considering only a small proportion of the low number of estimated collisions can be connected and apportioned to French SPAs it is logical to screen the French sites out;
- Potential impacts from disturbance and displacement or barrier effect are assessed for Thanet Extension during migratory periods (spring and autumn) were low for all species as set out in Sections 4.11 and 4.12 of Volume 2, Chapter 4 (PINS Ref APP-045/ Applicant Ref 6.2.4) of the Environmental Statement. Therefore, when considering only a small proportion of these low impacts can be connected and apportioned to French SPAs it is logical to screen the French sites out;
- Potential impacts assessed for Thanet Extension during the winter period were low in relation to collision risk and disturbance and displacement for the majority of species (PINS Ref APP-080/ Applicant Ref 6.2.4.4; Title: Environmental Statement Volume 2 Chapter 4 Annex 4-4 Collision Risk Modelling Report Ornithology Offshore). Therefore, when considering only a small proportion of these low impacts can be connected and apportioned to French SPAs it is logical to screen the French sites out;
- Overall, Thanet Extension is predicted to cause minimal risk from collision, disturbance and displacement or barrier effects on marine bird species that are associated with the four French SPAs identified by the French Government in the submission document (PINS Ref OD-009).

Specific points in Response to French Submission PINS Ref – AS006

- 57 A further response from the French Ministere de la Transition Ecologique et Solitaire was submitted on 11th December 2018 (PINS Ref AS-006).

- 58 The core of their additional representation in relation to both specific SPAs in France and bird species features of these designated sites was again that they are not satisfied with the scientific rigour of the appropriate assessment and that they sought the screening for LSE to be carried out again. This was in relation to the following four SPAs:
- Cap Gris Nez SPA
 - Bancs des Flandres SPA
 - Estuaire de la Canche SPA
 - Littoral Seineo-marin SPA
- 59 The detail of this French submission document (PINS Ref AS-006) emphasised the importance of each of the four French SPAs in relation to specific seabird species. It also raised points on the impact assessments for Thanet Extension more widely with respect to the following species: brent goose, gannet, fulmar, red-throated diver, great skua, herring gull, lesser black-backed gull, great black-backed gull, kittiwake, little gull, Mediterranean gull, Sandwich tern, common tern, little tern, razorbill and guillemot.
- 60 The French submission (PINS Ref AS-006) also detailed specific issues or statements in relation to:
- (2.1) Breeding and non-breeding populations of seabirds from Cap Gris Nez SPA at risk from Thanet Extension
 - (2.2) Breeding and non-breeding populations of seabirds from Bancs des Flandres SPA at risk from Thanet Extension
 - (2.3) France's commitment to the Marine Strategy Framework Directive (MSFD) within the French side of the English Channel (between the Belgium border and Littoral Seineo-Marin)
 - (2.4) The sensitivity of seabird species to different risks associated with offshore wind farms
 - (2.5) Their understanding of migratory movements of seabirds moving through the Dover Strait
 - (2.6) A summary of a selection of studies on seabird foraging ranges and migratory paths including a map extract on gannet movements and reference to a paper by Siorat & Bentz (2005) [for which full author details are not provided for either]

- (2.7) a request for the assessment of potential impacts from collision risk in relation to key seabirds (and other species considered as important 'stakes' [understood to mean species of conservation interest]) breeding at Cap Gris Nez SPA and Bancs des Flandres SPA. In addition they sought the assessment of potential impacts from collision risk, loss of habitat and barrier effect to be considered for key seabirds (and other species considered as important 'stakes') during the non-breeding (wintering and migratory periods) at the same two French SPAs.
- (2.7 continued) a request that Thanet Extension should more widely consider the potential impacts and effects of French offshore wind farms on key seabirds, especially in connection with the two more southern SPAs (Estuaire de la Canche SPA and Littoral Seine-marin SPA).

Addressing Issues specifically relating to Section 2.1 (PINS Ref AS-006) on Cap Gris Nez SPA

- 61 The French submission (PINS Ref AS-006) states that during the breeding season Cap Gris Nez SPA hosts two kittiwake colonies (approx. 2,158 and 1,290 pairs = 39% of French Population) and a colony of herring gulls also exists (approx. 241 pairs) among other species. The Applicant provides, for comparison, data on the breeding populations of each species within Kent: 1,229 pairs of kittiwake and 780 pairs of herring gulls (from Seabird 2000 Survey reported in Mitchell et al, 2004), whose breeding colonies are closer to Thanet Extension than Cap Gris Nez. The French submission (PINS Ref AS-006) states that the kittiwake colony has been increasing since 1996, providing evidence that Thanet offshore wind farm (operational since 2010) has not affected the growth of this colony.
- 62 The Applicant estimated that during the breeding season collision mortality rates for Thanet Extension as being between 1-2 kittiwakes and 3-4 herring gulls, which is insignificant at an EIA level. Thanet Extension is towards the outer reach of the mean max foraging range for both species of 60km and 61.1km, respectively (according to Thaxter et al, 2012). The low risk from collision mortality to both these species is further evidenced by very low abundances recorded across the breeding season (kittiwake = 9 individuals and herring gull= 17 individuals) when considering the biological periods defined by Furness (2015).

- 63 The French submission (PINS Ref AS-006) states that during non-breeding season Cap de Gris Nez SPA hosts a red-throated diver population during migratory and wintering periods (up to 80-100% of the French population), which registers as of national (French) importance during migration. Gannet is also noted as being of importance during non-breeding period, whilst common guillemot and razorbill are also noted as wintering here, but they emphasise that the 'main stake' [understood in this instance to mean primary interest] concerns the migration of these two species.
- 64 The Applicant's assessment of loss of habitat (disturbance and displacement) was undertaken for all four species both in the ES Chapter (PINS Ref APP-045/ Application Ref 6.2.4) and the RIAA (PINS Ref 031/ Application Ref 5.2). The outcome of these assessments were that no significant effects were apparent as a consequence of Thanet Extension in relation to any seabirds from designated sites screened in for assessment, which therefore would be applicable to any sites further afield or not fulfilling the criteria required for inclusion in the assessment as defined in the HRA Screening Report (PINS Ref 032/ Application Ref 5.2.1).
- 65 It is not clear what the French submission (PINS Ref AS-006) is implying by stating that Cap de Gris Nez SPA is of importance for species moving through on migration. It is the Applicant's opinion that additional wind turbine generators at Thanet Extension (on the opposite side of the Channel) do not have the potential to have an influence on the same four species other than being a potential barrier effect to any broad front migratory movements. The Applicant also considers that any impacts due to Thanet Extension being a barrier to movements (requiring a diversion of a few kilometres) would be minimal in relation to the long migratory movements that the four species undertake. The Applicant concludes that this means that the potential barrier effect is of no significance for all four species.

Addressing Issues specifically relating to Section 2.2 (PINS Ref AS-006) on Banc de Flandres SPA

- 66 The French submission (PINS Ref AS-006) states that during the breeding season Banc de Flandres SPA hosts colonies of lesser black-backed gulls (approx. 700 pairs), great black-backed gulls (not quantified), herring gull (stated as 'some pairs') and two species breeding 'nearby' including kittiwake and Mediterranean gull (stated as 400 pairs, but not specified as both species combined or just kittiwake?). The Applicant provides, for comparison, data on the breeding populations of each species within Kent: 75 pairs of lesser black-backed gulls (in addition Suffolk and Essex combined support approx. 7,000 pairs), 780 pairs of herring gulls and 1,229 pairs of kittiwake (from Seabird 2000 Survey reported in Mitchell et al, 2004), many colonies of which are closer to Thanet Extension than Banc de Flandres.

- 67 The Applicant recognises that Thanet Extension is towards the outer reaches of the mean max foraging range for three out of four species (according to Thaxter et al, 2012) with only lesser black-backed gull from Banc de Flandres well within mean max foraging range. Low usage of Thanet Extension by seabirds is evidenced by very low abundances for all four species (lesser black-backed gull = 13 individuals, great black-backed gull = 9 individuals, herring gull = 17 individuals and kittiwake = 9) during their respective breeding periods (defined in Furness, 2015). The estimated collision mortality rates for Thanet Extension during the breeding season are between 1-2 lesser black-backed gulls, 1-2 great black-backed gulls, 3-4 herring gulls and 1-2 kittiwakes, all of which are insignificant at an EIA level. Mediterranean gull was not recorded within the Thanet Extension site during 26 months of consecutive surveys (though it was recorded on the outmost boundary of the 4 km buffer on one occasion) and was therefore not assessed for collision, as there would be no impact if it is not present.
- 68 The French submission (PINS Ref AS-006) presents a statement on the area being of general interest (potential importance) for some seabird species during migration with migration counts provided per hour for a number of species from undefined seasons. The submission recognises that no conservation objectives are defined for this site and so therefore in the absence of key pieces of information it is difficult for the Applicant to address anything on this point about birds during the migration/ non-breeding period.

Addressing Issues specifically relating to Section 2.4 (PINS Ref AS-006) on Sensitivity of species to different risks generated by wind farms

- 69 The French submission (PINS Ref AS-006) provides a French perspective on the use of published ornithological literature to consider the sensitivity of seabirds to offshore wind farms, including consideration of foraging ranges during the breeding season to aid the assessment of kittiwakes in relation to collision risk.
- 70 The Applicant recognises that the methods proposed within the French submission (PINS Ref AS-006) to identify sensitivity of seabirds to different risk from offshore wind farms as being standard practice for UK impact assessments, which were incorporated in the ES Chapter (PINS Ref APP-045/ Application Ref 6.2.4) and the RIAA (PINS Ref 031/ Application Ref 5.2) for Thanet Extension. Some of the species referred to in the French submission (PINS Ref AS-006), including little gull, Mediterranean gull and great skua, were either not recorded within the Thanet Extension site or only on a limited number of occasions within the 4 km buffer extended around the Array Area. Therefore, for the reasons described above these species were screened out and not assessed further.

Addressing issues specifically relating to Section 2.5 (PINS Ref AS-006) on Precautionary Approach

- 71 The French submission (PINS Ref AS-006) provides a statement of their understanding of seabird migration, with basic examples of bird movement provided within the text and figures. It is suggested that the assessment of the potential impacts from Thanet Extension must make it possible to identify the risks, to evaluate the impacts in order to implement environmental measures to limit the impacts, before confirming that there is no likely effect. It is unclear to the Applicant what is really being requested here, as the impact assessments for Thanet Extension followed UK guidance in accordance with UK and EU legislation on EIA/ HRA for identifying potential impacts and assessing any effects in an appropriate manner. The Applicant identified potential impacts and assessed them in the ES Chapter (PINS Ref APP-045/ Application Ref 6.2.4) and in the RIAA (PINS Ref 031/ Application Ref 5.2) for Thanet Extension, resulting in the conclusion that no significant negative effects were found during migratory periods from collision risk or as a consequence of barrier effects.

Addressing Issues specifically relating to Section 2.6 (PINS Ref AS-006) on related Studies

- 72 A number of studies are referred to in the French submission (PINS Ref AS-006), including published technical papers the Applicant is aware of, has copies of and which are used in the assessments (e.g. Thaxter et al, 2012). However, the French submission (PINS Ref AS-006) does not provide full references to any of the accompanying literature that it refers to, for example Siorat & Bentz (2005). The Applicant is also unclear as to the source and purpose of the illustration on gannet migration provided as a figure, as labelling within this figure is in French language with no text that refers to the paper / report it is sourced from. The Applicant also recognise that there would appear to be errors in the arrows pointing to species in the table sourcing foraging ranges from Thaxter et al (2012), but it is assumed they should be pointing to the following species; northern gannet, herring gull, lesser black-backed gull and black-legged kittiwake.

- 73 The French submission (PINS Ref AS-006) emphasises the risk to seabirds during the breeding season that forage out from French breeding colonies. The latter part of this section is concerned with migratory risks to birds, with gannet provided as an example, for which it suggests birds may migrate north from the French colony as well as south. The Applicant recognises breeding seabirds that are features of French designated sites may forage within the Thanet Extension site, but it is important to understand that collision risk from Thanet Extension is estimated to be very low for all seabirds during their respective breeding periods, so any birds from sites at the edge of their mean max foraging range during the breeding period would be considered at very low risk.
- 74 The Applicant acknowledges that gannets from different colonies around the UK (including the Channel Islands), Ireland and France are known to mix outside of the breeding season. However, the majority of these gannets migrate out of UK and French waters to latitudes further south, therefore any risk to French birds moving north are outweighed by the far larger numbers of birds moving in the opposite direction. As a proportion of the minor number of gannets estimated to be subject to mortality during the spring (9-10 individuals) or autumn (4-5 individuals) migration periods it is not likely that the presence of Thanet Extension would have a significant effect on the colonies within French waters.

Addressing Issues specifically relating to Section 2.7 (PINS Ref AS-006) on Concluding Statement

- 75 The French submission (PINS Ref AS-006) concludes by insisting on the need to assess the impacts on kittiwake, gannet, herring gull, great black-backed gull and lesser black-backed gull for collision risk due to French breeding colonies being nearby. The Applicant undertook detailed assessments on collision risk within the ES Chapter (PINS Ref APP-045/ Application Ref 6.2.4), the RIAA (PINS Ref APP-031/ Application Ref 5.2) and separately within the detailed document on collision risk modelling (PINS Ref APP-080/ Application Ref 6.4.4.4) in relation to Thanet Extension and those seabirds referred to in the concluding statements of the French submission (PINS Ref AS-006). The conclusions from the Applicant's assessments of collision risk were that during the breeding season there is little risk to any seabird species, therefore no seabird species connected to any designated sites within French waters are at risk from Thanet Extension.

- 76 The French submission (PINS Ref AS-006) also requests further consideration of migratory and wintering seabird species that potentially pass through or around Thanet Extension (including common guillemot, razorbill and red-throated diver). The Applicant considers that this relates to birds wintering in France that may pass through or around Thanet Extension on their way to or from French waters. The Applicant considers that this potential impact is generally termed and assessed as a barrier effect in UK assessments. This was considered in the ES Chapter (PINS Ref APP-045/ Application Ref 6.2.4) and the RIAA (PINS Ref APP-031/ Application Ref 5.2) and the outcome of the assessments were an effect of negligible adverse significance in EIA terms.
- 77 The French submission (PINS Ref AS-006) refers to other species (including fulmar, common tern, Sandwich tern, Brent goose and skuas) as being important (in the French context), which may be subject to collision risk, loss of habitat and barrier effect. The Applicant has determined that as none of these species were found in abundances/ densities that warranted detailed assessment (i.e. they were not screened in for such assessment) it is considered that the Thanet Extension project poses an effect of negligible or no adverse significance in EIA terms.

- 78 The 73 The French submission (PINS Ref AS-006) requested that the Applicant should consider the potential effects of French OWFs on key seabirds at two French SPAs (termed Littoral SPA and Canche SPA) during migratory and wintering periods. The Applicant recognised these sites as being too distant to Thanet Extension as well as not meeting other criteria determined necessary for further assessment and therefore they were screened out. As the Applicant does not have access to relevant information on collision risk or other potential impacts predicted from French OWFs these developments were not considered further in a cumulative/in-combination assessment. The Applicant also considers that the matter of collision risk within French waters is further complicated by the mixing of populations from the North Sea, Irish Sea and Atlantic coasts for kittiwake and gannet, so the potential to undertake a cumulative or in-combination assessment is more complex. Ultimately, the Applicant estimated very low impacts from collision risk (the key potential impact from OWFs) as a result of Thanet Extension alone and therefore it will make a non-material contribution to any cumulative/in-combination assessment. The Applicant also considers that only a small proportion of the birds moving through the Strait of Dover would be French birds, therefore the proportion of cumulative or in-combination impacts on French seabird colonies from UK OWFs would be limited due to the nature of migratory movements (mostly in a southerly direction in the post breeding period by seabirds from French breeding colonies). The Applicant would welcome any data available from French offshore wind farm development applications or estimates of cumulative or in-combination assessments from the relevant French consenting/regulatory Agencies. However as data are not readily available for such matters, the Applicant considers that the requirement to estimate the potential impact from French offshore wind farms on French seabird colonies is more appropriate for French Developers and consultants to determine the potential effects and not for UK Developers and consultants to do so.

3 Action Point 1, 3 and 4 - Responses to concerns about effects on fisheries and fishing in French waters

- 79 The following section addresses both the section within Action Point 1 referring to commercial fisheries, namely: ***Responses to concerns about effects on fisheries and fishing in French waters*** through reference to Action Points 3 and 4 of document EV-002. The specific Action Points are noted within the body of the text for ease of reference. The (translated) concerns raised by French Authorities within their letter dated 17th October (PINS Ref OD-009) in relation to commercial fisheries are as follows:

As far as French commercial fishing activities are concerned, it is stated in the baseline that the description of French activities are based on data provided by CRPMEM hauts de France and Ifremer from 2009 and 2014 respectively. It is a shame that VATTENFALL's efforts to acquire further data from French authorities have not been successful. The impact assessment and especially for cumulative impacts associated with the displacement of activity from UK, Belgium, Dutch and French fleets is therefore weakened.

Even if the developer has tried to undertake the cumulative impact assessment using an appropriate approach including most marine activities (planned, consented and installed projects, MCZ), it remains an a priori impact assessment approach and results can always be challenged in absence of lessons learnt. There could be some consideration for a post-impact review to assess real level of impact post-installation.

- 80 The main threads within the response are therefore the *adequacy of characterisation data* (and the correspondence associated with it), and therefore *the robustness of the assessment based on the characterisation data*. These themes are captured within the ExA Action Points and are therefore addressed in the following paragraphs through reference to them.

3.2 Data requests and related correspondence

- 81 During ISH1 the ExA requested clarification as to whether the Applicant had sufficiently accounted for French fishery activity. Jonathan Keer (Brown and May Marine (BMM)) on behalf of the Applicant responded stating that multiple data requests had been made and the result was, whilst not comprehensive, a robust dataset on which to base an assessment. The ExA then asked for clarification of the French data sources and attempts to obtain updated datasets. This request is reflected in the following Action Point presented in EV-002:

The Applicant is to submit an audit trail of requests to French instrumentalities for recent French fisheries and fishing data. This is to record attempts made and responses to those attempts.

- 82 On behalf of Vattenfall, BMM have been in regular consultation with French fisheries interests and national government departments.
- 83 Direct consultation was undertaken with the Comité Régional des Pêches Maritimes et de Elevages Marins (CRPMEM) Nord Pas de Calais / Picardie at their office in Boulogne on 14th March 2017. Vessels which operate in the southern North Sea and northern Channel (around the Thanet project) are principal members of this CRPMEM working from Boulogne and to a less extent Dieppe. The meeting was held with the CRPMEM president and secretary.
- 84 A presentation was provided covering site description, project description, charts of French activity (VMS and surveillance), and construction programme. Coordinates of the site were also provided for distribution to French fishermen.
- 85 During the meeting, BMM and the CRPMEM agreed that updated VMS data would be the best way to better describe French fishing activity.
- 86 In addition to this meeting, further telephone correspondence was held on 11th April 2017 with the secretary of CRPMEM. During this call it was confirmed that both BMM and the CRPMEM should concentrate on obtaining more up to date VMS from the Direction des Pêches Maritimes et de l'Aquaculture (DPMA) / Institut Francais de Recherche pour l'Exploitation de la Mer (IFREMER). Copies of this correspondence can be provided if necessary.
- 87 On 23rd February 2017, BMM highlighted internally that it would be advantageous to gain updated VMS data from the French Authorities.
- 88 Following the consultation meeting on 14th March 2017 and subsequent discussions with CRPMEM, the use of VALPENA data was proposed to the client for another Project in the North Sea.
- 89 Further discussions were held with the CRPMEM, during which they confirmed that the VALPENA data was subject to limitations and associated costs to process it. VALPENA data is based on interviews with a sample of skippers indicating the extent of their fishing ground by gear type using a 3*3nm grid. There were clear and acknowledged limitations associated with the declarative nature of the data. In comparison, VMS data obtained from French authorities in the past provide average effort over 5 years which would have made it more comparable to data sets used for other European fleets.

- 90 The Project therefore made the decision to look for an alternative to VALPENA, namely more robust/recent VMS data from DPMA/ IFREMER would be possible.
- 91 The CRPMEM confirmed that the Applicant's proposal to consider VMS data was appropriate as all vessels targeting fishing grounds in the vicinity of Thanet would be adequately characterised. At this stage the CRPMEM offered to make the necessary enquiries themselves to obtain VMS data.
- 92 On 17th May 2017, an email was sent to CRPMEM requesting an update on the status of the VMS data request for the Thanet Extension project.
- 93 During 2018, an additional email was sent to the CRPMEM requesting support in getting VMS data from DPMA. The CRPMEM had not been successful in obtaining the data.
- 94 On 21st February 2018 an email was issued to the CRPMEM confirming with them the project's intention to request VMS data from French authorities themselves. On 22nd February 2018, a formal letter was sent to DPMA requesting access to VMS and other recent landings data. On the same day, a DPMA officer (Didier Saillier) acknowledged receipt and indicated that our request "*would be addressed very soon*".
- 95 On 16th May 2018, BMM issued a follow up email, as well as a copy of the original email, to ask DPMA if there had been any progress had been made. Following this the lack of data update was communicated to the BMM team on several projects where technical appendices or ES chapter were being compiled.
- 96 A personalised receipt of delivery was received on 18th May 2018 from Didier Saillier (DPMA) saying that the original data request (22nd February 2018) had been taken into account and was being processed.
- 97 A further request for data for another UK project in the southern North Sea was sent to the DPMA and which was again acknowledged in the same terms.
- 98 On 14th June 2018 an email was sent to Didier Saillier (DPMA) asking for an update on the data requests and wondering how these appeals could be progressed. This clearly highlighted all the outstanding requests.
- 99 The absence of any response from the DPMA led BMM to rely on previously obtained French data, in addition to MMO data covering the French, which was deemed by BMM's experienced team of consultants to be robust for the purposes of the analysis.

- 100 Since the CNPMEM response to the 3rd round of offshore wind farms, BMM have only been able to access French data (DPMA/IFREMER) for one Project (GF1 – Guernsey to France cable). We had followed the exact same procedure as for Thanet Extension at the time: data request to DPMA followed by their authorisation for IFREMER to process and hand over the data to BMM. It is unknown why all other projects have failed accessing French data. A discussion on data access restriction was proposed by BMM to the DPMA (within the email sent 14th June 2018) but again the proposals have not received any response.

3.3 Summary of Applicant position - why is the existing dataset used robust for the assessment

- 101 The EXA Action Point (4) presented within EV-002 notes the following:

The Applicant is to explain why its utilisation of existing French fishing and fisheries data is adequate.

- 102 The commercial fisheries technical report (PINS Ref APP-088/ Application Ref 6.4.9.1) and subsequent Environmental Statement (PINS Ref APP-050/ Application Ref 6.2.9) was compiled using the latest data provided by French authorities. The data are presented at pdf page 70 et seq of the commercial fisheries technical report, noting in particular Figure 3.40 (pdf page 72) of that annex, and Figure 9.17 of the ES chapter (pdf page 38), which illustrate French fisheries effort. This data covers 2008 and 2009.
- 103 All data collected highlight that the majority of effort is undertaken a distance to the east and south of Thanet Extension. MMO surveillance data was also utilised to show proportionality of fishing activity, which showed limited French activity close to the project, with the majority of fishing vessels observed to the east and south. Figure 3.43 (pdf page 74) illustrates MMO surveillance sightings of French vessels (2012-2016). Using this data, only one sighting of a French fishing vessel has occurred within the development boundary in five years. Whilst Figure 3.40 and Figure 3.41 (pdf page 72) demonstrate French activity in the rectangle (10km x 10km) covering the development, cross referencing with Figure 3.43 infers that the majority of French activity in the area would be to the south and east of the development. Figure 3.42 (pdf page 73) identified fishing effort within ICES rectangle 31F1 in which Thanet Extension is located, but using the data sources in Figure 3.40 and Figure 3.41, which subdivide this area, it is clear that the majority of activity is to the south and east of the development.

- 104 The impact assessment (page 9-49 of Environmental Statement) has been based on information provided in the technical appendix and was undertaken on a fleet by fleet basis. The French fleet are known to target a wide range of grounds in the Southern North Sea and further north off Northern England. In addition, this fleet has historic rights under The London Convention to work grounds between 6-12nm from the shore around the majority of Southern North Sea, English Channel and Celtic Sea (Reg 24 notification response for France Focal Convention de Espoo: Corinne Fritsch). Therefore, due to this extensive spread of targeted and available grounds in comparison to the small nature of Thanet Extension, their sensitivity has been assigned as Low. As the area utilised by WTGs and associated advisory safety zones is a minimal percentage of the fishing grounds targeted by the French fleet and that trawling activities are expected to resume within the array site subject to individual skipper's review, the magnitude is low. Using the available data and records from consultation, combining the Low sensitivity of the receptor and the Low magnitude of the impact, the significance of the effect of loss or restricted access to fishing grounds for the French trawling fleet, was assessed as Minor. The assessment is based on an appropriate baseline description of the receiving environment and it is therefore submitted with a strong degree of confidence.
- 105 For the assessment of potential cumulative impacts, it was assessed that there could be potential for the loss of a relatively small area of grounds as the French fleet undertake activity throughout the Southern North Sea, English Channel and Celtic Sea, which will not have a significant cumulative impact. This was therefore identified as negligible. The impacts during construction will be temporary and short term and it is anticipated that fishing activity will return to the operational wind farm. It should be noted that there is no UK restriction on this activity returning.
- 106 Therefore, by demonstrating that three separate sources of data were used for the technical appendix and the ES, this can be considered robust and fit for purpose.

4 Action Point 1 - Responses to concerns about navigation in French waters

- 107 The following section addresses the section within Action Point 1 requesting that the Applicant provide ***responses to concerns about navigation in French waters***.
- 108 The Applicant wishes to note that in the Response (PINS Ref OD-009) by DIRM Manche Est- mer du Nord by email on 10-October-2018 does not indicate concerns by French authorities.
- 109 It would appear therefore that the representations made by the MCA on behalf of the French Authorities have not been made following consultation with them, or in cognisance of the representations made by the French Authorities.
- 110 Notwithstanding this the Applicant wishes to reiterate that the project Red Line Boundary is 5nm clear of Traffic Separation Schemes and internationally recognised sea lanes (NPS EN-3) and is also outside of the CALDOVREP IMO Mandatory reporting area and Channel Navigation Information Service (operated by Maritime Rescue Co-ordination Centre in Dover and CROSSS Gris Nez in France).
- 111 The proposed extension is within 12 nm of the UK coast and a further 13 nm from the UK/ France marine border. Whilst shipping is a multinational industry with vessels of many nationalities transiting passed the extension, they abide by international regulations and when in territorial or port waters, by local regulations. These impacts are therefore inherently included within this assessment (Ref Paragraph 10.17 of Volume 2, Chapter 10 (PINS Ref APP-051/ Application Ref 6.2.10) of the Environmental Statement).
- 112 The study area includes a 5nm buffer from the Red Line Boundary and the vessel traffic survey data (in accordance with MGN543) obtained within this study area is a key component of the baseline assessment and inherently includes traffic departing to and arriving from international destinations.
- 113 It is therefore the Applicants position that there are no outstanding concerns for navigation in French waters.

5 Action Point 1 - Whether there is any case for specific post-construction monitoring within France or relevant to species present in France.

- 114 As noted by the Applicant in other responses to queries regarding ecological monitoring, it is the Applicant's position that the ecological monitoring proposed within the draft DCO reflects the requirement to address uncertainty with regards final project alignment, i.e. the survey and assessment methodology identified within the proposed biogenic reef monitoring plan (PINS Ref APP-149) will inform the final infrastructure alignment and micro siting. For other areas where specific monitoring proposals have been submitted, i.e. the saltmarsh mitigation, reinstatement and monitoring plan (APP-147) this will ensure monitoring of the rate of recovery of the saltmarsh but this has not transboundary implications.
- 115 With regards transboundary features there is no other identified uncertainty within the assessments presented that would require validation by monitoring.

6 References

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Thanet Extension Offshore Wind Farm

Appendix 27, Annex A to Deadline 1 Submission:
Translation of Regulation 32 Relevant
Representation by Ministere de la Transition
Ecologique et Solidaire dated 10/10/2018

Relevant Examination Deadline: 1

Submitted by Vattenfall Wind Power Ltd

Date: January 2019

Revision A

Drafted By:	Vattenfall Wind Power Ltd
Approved By:	Daniel Bates
Date of Approval:	January 2019
Revision:	A

Revision A	Original Document submitted to the Examining Authority
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Appendix 27, Annex B to Deadline 1 Submission:
A French SPA location plan showing distances to
the application site

Relevant Examination Deadline: 1

Submitted by Vattenfall Wind Power Ltd

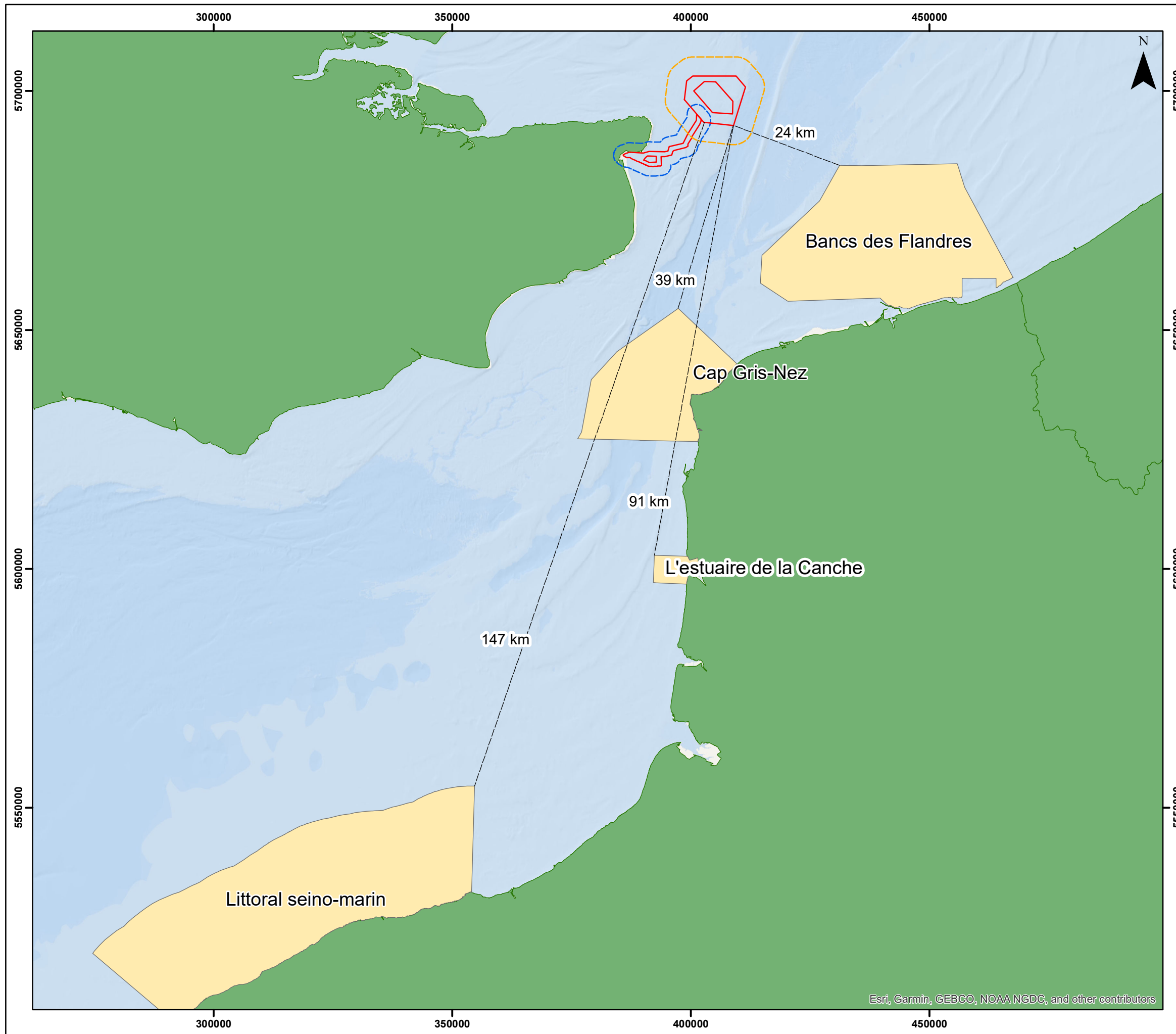
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Drafted By:	GoBe Cnsultants Ltd
Approved By:	Daniel Bates
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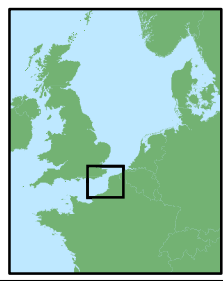


THANET EXTENSION OFFSHORE WIND FARM

Figure
French SPA Sites in Relation to Thanet Extension

- Legend**
- Offshore Red Line Boundary
 - 2 km Cable Route Buffer
 - 4 km Wind Farm Buffer
 - French SPA Sites

Datum: ETRS 1989
Projection: UTM31N



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1:800,000

0 8.5 17 km 0 4.5 9 nm

Drg No	Screened_In_SPA_Sites			Figure
Rev	0.1	Date	08/01/2019	
By	LS	Layout	N/A	

Esri, Garmin, GEBCO, NOAA NGDC, and other contributors

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Thanet Extension Offshore Wind Farm

Appendix 27, Annex C to Deadline 1 Submission:
A matrix of relevant French, English and Latin
Species Names

Relevant Examination Deadline: 1

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Date of Approval:	January 2019
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Annex C - A matrix of relevant French, English and Latin species names

English Name (common)	Latin Name	French Name (common)
Harbour porpoise	<i>Phocoena phocoena</i>	Marsouin commun
Harbour seal	<i>Phoca vitulina</i>	Phoque commun
Grey seal	<i>Halichoerus grypus</i>	Phoque gris
Brent goose	<i>Branta bernicla</i>	Bernache cravant
Common scoter	<i>Melanitta nigra</i>	Macreuse noire
Red-throated diver ⁱ	<i>Gavia stellata</i>	Plongeon catmarin
Fulmar ⁱⁱ	<i>Fulmarus glacialis</i>	Fulmar boréal
Balearic shearwater	<i>Puffinus mauretanicus</i>	Puffin des Baléares
Gannet ⁱⁱⁱ	<i>Morus bassanus</i>	Fou de Bassan
Ringed plover	<i>Charadrius hiaticula</i>	Grand gravelot
Kentish plover	<i>Charadrius alexandrinus</i>	Gravelot à collier interrompu
Oystercatcher	<i>Haematopus ostralegus</i>	Huïtrier pie
Common gull	<i>Larus canus</i>	Goeland cendré
Mediterranean gull	<i>Larus melanocephalus</i>	Mouette mélanocéphale
Kittiwake ^{iv}	<i>Rissa tridactyla</i>	Mouette tridactyle
Herring gull	<i>Larus argentatus</i>	Goéland argenté
Great black-backed gull	<i>Larus marinus</i>	Goéland marin
Lesser black-backed gull	<i>Larus fuscus</i>	Goéland brun
Sandwich tern	<i>Thalasseus sandvicensis</i>	Sterne caugek
Little tern	<i>Sternula albifrons</i>	Sterne naine
Common tern	<i>Sterna hirundo</i>	Sterne pierregarin
Great skua	<i>Stercorarius skua</i>	Grand labbe
Guillemot ^v	<i>Uria aalge</i>	Guillemot de troil
Razorbill	<i>Alca torda</i>	Pingouin torda

Notes on the table on alternative names that might be found using an internet search:

i Red-throated diver is also known as 'red-throated loon' in America

ii Fulmar is also known as 'norther fulmar'

iii Gannet is also known as 'northern gannet'

iv Kittiwake is also known as 'black-legged kittiwake'

v Guillemot is also known as 'common murre' in America

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Thanet Extension Offshore Wind Farm

Appendix 27, Annex D to Deadline 1 Submission:
A location plan for the French Offshore Wind
Farm projects with confirmation of project names
and status

Relevant Examination Deadline: 1

Submitted by Vattenfall Wind Power Ltd

Date: January 2019

Revision A















Drafted By:	Vattenfall Wind Power Ltd
Approved By:	Daniel Bates
Date of Approval:	January 2019
Revision:	A

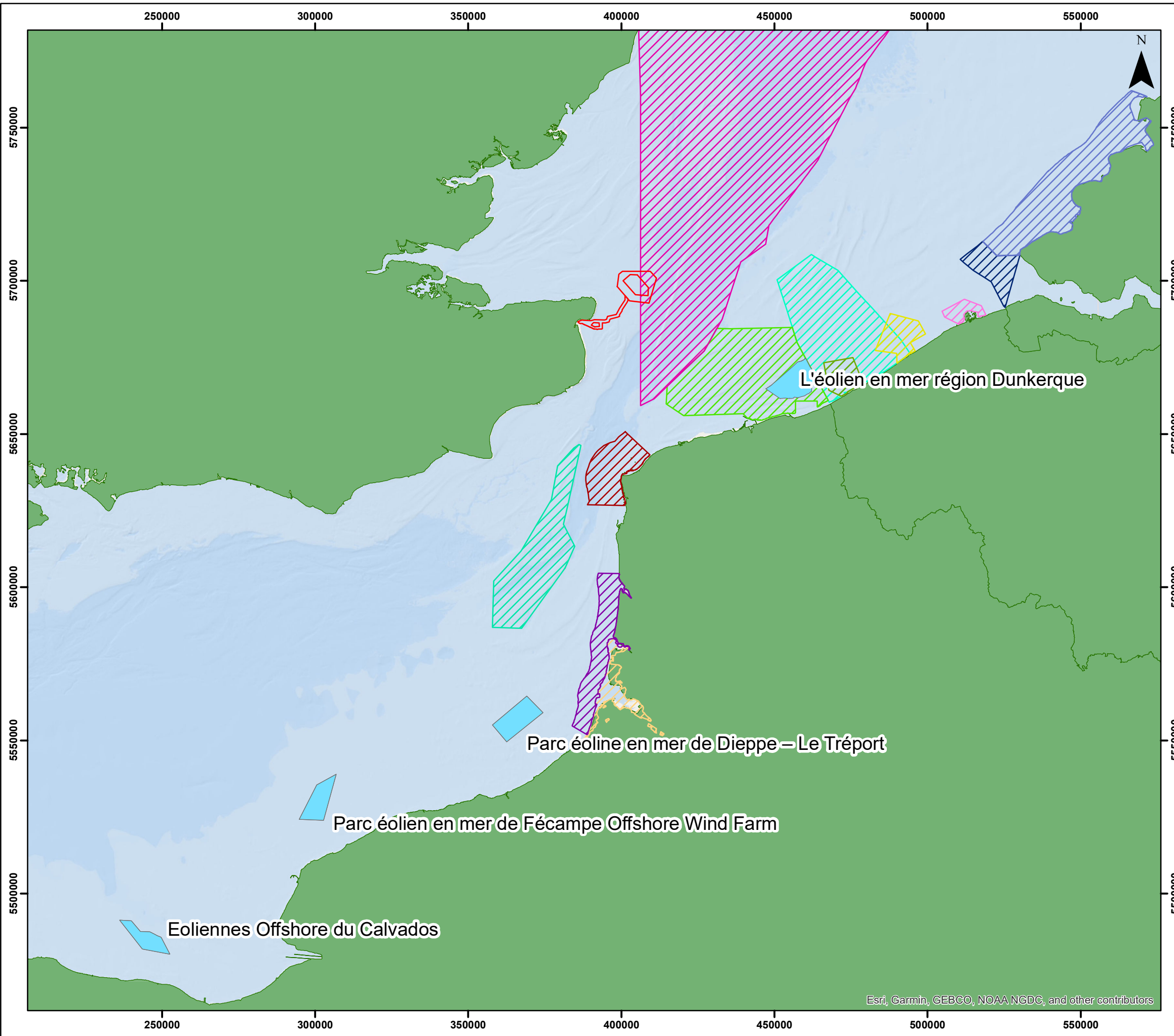
Revision A	Original Document submitted to the Examining Authority
N/A	
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N/A	

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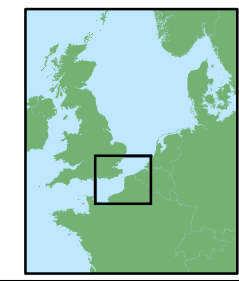
THANET EXTENSION OFFSHORE WIND FARM

Figure
Location of French
Offshore Windfarms
Considered in Combination

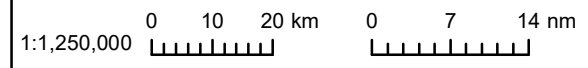
- Legend**
-  Offshore Red Line Boundary
 -  French Offshore Windfarms
- Identified Designated Sites**
-  Baie de Canche et couloir des trois estuaires
 -  Bancs des Flandres
 -  Estuaires et littoral picards (baies de Somme et d'Authie)
 -  Ridens et dunes hydrauliques du détroit du Pas-de-Calais
 -  Récifs Gris-Nez Blanc-Nez
 -  SBZ 1 / ZPS 1
 -  SBZ 2 / ZPS 2
 -  SBZ 3 / ZPS 3
 -  Southern North Sea
 -  Vlaamse Banken
 -  Vlakte van de Raan
 -  Voordelta



Datum: ETRS 1989
Projection: UTM31N



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Esri, Garmin, GEBCO, NOAA NGDC, and other contributors

Drg No	TEOW_French_OWF_In_Comb		
Rev	0.1	Date	08/01/2019
By	LS	Layout	N/A

Figure

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 27, Annex E of Deadline 1 Submission:
Defining "Competent Authority" in relation to
Transboundary HRA issues"

Relevant Examination Deadline: 1

Submitted by Vattenfall Wind Power Ltd

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3	Natural England.....	10
3	Conclusion.....	11

1 Introduction

- 1 At Issue Specific Hearing 1 (Transboundary Issues) for the Thanet Extension Offshore Wind Farm (the **Project**), the Examining Authority requested that the Applicant provide a legal submission to establish the competent authority for HRA issues, when the relevant sites are outside of UK jurisdiction, specifically relating to France. This is because the application for development consent includes an assessment of two Special Protection Areas (SPAs) in French waters. This clarification note is intended to answer this question.
- 2 This note also considers the extent to which the competent authority may need to rely on its statutory advisors, namely Natural England, in relation to evidence arising outside its territorial operation.

2 Competent authority

- 3 For the reasons given below, the Secretary of State is the competent authority for the purposes of determining this DCO application.
- 4 Article 6(3) of Directive 92/43/EEC, as amended ("the Habitats Directive") provides as follows:
"Any plan or project not directly connected with or necessary to the management of the 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 and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public".
- 5 The requirements of the Directive have been transposed into domestic law by the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the Habitats Regulations"), which apply to the current application.¹
- 6 Regulation 63 in Part 6 of the Habitats Regulations provides as follows ("Assessment of implications for European sites and European offshore marine sites"):
(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

¹ The Applicant notes that the Conservation of Offshore Marine Habitats and Species Regulations 2017 also transpose the Habitats Directive, but its similar provisions (see regulation 28, regulation 5-6) relating to the protection of European sites only apply where a project is in the offshore marine area, or is an offshore marine installation (see regulation 28), both of which lie outside the territorial sea adjacent to the United Kingdom (see regulation 2(1) and, in relation to an offshore marine installation, the Renewable Energy Zone (Designation of Area) Order 2004 article 1). The territorial sea covers water out to 12 nautical miles (Territorial Sea Act 1987, section 1). The project lies up to around 8km from the Kent coast. The Habitats Regulations confirm that nothing in their provisions require an appropriate assessment to be carried out in so far as a project is to be carried out on, in or in relation to any part of the sea in the offshore marine area, or on or in relation to an offshore marine installation: see regulation 4.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

7 By regulation 7(1):
"competent authority" includes—

(a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, statutory undertaker, public body of any description or person holding a public office;

(b) the Welsh Ministers; and

(c) any person exercising any function of a person mentioned in subparagraph (a) or (b).

8 The Habitats Regulations therefore make clear that the competent authority is the authority which is deciding to undertake, or give any consent, permission or other authorisation for the development in question. In this case the Secretary of State is the competent authority, as the Minister of the Crown charged with making the decision to grant consent under section 103 of the Planning Act 2008.²

9 It is to be noted that by regulation 8(2)(a) "a reference to a European site— (a) in Part 6, is a reference to a European site in the United Kingdom". The Habitats Regulations do not specifically require the effects of a project on other European sites to be assessed.

10 However as PINS Advice Note 12 advises:
"2.7 The Department of Energy and Climate Change (DECC) (now the Department of Business, Energy and Industrial Strategy (BEIS)) has released guidelines⁹ which specify that the SoS, when considering whether to consent energy projects, will

² See too regulation 84 of the Habitats Regulations, which provides that "(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008".

apply the principles of the Habitats Directive to any energy development where significant effects on Natura 2000 sites or candidate sites in other EEA States are likely. BEIS considers that this approach is most applicable to offshore wind farm developments".³

- 11 The guidelines⁴ state that:
"The Secretary of State for Energy and Climate Change recognises the importance of cooperating to support the protection of Natura 2000 sites in other Member States. He has therefore decided that the principles set out in the Habitats Directive should be applied to any energy development where significant effects on Natura 2000 sites or candidate sites on other Member States are likely. This will contribute to the protection of the integrity of the Natura 2000 network and ensure that all matters relevant to the determination of development consent applications can be properly taken into account...

The format and extent of transboundary consultation is for the applicant to agree with the Planning Inspectorate (or for section 36 consent, DECC). DECC suggests that applicants consider streamlining their consultation on impacts on sites in other Member States, with other transboundary consultation requirements e.g. under the appropriate domestic regulation implementing the Environmental Impact Assessment (EIA) Directive and Espoo Convention".

- 12 There is nothing in the guidelines to suggest that the competent authority is any authority other than the Secretary of State; and the PINS guidance expressly anticipates that the Secretary of State remains the competent authority where transboundary impacts are to be taken into account.
- 13 This approach is consistent with Article 6(3) of the Habitats Directive, which provides for competent national authorities to agree to a project, and thereby anticipates that it is the body charged with authorising the project which carries out the appropriate assessment and decides whether to issue consent for the scheme.
- 14 Further, EC guidance "Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" states as follows at paragraph 4.6.1, in relation to the "competent national authorities":

³ See too paragraph 2.1 of PINS Advice Note 10.

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408465/transboundary_guidelines.pdf

"It is clear that the word 'national' in this expression has been used in contrast with the word 'Community' or 'international'. Thus, the term refers not only to authorities within the central administration but also to regional, provincial or municipal authorities, which have to give an authorisation or consent to a plan or project.

- 15 It adds that "Competent national authorities are those entitled to give an authorisation or consent to a plan or project".
- 16 This follows the approach taken by the ECJ which has referred to "the national authority with competence to authorise the plan or project concerned" (Case C-182/10, Solvay and others, paragraph 69).
- 17 The Applicant therefore considers that even where it is necessary to consider potential transboundary effects, the competent authority remains the Secretary of State as the authority with the power to grant consent for the project. That power is not accorded to any other Member State (including France), even if a project may cause transboundary effects within that state. In such cases, however, as advised by the government, appropriate consultation will take place and the effect on any Natura 2000 site can be taken into account by the Secretary of State in deciding whether to grant consent.
- 18 It is also instructive to consider the position under the Environmental Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"), which transpose the requirements of the EIA Directive 2011/92/EU (as amended) into domestic law.
- 19 Article 7 of the EIA Directive sets out consultation processes in relation to transboundary effects. It provides that:
"Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:
- (a) a description of the project, together with any available information on its possible transboundary impact;
 - (b) information on the nature of the decision which may be taken.

- 20 The article goes on to set out procedural requirements which enable the other Member State to “participate in the environmental decision-making procedures” and “enter into consultations regarding, inter alia, the potential transboundary effects of the project”.
- 21 By regulation 4(2) of the EIA Regulations, the Secretary of State must not make an order granting development consent in the case of an application for EIA development unless an EIA has been carried out in respect of that application.
- 22 Regulation 32 establishes the procedural duties which apply where the Secretary of State is of the view that a NSIP is likely to have significant effects on the environment in another EEA State; or where another EEA State is of the view that its environment is likely to be significantly affected by an NSIP. Guidance on these duties is set out in PINS Advice Note 12. The carrying out of these duties, in cases where a project may have transboundary effects which engage regulation 32, does not affect the status of the Secretary of State as the decision maker. The role of other EEA states is to provide consultation responses which are taken into account by the Secretary of State and not to act as any form of decision-maker in relation to the application for EIA development. The Secretary of State remains the competent decision-making authority.
- 23 This reflects the approach to competent national authorities taken in the Habitats Directive.
- 24 For completeness, the Applicant also observes that the Espoo Convention (as incorporated into the EIA Directive and transposed into the EIA Regulations), defines “competent authority” in Article 1(ix) to mean “...the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity”. Article 1 also distinguishes between the “Party of origin”, which means “the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place” (here the UK), and the “Affected Party”, which means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity”. Again this confirms that it is the Secretary of State who retains competency for decision-making in cases where transboundary effects need to be considered, including effects on European sites outside the UK.

3 Natural England

25 The Applicant was also asked to consider the extent to which the Secretary of State may wish to rely on its statutory advisors when making a decision on a transboundary issue. Natural England would ordinarily advise on matters relating to HRA.

26 Section 1(3) of the Natural Environment and Rural Communities Act 2006 establishes that:

Except where otherwise expressly provided, Natural England's functions are exercisable in relation to England (including, where the context requires, the territorial sea adjacent to England] only.

27 Therefore, where the affected sites are in French waters, the Applicant considers that the role of Natural England as a statutory consultee does not apply.

3 Conclusion

- 28 This clarification note has established that the "competent authority" for deciding transboundary HRA issues is the Secretary of State, acting in his capacity as the decision making body for applications for development consent.
- 29 In relation to the Project, the relevant French authorities were consulted under section 42 of the 2008 Act and section 56 of the 2008 Act, in accordance with Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017, and were invited by the Planning Inspectorate, on behalf of the Secretary of State, to partake in the Examination process. The consultation process has allowed the French authorities to comment on the potential effects of the Project on European sites outside UK territorial waters, as envisaged by government guidance.
- 30 The Applicant concludes that all decisions relating to the granting of development consent, including those relating to transboundary HRA issues, should be made by the Secretary of State, following due consideration of the representations of the relevant French authorities.

Annex E - Legal submissions on the question of competent authority for HRA matters in France