

Natural England's response to Norfolk Boreas comments on Relevant Representations [AS-024] Table 26 DCO and DML

No.	Boreas response	Natural England comment
1	<p>The Applicant can confirm that any new areas of cable protection required during the operation stage would be subject to a separate marine licence. The EIA and HRA assess the placement of up to 10% of the export cable not being buried and therefore requiring cable protection. This is a precautionary worst case scenario and the Applicant has since committed to 5%. Therefore, the Applicant believe that in the unlikely event that new areas of cable protection are required during the operation phase this has been accounted for within the assessment. Furthermore, the Applicant has made the post application commitment to attempt to rebury any exposed cables first before applying for a marine licence for new areas of cable protection.</p>	<p>Natural England welcomes this commitment and notes that both Natural England and the MMO have issued draft statements on the deployment of cable protection. Additionally, given the commitment made to the reduction of the volume of cable protection Natural England would recommend the ES chapters be updated to show the correct volume. During review and sign off of pre-construction plans it is the ES that is referred to as the guide for what has been permitted. However, given this change the ES is now inaccurate.</p>
2	<p>Document 8.16 (APP-707) has been prepared as an outline plan and therefore in the interests of keeping the document as brief and concise as possible it refers to the EIA rather than repeating the full assessment. This format has been accepted for Outline Scour Protection and Cable Protection Plans submitted for previous projects such as Norfolk Vanguard.</p> <p>As secured under Condition 14(e) of the generation DMLs the Applicant must produce: A scour protection and cable protection plan (in accordance with the outline scour protection and cable protection plan) providing details of the need, type, sources, quantity, distribution and installation methods for scour protection and cable (including fibre optic cable) protection.</p> <p>These parameters will only be known at the detailed design stage and therefore will be included in the actual Scour Protection and Cable protection plan. It should be noted that the HHW SAC SIP</p>	<p>Natural England notes the need for updated plans to be produced later. However, given the above we would expect the outline plan to be updated. Our comments in our Relevant Representation [099] should still be addressed through production of a more detailed outline plan, including consideration of the potential impacts, options to minimise and mitigate.</p>

	<p>will cover these parameters and assessment of impacts in more detail were relevant to the HHW SAC.</p> <p>Further detail would be added to the HHW SAC SIP at the detailed design stage.</p>	
3	<p>The Applicant notes this and will amend the definition throughout the next version of the dDCO and DMLs.</p>	<p>Natural England notes the updated dDCO refer to the relevant Statutory Nature Conservation Body and consider this issue resolved.</p>
4	<p>The Applicant notes this comment. The Applicant, however, does not consider that this amendment is necessary for the following reasons:</p> <ol style="list-style-type: none"> 1.The Applicant must provide the MMO with a Construction Programme and Monitoring plan in accordance with the Offshore In Principle Monitoring Plan, as secured by Condition 14(1)(b) (Schedule 9-10), Condition 9(1)(b) (Schedule 11-12) and Condition 7(1)(b) (Schedule 13). This will set out the proposed construction programme; 2.The Applicant must also provide an offshore operations and maintenance plan at least four months prior to commencement of operation of the licensed activities, pursuant to Condition 14(1)(j) (Schedule 9-10), Condition 9(1)(j) (Schedule 11-12), and Condition 7(1)(i) (Schedule 13); 3.The Applicant must notify the MMO (including Kingfisher Information Service of Seafish and the UK Hydrographic Office) upon completion of licensed activities (for example, Condition 9 (Schedule 9-10)).In the case of the Kingfisher Information Service of Seafish notification, this must be no later than 24hours of completion of construction of all offshore activities. The MMO will therefore be notified accordingly and will be in a position to 	<p>Natural England notes that this condition meets a requirement to notify. However, the proposed condition was not just needed for notification. It was there to ensure a clean line between the end of construction and the beginning of operation. Included in this is a confirmation that after this date no works considered construction could take place. Recently Natural England has been involved in discussion on an OWF NSIP project in the operation phase requesting permission to do works which would fall under construction. In this case the position was put forward by the applicant that it could be construed that construction had not ended as there was no such clear indication of when construction ends. A clear condition or requirement would help prevent future disagreements.</p>

	<p>share the information with relevant stakeholders, such as Natural England. This approach is also in line with precedent, following as made offshore wind DCOs; and</p> <p>4. In respect of the onshore works, the Applicant must submit a scheme to the LPA setting out the stages of onshore transmission works (Requirement 14). The detail of the stages and construction measures for each stage will then be secured through the Code of Construction Practice (Requirement 20), to be submitted to the LPA in consultation with Norfolk County Council, the Environment Agency and (as per the latest version of the dDCO) Natural England.</p> <p>Accordingly, there are sufficient measures contained in the DCO to provide control and transparency for the enforcement bodies - in consultation with their statutory advisers - in relation to commencement, construction, and stages of works.</p>	
5	<p>The Applicant does not consider this necessary or appropriate for a project of this nature. The proposals for net gain fall outside of the NSIP consenting regime. This is confirmed in the Government response to consultation dated July 2019, at page 5 as follows:</p> <p>"Government will continue to work on exploring potential net gain approaches for these types of development, but nationally significant infrastructure and net gain for marine development will remain out of scope of the mandatory requirement in the Environment Bill."</p> <p>This document can also be located at the following link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819823/net-gain-consult-sum-resp.pdf</p>	<p>Natural England notes that there is no legislation requiring the Applicant to commit to supporting Net Gain. However, refer to our Relevant Representation [099] Appendix 4 22.2.3 and would encourage the Applicant to consider Net Gain.</p>
6	<p>The Applicant notes this and will review the dDCO and make any</p>	<p>Following the changes to the DCO and the updated</p>

	<p>changes accordingly. The Applicant, however, anticipates that the figures Natural England are referring to can be explained by reference to the Reconciliation Document (document 6.7, APP-689). This document explains how the “worst case scenario” as assessed within the EIA has been adequately secured within the DCO and DMLs. For many of the parameters secured within the DCO it is clear that the same values have been assessed within the ES, for example the minimum gap between turbines - which is stated at requirement 2 in Schedule 1 of the DCO and also presented throughout. However, due to the fact that the DMLs are defined by a group of assets and the EIA takes a geographical approach to assessing impacts, values for other parameters, such as the maximum quantities of cable protection and/or scour protection, are not so easily cross referenced between the ES and the DCO. This is explained further in the Reconciliation Document.</p>	<p>reconciliation document Natural England is satisfied that the numbers on the dDCO are correct. However, as above would recommend that the ES project description be updated to reflect the commitment to reduced volumes of cable protection.</p>
7	<p>The Applicant has agreed to include Natural England within the list of consultees for Requirement 20 and this will be reflected within the next version of the dDCO.</p>	<p>Natural England notes that in the updated dDCO these changes have now been made. This issue is considered closed.</p>
8	<p>The maximum amount of hammer energy is secured within the dDCO at Condition 14(3) (Schedule 9-10), and Condition 9(3) (Schedule 11-12) of the DMLs, which states the following:</p> <p><i>...“(3) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 5,000kJ.”</i></p> <p>The Applicant does not therefore consider it necessary to amend this condition further.</p>	<p>Natural England acknowledges that this condition secures the maximum hammer energy for monopoles. We note the MMO has responded in relation to hammer energy and Natural England support the MMO position.</p>
9	<p>Disposal volumes have been separated into drill arisings and dredged sediment in the dDCO. Any boulders of significant size would be relocated as assessed in the ES. These would not be</p>	<p>Natural England is content with the answer provided and considers this issue closed.</p>

	<p>lifted to the surface and are therefore not considered in the volumes for disposal. The Applicant considers that it is not practicable or necessary to distinguish between sand and mud volumes.</p> <p>Notwithstanding this, the Applicant has secured the amount of boulders to be cleared within the HHW SAC within the Outline HHW SAC SIP (document 8.20 APP-711). This is secured within condition 9(1)(m) of the Transmission DMLs (Schedule 11-12).</p>	
10	<p>The Applicant must produce a marine mammal mitigation protocol, in accordance with the draft marine mammal mitigation protocol, prior to commencement of any piled foundations (Condition 14(1)(f) (Schedule 9-10) and Condition 9(1)(f) (Schedule 11-12)).</p> <p>Pursuant to Condition 20 (Schedule 9-10) and Condition 14 (Schedule 11-12), the Applicant must then submit further details, in accordance with the Offshore In Principle Monitoring Plan (document 8.12, APP-703), for approval by the MMO in consultation with the relevant SNCBs. This submission must cover any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. Noise monitoring results must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type and, if in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impacts to those assessed in the environmental statement or failures in mitigation, then all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.</p>	<p>Natural England notes that the marine mammal mitigation protocol is a mitigation protocol and does not secure marine mammal monitoring. The monitoring of noise during construction, while a relevant impact to marine mammals and essential to ensuring impact is within the predicted levels, is not monitoring of marine mammals.</p> <p>The In Principal Monitoring Plan includes commitments to marine mammal monitoring and this commitment should be appropriately secured through condition.</p>

	The Applicant therefore considers that these measures cover Natural England's concerns in relation to marine mammal monitoring.	
11	The Applicant considers that all material dredged or drilled from the seabed would be of natural origin. Furthermore, all material would be disposed of within the vicinity of the dredge location and therefore would not be transported far from source. Therefore, the wording of the DCO should remain in keeping with the precedent set by previous DCO projects.	<p>Natural England discussed this issue with the Applicant in a meeting on 29 November. The Applicant is going to consider the wording change proposed by Natural England. We would note this wording change was made on the Vanguard DCO at the request of the ExA.</p> <p>Additionally, Natural England notes that the intention may be that only material of natural origin are dredged up and then disposed. However, the reality is that there is a risk of manmade material being dredged up, this has occurred on other developments. For example parts of wrecks, detonated UXOs and other man made debris. Disposing of this material back into the marine environment could potentially be considered a breach under OSPAR and this condition should be amended to ensure that any man made material recovered is disposed of to an appropriate onshore disposal site, or as directed under the Written Scheme of Investigation (for any historically significant recoveries).</p>
12	The Applicant can confirm that any new areas of cable protection required during the operation stage would be subject to a separate marine licence. The wording of the current DCO does not allow for the Applicant to install new areas of cable protection during operation. The Outline Operations and Maintenance Plan (OOOMP) (document 8.12, APP-703) demonstrates this in the Table in Appendix 1 that has a "yes" in the Additional licence likely to be required column against cable protection.	Natural England is grateful for the confirmation and considers this issue resolved.
13	The Applicant notes Natural England's comments. The Applicant, however, considers that the four month time frame conditioned within the DMLs is appropriate and proportionate to allow the	Natural England notes the Applicant's comments regarding the appropriateness of the four month period. However, disagrees that this period is appropriate for this project.

MMO, in consultation with statutory bodies, sufficient time for stakeholder consultation and the provision of comments, whilst ensuring no unnecessary delay to the commencement of development and completion of construction works.

This time period is contained on a number of other Offshore Wind Farm (OWF) DCOs (including The East Anglia Three Offshore Wind Farm Order 2017, the Hornsea Two Offshore Wind Farm Order 2016, the draft Norfolk Vanguard Offshore Wind Farm Order [2019], and the draft Hornsea Project Three Offshore Wind Farm Order [2020]). Four months is, therefore, well-established as an appropriate time frame for OWF schemes and one that ensures a balance is struck between the expedient discharge of the relevant conditions attached to the DML whilst allowing a reasonable period of time for consideration by the MMO and its consultees.

The Applicant is aware that it has, in some recent cases, taken much longer than 4 months to discharge certain DML conditions on other OWF projects and it should be recognised that with no mechanism to encourage the determination of applications within a reasonable period (such as arbitration or appeal) the developer is then left in a position which is wholly unsatisfactory. With such highly competitive and fixed Contracts for Difference milestones, and where offshore construction can only be undertaken in safe and optimal weather conditions, wind farm developers need the certainty and confidence of a reliable and consistent approval process. This is also one of the reasons why the Applicant sought to insert an appeal provision within the dDCO. In this context, the Applicant refers the MMO to its response in relation to arbitration (row 21 of this table) and the Norfolk Vanguard Ltd and MMO Joint Position Statement (Appendix 3 of this

Natural England notes that it has disagreed with the four month period on a number of NSIP OWF projects including but not limited to; Vanguard, East Anglia Three, and Hornsea Project Three.

The four month period was originally designed for round one offshore wind farms. These developments were much closer to shore and far smaller. Therefore, they were much less complex and the issues within them easier to resolve. This four month period has been carried over to the NSIP by industry as a standard, however, it is no longer appropriate for projects of such orders of magnitude bigger and more complex than for that it was originally deemed appropriate. The Applicant acknowledges that in some cases it has not been possible to approve these documents within this time period which can lead to costly delays. An appeal mechanism launched at the end of a four month process is not going to reduce the risk of delay. It is more likely to compound the issue by taking up resources that could be devoted to issue resolution, while also taking additional time to come to a determination. Natural England supports the MMO position on the appropriateness of an appeals process.

Natural England also notes that within the recent applications for East Anglia 2 and East Anglia One North the Applicant has deemed that 6 months is an appropriate timeframe and included such within their dDCOs.

	<p>document).</p> <p>Accordingly, there is a strong public interest argument in favour of timely approvals in order to ensure that Nationally Significant (renewable energy) Infrastructure Projects are not unduly delayed. Accordingly, the Applicant considers that the dDCO strikes the balance between allowing the MMO (and Natural England) to properly discharge their statutory duties whilst ensuring renewable energy development is unlocked in a timely manner.</p>	
14	<p>The obligations in condition 20(2)(a) are in respect of the surveys referred to in sub-paragraph (1) (i.e. all the post-construction surveys) and condition 14(1)(b) (the construction programme and monitoring plan).</p> <p>The construction programme and monitoring plan, submitted pursuant to condition 14(1)(b), must accord with the IPMP. As stated in the IPMP (document 8.12, APP-703), "post-construction survey(s) will be undertaken at a frequency to be agreed with the MMO (e.g. 3 years non-consecutive e.g. 1, 3 and 6 years or 1, 5 and 10 years)".</p> <p>In any event, the MMO must be satisfied and approve both the construction programme and monitoring plan and the post-construction surveys under condition 20. The MMO (and, by extension, Natural England) therefore has sufficient opportunity to raise any further points during this approval process.</p> <p>Accordingly, the Applicant does not consider it necessary to change the wording of the condition.</p>	<p>Natural England notes the response. However, the wording within the condition is fairly specific and could be read to imply a limit of one survey. Given the wording Natural England questions if multiple surveys could be enforced by the MMO? The condition states 'a survey' thus there is a strong implication that only one survey will be required. The wording 'appropriate surveys' would allow for one or more surveys and is more appropriate.</p>
15	<p>The Applicant notes Natural England's comments. The Applicant's position remains the same as that put forward during the Norfolk Vanguard examination and through the joint position statement with the MMO (Appendix 3 of this document).</p>	<p>Natural England confirms it supports the position of the MMO.</p>
16	<p>The Applicant notes this and has interpreted the representations</p>	<p>No response required.</p>

	accordingly.		
17	The Applicant refers Natural England to the responses in section 1.5 (specifically rows 20 and 22 of Table 5).	Natural England refers to our advice provided within our Relevant Representation [099] and in our response to the ExA's written questions at Deadline 2.	
18	The Applicant agrees that new areas of cable protection installed during the operation phase of the project would be subject to a separate marine licence and the next version of the OOOMP will be updated accordingly.	Natural England notes the Applicant agrees that this consent does not allow construction of cable protection during the operations phase.	
19	This will be updated to red in the next version of the OOOMP.	Natural England notes that this will be changed, once the updated OOOMP is provided this issue may be considered closed.	
20	<p>The Applicant does not consider this necessary or appropriate for a project of this nature. The proposals for net gain fall outside of the NSIP consenting regime. This is confirmed in the Government response to consultation dated July 2019, at page 5 as follows:</p> <p>"Government will continue to work on exploring potential net gain approaches for these types of development, but nationally significant infrastructure and net gain for marine development will remain out of scope of the mandatory requirement in the Environment Bill."</p> <p>This document can also be located at the following link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819823/net-gain-consult-sum-resp.pdf</p> <p>The mitigation measures set out within Chapter 22 Onshore Ecology (document 6.1.22, APP-235) have been designed to result in no loss of biodiversity, with all habitats removed to be either reinstated or enhanced following construction (for example,</p>	Natural England refers to our response to point 5 above.	

	<p>hedgerows temporarily severed along the onshore cable route), or compensated for where permanently lost (for example, at the onshore substation). Furthermore, for selected species (for example commuting / foraging bats), the mitigation set out within Chapter 22 Onshore Ecology (document 6.1.22, APP-235) has been designed to result in an overall enhancement in biodiversity through increasing the quality of foraging habitat provided following construction of the project.</p>	
60	<p>The general position is that stated under Condition 15(3) in that each programme, statement, plan, protocol or scheme required to be approved under condition 14 must be submitted for approval at least four months prior to the intended commencement of licensed activities (unless stated otherwise). Condition 14(b) is an exception where it is necessary to 'otherwise state' the timeframe. The express reference to a timeframe within condition 14(1)(b) is necessary given that the four month deadline is relevant for the submission of details at different stages and prior to certain events (as opposed to that under the general Condition 15(3) position) – for instance, prior to the first survey, prior to construction, and prior to commissioning. Equally, Condition 14(1)(j) secures the Operation and Maintenance plan. This plan is not applicable for the construction stage; it must be submitted at least four months prior to commencement of operation of the licensed activities. Condition 14(1)(j) therefore falls outwith the general rule under Condition 15(3).</p>	<p>Natural England notes this is listed as a request raised by us for a change to condition 14 (1). However, we suspect this is actually a request by the MMO. We defer to the MMO on this topic.</p> <p>However, we note that no reply has been given to our request for condition 14 (1) (l) to be linked to a different timing requirement. Condition 14 (1) (l) refers to the approval of the ornithological monitoring plan. Natural England considers that this plan needs to be provided prior to any pre-construction surveys being approved. These surveys will likely need to be conducted up to 18 months prior to commencement of construction. It is, therefore, inappropriate for this condition to be linked to a requirement to submit the plan 4 months prior to construction. While we acknowledge that the methodology for pre-construction surveys will be submitted under condition 14 (1) (b) (iv) (aa), in order to approve the pre-construction plans we would need to see the full detail on the proposed ornithological plan. This is required to confirm that the proposed pre-construction surveys will allow the monitoring objectives to be achieved.</p>
87	<p>The Applicant does not consider this necessary or appropriate for a project of this nature. The proposals for net gain fall outside of</p>	<p>Natural England refers to its answer to point 5.</p>

the NSIP consenting regime. This is confirmed in the Government response to consultation dated July 2019, at page 5 as follows:

"Government will continue to work on exploring potential net gain approaches for these types of development, but nationally significant infrastructure and net gain for marine development will remain out of scope of the mandatory requirement in the Environment Bill."

This document can also be located at the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819823/net-gain-consult-sum-resp.pdf

The mitigation measures set out within Chapter 22 Onshore Ecology (document 6.1.22, APP-235) have been designed to result in no loss of biodiversity, with all habitats removed to be either reinstated or enhanced following construction (for example, hedgerows temporarily severed along the onshore cable route), or compensated for where permanently lost (for example, at the onshore substation). Furthermore, for selected species (for example commuting / foraging bats), the mitigation set out within Chapter 22 Onshore Ecology (document 6.1.22, APP-235) has been designed to result in an overall enhancement in biodiversity through increasing the quality of foraging habitat provided following construction of the project.