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THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
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NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

Deadline 9

**Natural England's comments on Norfolk Boreas
Position Statement on Derogation**

29th April 2020

Our Ref: NE.NB.D9.05. Derogation

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1 Introduction

The below constitutes Natural England's comments on Norfolk Boreas Position Statement on Derogation [REP6-025].

2 Summary of Natural England position on impacts to SPA sites

The mitigation provided by Norfolk Boreas must either avoid or reduce as far as possible the impacts associated with the development. That mitigation should mean the development will not, alone, have an adverse effect on integrity (AEol) of the SPAs. Any residual effects of the development which alone are not adverse must be considered in combination with the residual impacts of other plans and projects.

Natural England agree that AEol can be ruled out for both kittiwake at the Flamborough and Filey Coast (FFC) SPA and lesser black-backed gull (LBBG) at the Alde-Ore Estuary SPA from Norfolk Boreas **alone** (see our Deadline 7 response to REP5-059) and therefore, there is no need for compensation due to Norfolk Boreas **alone**. However, we consider that it is not possible to rule out AEol for LBBG and that there is an AEol for Kittiwake due to in-combination collision mortality and that includes a contribution from Norfolk Boreas (see our Deadline 7 response to Applicant's REP6-024 on updated cumulative/in-combination collision risk). We note Natural England's advice during the Thanet Extension Examination was that whilst this project made a small contribution to the in-combination collision mortality, it could not be concluded that there would be no AEol of the site by the project, when considered in-combination.

Natural England agrees with the Applicant that following the commitment to mitigation measures from the Applicant, AEol can be ruled out for red-throated diver (RTD) and common scoter at the Greater Wash SPA due to Norfolk Boreas alone and in-combination from construction activities and operations and maintenance vessels (see REP4-040). We also agree with the Applicant that AEol can be ruled out for collision risk to little gull at the Greater Wash SPA from the project alone and in-combination (see REP4-040 and our Deadline 7 response to Applicant's REP6-024 on updated cumulative/in-combination collision risk). Therefore, there is no need for compensation due to Norfolk Boreas alone or in-combination for the Greater Wash SPA.

3 Precaution in assessments

The Applicant asserts that ornithology impact assessment for offshore wind farms has become highly over precautionary through the accumulation of numerous individual precautionary elements added throughout the different stages of assessment. As noted in our Deadline 4 responses [REP4-039, REP4-040 and ISH response [REP4-043] and in

our response to Examining Authority Question 2.8.4.4 [REP5-077], we do not agree with the Applicant's assertion regarding over precaution in assessments.

With regard to consented versus as built turbine numbers and headroom in in-combination collision assessments, we note our Deadline 6 response [REP6-049] and Deadline 7 response to our response to Applicant's D6 headroom position paper.

In summary, Natural England:

- a) Acknowledges the work that the Norfolk Boreas Applicant and their consultants have done to consider potential headroom in the in-combination/cumulative collision risk figures by assessing the 'as built' rather than the worst case scenario (WCS);
- b) Recognises 'headroom' as an important issue; it is a highly complex one though, and it is important to note that there is not yet an agreed way forward at present. The Applicant's approach has also not been subjected to judicial scrutiny.
- c) Does not disagree that there is likely to be some headroom; however, the exact extent of any potential headroom is not agreed.

There are a number of uncertainties/issues with the approach proposed by the Applicant in REP4-014 and in REP6-021, namely:

- Whether consented or as-built scenarios can be considered 'legally secured'.
- Issues with the approach developed by MacArthur Green for The Crown Estate (TCE) to adjust altering the collision figures of planned and consented projects (Trinder 2017) and that Natural England does not advise that it is used.

These uncertainties/issues are set out in detail in our Deadline 6 response [REP6-049] to the Applicant's headroom approach in REP4-014. Therefore, until the uncertainties highlighted by Natural England are addressed and an industry wide approach is agreed we recommend that the default 'standard' approach is appropriate.

Our position remains that CRM should be re-run in full to generate updated collision figures against any agreed changes to turbine design layouts. Where this is not possible for a project, because original bird density data cannot be obtained, we would need to agree whether correction ratios can be calculated (for example following an approach such as that presented in Trinder (2017)). Natural England would need to see the full calculation details for these correction factors. It is Natural England's advice that simplistic scaling of collision figures based on reductions in turbine numbers from the consented number should not be used, for example due to variation in flight activity at different heights and differences in turbine parameters such as rotor speeds. There are also case-specific issues that need to be addressed: Natural England notes that the Race Bank and Dudgeon assessments didn't use the Band model, and were based on the Folkerts model.

As noted during the Norfolk Boreas Issue Specific Hearing on 22nd January 2020¹, Natural England has been raising the issue of whether as built or consented projects should be considered for in-combination effects with The Crown Estate and we note the need for a strategic approach to this issue. If conducted simply on a project-by-project basis this has significant risks of inconsistency of approach across applications. Therefore, we consider that this issue needs to be addressed strategically on behalf of the whole sector, including developing consensus on an approach. However we do recognise that this is not possible in timescale for the Norfolk Boreas examination.

4 Summary of Natural England Position on HHW SAC

Natural England has provided responses to the (8.20) HHW SAC SIP, HHW Position Paper including CSIMP including decommissioning, cable recovery and cable protection for D9 and so will not duplicate our response here.

5 Appendix 1 of REP6-025: Alternatives

5.1 Alternative Conditions

Natural England has provided comment on the CSIMP for D9.

5.2 Alternative Design Solutions

Natural England has provided comment on alternatives numbers of turbines and draught heights as presented by the Applicant throughout Examination.

6 Appendix 2: Compensation

6.1 SPA's

Coherence of the Natura 2000 network relates to securing and maintaining an ecologically coherent network of sites designated for the protection of relevant habitats and/or species across their natural range. It is important therefore that compensatory measures address what is being lost. Considerations should include the scale, location and timing of impacts with respect to the resource currently provided by the network for the species in question. In this case it is in relation to the features supported by the FFC SPA and the Alde-Ore Estuary SPA.

¹ Natural England (2020) Norfolk Boreas Offshore Wind Farm: Natural England's Written Summary of Oral Representations made at Issue Specific Hearing 4 on offshore effects including the Draft Development Consent Order. Planning Inspectorate Reference: EN010087. Available from: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-001630-DL4%20-%20Natural%20England%20-%20Written%20Representation%20of%20Oral%20Case.pdf>

We agree that prey enhancement through fisheries management measures and nesting ledge provision for kittiwakes from the FFC SPA, and predator proof fencing for LBBG at the Alde-Ore Estuary SPA have the potential to be considered as appropriate compensatory measures to address collision mortality impacts.

The Applicant states that it is progressing this further to provide a fuller derogation case for submission to the examination which will include more detail on the feasibility and deliverability of the possible compensatory measures. We welcome this commitment from the Applicant and advise that any further submission should consider the evidence base and management options and implementation/legal issues, and be informed by the ongoing discussions about compensatory measures for the Norfolk Vanguard and Hornsea 3 projects. We also advise that the potential compensation measures considered in any further submission are not restricted to the most immediately deliverable options (e.g. to just provision of artificial nest sites for FFC SPA kittiwakes) and that a range of compensatory measures are developed, given such measures for collision mortalities are novel, untested and need to satisfy multiple requirements.

6.2 SAC

Natural England has provided comment on the detailed In Principle Habitats Regulations Derogation Provision of Evidence, including HHW SAC at D9, and so for the sake of brevity will not replicate this here.