

# Norfolk Boreas Offshore Wind Farm Applicant's Comments on Natural England and the MMO's Deadline 14 Submissions

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*Photo: Ormonde Offshore Wind Farm*

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## Glossary of Acronyms

AEol	Adverse Effect on Integrity
AOE	Alde-Ore Estuary
BT	British Telecom
CIA	Cumulative Impact Assessment
CSIMP	Cable Specification, Installation and Monitoring Plan
dDCO	Draft Development Consent Order
DCO	Development Consent Order
DML	Deemed Marine Licence
ExA	Examining Authority
FFC	Flamborough and Filey Coast
HHW	Haisborough, Hammond and Winterton
HRA	Habitats Regulation Assessment
IPMP	In Principle Monitoring Plan
ISH	Issue Specific Hearing
MMO	Marine Management Organisation
NE	Natural England
OWF	Offshore Wind Farm
SAC	Special Area of Conservation
SIP	Site Integrity Plan
SoCG	Statement of Common Ground
SoS	Secretary of State

## 1 Applicant's Comments on Natural England and the MMO's Deadline 14 Submissions

1. This document contains the Applicant's comments on the submissions by Natural England and the MMO at Deadline 14 of the Norfolk Boreas Examination.

## 1.1 REP14-058, Marine Management Organisation – Response to Rule 17 Letters

Summary of Submission	Applicant's Comments
<b>MMO's Response to the Rule 17 Letter</b>	
<p><b>Statement of Common Ground with the MMO: Commercial Fisheries To: the Applicant and the MMO</b></p> <p>The MMO thanks the ExA for highlighting this discrepancy. The MMO has discussed this with the Applicant and can confirm that the SoCG has been amended to reflect this. The MMO and the Applicant agreed this point and completed a full review of Chapter 14 Commercial fisheries [APP-227] prior to providing their relevant representation [RR-069] and agree with the outcomes of the assessment. The MMO note the change is due to the worst-case scenario of the current proposals for closures to fishing within MPAs in the North Sea (in UK, Dutch and German waters), there is little certainty that all of the proposed closures will occur. The final SoCG will be submitted by the Applicant at Deadline 16.</p> <p>The MMO believes no update to the CIA is required.</p>	<p>The Applicant is in complete agreement with the MMO on this point and has updated the Statement of Common Ground (SoCG), for submission at Deadline 16 accordingly.</p> <p>To clarify, the change to the assessment mentioned by the MMO in its response was made between the Section 42 Consultation and accompanying Preliminary Environmental Information Report and the submission of the Development Consent Order (DCO) Application on the 11<sup>th</sup> June 2019.</p> <p>As confirmed by the Applicant in its response to the Rule 17 request for further information the Applicant agrees that no update to the Cumulative Impact Assessment (CIA) is required.</p>
<b>MMO's Comments on Deadline 13 Submissions</b>	
<p><b>REP13-013: Applicants response to request for further Information- R17.1.25 – HHW SAC SIP and CSIMP</b></p> <p>The MMO understands that NE, the Applicant and the MMO agree that the CSIMP, which contains all the same mitigation measures but without the Grampian condition, is the preferred route to manage the impacts to the HHW SAC.</p> <p>The MMO believes the SIP should therefore be removed from the dDCO. Please see our further detailed comments in section 2.2 of REP13-035.</p>	<p>The Applicant is in agreement with Natural England and the MMO that the Cable Specification, Installation and Monitoring Plan (CSIMP) should be secured in preference to the SIP. However, in the interests of consistency between Norfolk Boreas and Norfolk Vanguard, and in the event that an additional safeguard is recommended by the Examining Authority or considered appropriate by the Secretary of State, the Applicant proposes to retain optionality for both the Site Integrity Plan (SIP) and CSIMP in the draft Development Consent Order (dDCO) (further information is provided in REP13-013).</p>

## 1.2 REP14-063, Natural England - Cover Letter

Summary of Submission	Applicant's Comments
<p><b>Norfolk Boreas written summary of oral response at the DCO hearing.</b></p> <p>Natural England notes that the Applicant has referenced an agreement provided in a meeting on 10 July that the compensatory packages are sufficient. As detailed elsewhere within our response at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5 and NE.NB.D14.02.OrnImp) this is incorrect. The Natural England representative agreed in error on the 10 July that all compensatory packages were agreed. However, only the Haisborough Hammond and Winterton Special Area of Conservation (SAC) compensatory package is currently agreed. As detailed in our other Deadline 14 responses discussion is ongoing with regards to the remaining compensatory packages.</p>	<p>Following the original date for closure of the examination on the 12th May 2020 until the 24th August 2020, Natural England had not provided any advice to the effect that additional information was required in relation to the potential development of the compensatory measures. Indeed, it was made clear by Natural England that there was no value in meeting until the Norfolk Vanguard and Hornsea Project 3 decisions were available. Following publication of the Norfolk Vanguard decision and the Hornsea Project 3 'minded to' letter, the Applicant was unable to meet Natural England (despite requests) because Natural England requested additional time to consider the implications of the decisions, particularly in relation to HRA matters, before doing so. On the 10th July 2020 (and at subsequent meetings) Natural England confirmed that all of the Applicant's compensatory packages were agreed and that the outstanding points were matters of finer detail to be dealt with post consent, in the event that the Secretary of State considered that compensatory measures were necessary. In reliance on this, the Applicant confirmed the same to the ExA at Deadline 13 [REP13-013].</p> <p>The Applicant was only made aware on the afternoon of the 24th August 2020 (the day before Deadline 14) that Natural England had been mistaken in their previous advice, and were not in agreement with the compensatory packages for the Alde Ore Estuary (AOE) and the Flamborough and Filey Coast (FFC) SPA. Notwithstanding this, on the 24th August 2020 the Applicant proposed a revised draft condition to secure the compensatory measures for the AOE in order to address Natural England's outstanding concerns. The Applicant understands from Natural England that, as a result of these revisions to the dDCO, the compensatory package for the AOE is now fully agreed with Natural England. At the meeting on the 24th August 2020, Natural England also agreed to confirm, by 28th August 2020, whether in Natural England's opinion, the points raised in respect of the FFC compensatory package could be dealt with post consent (as previously proposed) or, if not, what further detail was required. On the afternoon of 28th August 2020, (the working day before Deadline 15) Natural England</p>

Summary of Submission	Applicant's Comments
	<p>provided new details on the information it considered could be provided in respect of the FFC compensatory measure. Despite Natural England's previous position (as explained in the REP13-013 and in this cover letter), the Applicant is currently seeking to agree with Natural England a programme of work to address the points which Natural England now consider to be outstanding; Natural England have, however, informed the Applicant that they are unable to engage further until 7th September 2020 at the earliest. In the meantime, the Applicant will progress work to address the recent points raised by Natural England and the Applicant will provide a further update to the Examining Authority at Deadline 16 both on the engagement achieved (noting the limited availability of Natural England prior to the 7th of September 2020) with Natural England and the proposed timetable for delivery of any further information into the Norfolk Boreas Examination</p>

### 1.3 REP14-065, Natural England - Comments on other Interested Parties (Applicant and MMO) responses to the Examining Authority's Rule 17 Letter

Summary of Submission	Applicant's Comments
<b>Offshore Ornithology</b>	
<p>R17.1.1 In the light of the SoS decision letters for Norfolk Vanguard and Hornsea THREE published on 1 July 2020, can NE and the RSPB give their current positions for the Proposed Development.</p>	
<p>With regard to kittiwakes at the Flamborough and Filey Coast (FFC) SPA, as set out in our Deadline 13 response [REP13-038] to point R17.1.8 and in our response to the ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) our advice remains as that submitted at Deadline 9 [REP9-045 and REP9-049]. Namely that, as we have already advised at Hornsea 2 and East Anglia 3 examinations onwards that it was not possible to rule out an AEoI on the FFC SPA from operational and consented projects due to the level of annual in-combination collision mortality predicted for kittiwake and therefore, any additional mortality arising from these proposals would be</p>	<p>The Applicant notes Natural England's response on this matter and does not consider that any new points have been raised beyond those on which the Applicant has previously provided comments. The Applicant has also provided a response to this topic in Table 1.2, Q5.8.6.2[REP14-036], and has provided comments on Natural England's response to Q5.8.6.1.</p>



Summary of Submission	Applicant's Comments
<p>considered adverse. Therefore, as further FFC SPA kittiwake collisions have been added to the in-combination total from five further projects (including Boreas) since the East Anglia 3 examination, our advice remains that there is an adverse effect on integrity (AEol) of this feature due to in-combination collision mortality and that includes a contribution from Norfolk Boreas.</p> <p>With regard to lesser black-backed gulls (LBBGs) at the Alde-Ore Estuary SPA, as set out in our Deadline 13 response [REP13-038] to point R17.1.6 and in our response to the ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) our advice remains as that submitted at Deadline 9 [REP9-045], namely that as this feature has a restore conservation objective, and because there are indications that the population might even decline from current levels, we continue to advise that we cannot rule out AEol of Alde-Ore Estuary SPA through impacts to LBBG, in-combination with other plans and/or projects and the Norfolk Boreas project does make a contribution to this in-combination impact.</p> <p>Please also see our separate response to the ExA question 5.8.6.1 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) regarding de minimis.</p>	
<p>R17.1.2 To provide the latest considerations on the level of precaution applied to the significance of impacts on seabird populations, and how headroom could be taken into consideration when assessing AEol.</p>	
<p>As set out in our Deadline 13 response [REP13-038] our position on precaution, regarding both the individual components of precaution and the accumulation of these, has been set out in our previous responses [REP4-039, REP4-040, REP4-043, our response to ExA second round question 2.8.4.4 in REP5-077 and our response to ExA third round question 3.8.4.1 in REP7-049]. No further information has been provided by the Applicant regarding this and as noted in REP13-038, in both the Hornsea Project Three and Norfolk Vanguard decisions, the SoS was satisfied that outputs using Natural England's preferred parameters were suitably precautionary to use as a basis of his impact assessments. Therefore, our advice regarding precaution in assessments remains unchanged.</p>	<p>The Applicant refers to its response to this question in REP13-013. No new points have been raised by Natural England on which further comment is required.</p>

Summary of Submission	Applicant's Comments
<p>R17.1.3 NE and the RSPB to provide their latest conclusions on significant cumulative displacement impacts for red-throated diver, guillemot and razorbill.</p> <p>R17.1.4 NE and the RSPB to provide their latest conclusions on significant cumulative collision impacts for herring gull, lesser black-backed gull, kittiwake and great black-backed gull.</p> <p>R17.1.5 NE and the RSPB to provide their latest conclusions on combined effects of collision and displacement for cumulative projects for gannet.</p>	
<p>[note that Natural England provide the same response to each question]</p> <p>Please see our response to ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) regarding the availability of updated figures for Hornsea 3 following the additional data submitted by this project post-examination. Therefore, our advice regarding this remains as set out in our response to point R17.1.3, R17.1.4 &amp; R17.1.5 in our Deadline 13 response [REP13-038].</p>	<p>The Applicant notes Natural England's response on this matter and does not consider that any new points have been raised beyond those on which the Applicant has previously provided comments. The Applicant has also provided a response to this topic in Table 1.2, Q5.8.6.2 [REP14-036].</p>
<p>R17.1.6 NE to provide its latest conclusions on no AEoI for lesser black-backed gull population from in-combination collision effects.</p> <p>As set out in our Deadline 13 response [REP13-038] to this point and in our response to the ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) our advice remains as that submitted at Deadline 9 [REP9-045], namely that as the LBBG feature of the Alde-Ore Estuary SPA has a restore conservation objective, and because there are indications that the population might even decline from current levels, we continue to advise that we cannot rule out AEoI of Alde-Ore Estuary SPA through impacts to LBBG, in-combination with other plans and/or projects and the Norfolk Boreas project does make a contribution to this in-combination impact.</p> <p>Please also see our separate response to the ExA question 5.8.6.1 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) regarding de minimis.</p>	<p>The Applicant notes Natural England's response on this matter and does not consider that any new points have been raised beyond those on which the Applicant has previously provided comments. The Applicant has previously provided a detailed assessment for lesser black-backed gull from the Alde-Ore Estuary SPA in REP2-035, with subsequent updates to the collision risk in REP5-059 which further reduced the predicted impact at Norfolk Boreas. The Applicant has also provided comments on Natural England's response to Q5.8.6.1 [REP14-036].</p>
<p>R17.1.7 NE to provide its latest conclusions on no AEoI for razorbill and guillemot populations from in-combination displacement effects.</p> <p>R17.1.9 NE to provide its latest conclusions on no AEoI for gannet populations from in-combination displacement and collision effects.</p> <p>R17.1.10 NE to provide its latest conclusions on no AEoI for the assemblage at Flamborough and Filey Coast SPA on the basis of displacement or collision impacts for the project in-combination.</p>	
<p>[note that Natural England provide the same response to each question]</p>	<p>The Applicant notes Natural England's response on this matter and does not consider that any new points have been raised beyond those on which the Applicant has</p>

Summary of Submission	Applicant's Comments
<p>Please see our response to ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) regarding the availability of updated figures for Hornsea 3 following the additional data submitted by this project post-examination. Therefore, our advice regarding this remains as set out in our Deadline 4 response [REP4-040].</p>	<p>previously provided comments. The Applicant has also provided a response to this topic in Table 1.2, Q5.8.6.2 [REP14-036].</p>
<p>R17.1.8 NE to provide its latest conclusions on no AEoI for kittiwake, populations from in-combination collision effects.</p>	
<p>As set out in our Deadline 13 response [REP13-038] to point R17.1.8 and in our response to the ExA question 5.8.6.2 also provided at Deadline 14 (Our ref: NE.NB.D14.01.ExWQ5) our advice remains as that submitted at Deadline 9 [REP9-045 and REP9-049] namely that as we have already advised at Hornsea 2 and East Anglia 3 examinations onwards that it was not possible to rule out an AEoI on the FFC SPA due to the level of annual in-combination collision mortality predicted for kittiwake, any additional mortality arising from these proposals would be considered adverse. Therefore, as further FFC SPA kittiwake collisions have been added to the in-combination total from five further projects (including Boreas) since the East Anglia 3 examination, our advice remains that there is an AEoI of this feature due to in-combination collision mortality and that includes a contribution from Norfolk Boreas.</p>	<p>The Applicant notes Natural England's response on this matter and does not consider that any new points have been raised beyond those on which the Applicant has previously provided comments. The Applicant has previously provided a detailed assessment for kittiwake from the Flamborough and Filey Coast SPA in REP2-035, with subsequent updates to the collision risk in REP5-059 which further reduced the predicted impact at Norfolk Boreas. The Applicant has also provided a response to this topic in Table 1.2, Q5.8.6.2 [REP14-036].</p>
<p>R17.1.11 Alde-Ore Estuary SPA: The Applicant to respond to NE's request [REP10-064, Q4.5.10.2] for a commitment to deliver measures on the ground to offset predicted collision risk mortality.</p>	
<p>We note that in the Secretary of State's (SoS) decision letter for Vanguard, the SoS states: 'that it is important that potential AEoI of designated sites are identified during the pre-application period and full consideration is given to the need for derogation of the Habitat Regulations during the Examination. He expects Applicants and statutory nature conservation bodies ("SNCBs") to engage constructively during the pre-application period and provide all necessary evidence on these matters, including possible compensatory measures, for consideration during the Examination.'</p> <p>As set out in our Deadline 9 response [REP9-047] to the Applicant's in principle Habitats Regulations Derogation provision of evidence for Alde-Ore Estuary SPA in principle compensation measures, we believe that these proposals are in principle heading in the right direction. However, our view is whilst the</p>	<p>The Applicant considers that the erroneous advice provided by Natural England (REP14-063) is highly relevant to this question. Natural England advised that there was no requirement to undertake additional work on the proposed compensation during the Examination and agreed with the Applicant that any additional work required could be undertaken following award of consent, and if the Secretary of State determined compensation was required. Consequently, when Natural England state that '<i>No further information has been presented by the Applicant regarding this matter</i>' this was following Natural England's advice. Natural England did not communicate a change to this position until the 24<sup>th</sup> August 2020.</p> <p>Nonetheless, following Natural England's change in position as advised during the call on the afternoon of 24<sup>th</sup> August 2020, the Applicant promptly proposed a revised</p>

Summary of Submission	Applicant's Comments
<p>Applicant's proposal to fund of a project coordinator and scoping study is helpful, there must be a commitment to delivering measures on the ground that would offset the predicted collision risk mortality. Therefore, we reviewed all of the options considered by the Applicant as compensation measures and we again note that we believe that predator proof fencing of the nature proposed for LBBG at the Alde-Ore Estuary SPA has the most potential to be considered as an appropriate compensatory measure to address collision mortality impacts. However, there are other factors, including site suitability and management issues, which need to be considered in determining a suitable location for such fencing. Nevertheless, we do consider that it is achievable to have a suitable location identified and a predator proof fence erected before the construction of the windfarm.</p> <p>No further information has been presented by the Applicant regarding this matter and no firm commitment has been made by the Applicant that a suitable location for such predator proof fencing will be identified and such a fence erected before construction of the windfarm, which we consider to be required for the compensatory measures to be effective. However, at a meeting 24 August the applicant did confirm that there was an intention to install anti predator fencing and they are looking at possible ways to secure this. Natural England are providing some support on this and have committed to providing a risk tracker outlining what it may be reasonable to achieve within the time remaining for the extended examination. Natural England are currently reviewing proposed updated text for the Schedule 13 compensatory package which may resolve our outstanding issues. We will provide a further update at deadline 15.</p>	<p>condition for inclusion in the dDCO which was sent to Natural England the same day and subsequently submitted into the Examination at the next available Deadline (only one day later at Deadline 14) on the 25<sup>th</sup> August 2020 (REP14-036). This includes a commitment to install predator proof fencing, which was always the Applicant's intention as explained in REP11-013.</p> <p>Following feedback from Natural England, the Applicant understands that this has addressed all of Natural England's outstanding concerns such that this compensatory package is now fully agreed.</p> <p>Further to this, Natural England provided the Applicant with a document on the 28<sup>th</sup> August 2020 which highlighted those aspects of the Flamborough and Filey Coast SPA kittiwake compensation proposal for which Natural England considered additional information should be provided. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. The Applicant proposes to engage further with Natural England on this basis and will submit an update to the Examining Authority at Deadline 16.</p>
<p>R17.1.12 The Applicant [REP11-007, Q4.5.10.2] states that there were different opinions on what the best options for compensation measures would be and the Applicant would continue to engage with NE to further develop this measure post consent. The Applicant is reminded of the SoS decision letter for Norfolk Vanguard, which requires "Applicants and statutory nature conservation bodies ("SNCBs") to engage constructively during the pre-application period and provide all necessary evidence on these matters, including possible compensatory measures, for consideration during the Examination".</p>	
<p>See response to R17.1.11 above.</p>	<p>The Applicant refers to its submission on this question (REP13-013) which summarised the positions of the Applicant and Natural England following the advice received during a meeting on the 10<sup>th</sup> July 2020. In summary the advice from Natural England at</p>

Summary of Submission	Applicant's Comments
	<p>that time (and until 24<sup>th</sup> August 2020) was that no further work was required on the compensation proposals within the confines of the Examination. The Applicant again notes its disappointment at the change in advice received from Natural England at this late stage in the Examination.</p> <p>Notwithstanding this, the Applicant does now understand that the proposed revisions to the condition dealing with compensatory measures for the AOE in the dDCO have addressed all of Natural England's outstanding concerns, as explained in the comments on Natural England's response to R17.1.11 above.</p> <p>In relation to the compensation package for FFC, the Applicant has received further advice from Natural England (on the 28<sup>th</sup> August 2020) on matters which Natural England considers the Applicant should provide additional information prior to the close of the examination. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. As set out above, the Applicant will provide an update to the Examining Authority on this at Deadline 16, following further engagement with Natural England.</p>
R17.1.13 What compensatory measures does NE consider suitable to deliver for lesser black-backed gull?	
Please see our response to this point in our Deadline 13 response [REP13-038].	As explained in the Applicant's comments on Natural England's Rule 17 responses above (R17.1.11 and R17.1.12), the Applicant understands that the compensatory package for lesser black-backed gull is now fully agreed with Natural England.
R17.1.4 Flamborough and Filey Coast SPA Similar to R17.1.12, the Applicant to provide additional details of compensation measures appropriate to the Proposed Development for kittiwake at D13. The ExA reminds the Applicant that compensatory measures must be specific to Norfolk Boreas and not duplicate those for Norfolk Vanguard.	
We note that in the Secretary of State's (SoS) decision letter for Vanguard, the SoS notes: 'that it is important that potential AEoI of designated sites are identified during the pre-application period and full consideration is given to the need for derogation of the Habitat Regulations during the Examination. He expects Applicants and statutory nature conservation bodies ("SNCBs") to engage constructively during the pre-application period and provide all	The Applicant considers that the erroneous advice provided by Natural England (REP14-063) is highly relevant to this question. The Applicant was advised that there was no requirement to undertake additional work on the proposed compensation during the Examination and agreed with the Applicant that any additional work required could be undertaken following award of consent, and if the Secretary of State determined compensation was required. Consequently, when Natural England state that 'No further information has been presented by the Applicant regarding this

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necessary evidence on these matters, including possible compensatory measures, for consideration during the Examination.'

As set out in our Deadline 9 response [REP9-046] to the Applicant's in principle Habitats Regulations Derogation provision of evidence for Flamborough and Filey Coast SPA in principle compensation measures, we believe that these proposals are in principle heading in the right direction in relation to addressing the ecological impacts. However, we note that the compensation measure mostly likely to increase the FFC SPA productivity i.e. fisheries management measures has not been taken forward by Norfolk Boreas in the proposed approach to delivery and draft conditions to secure the compensation; with the Applicant in favour of providing nesting ledge provision for kittiwakes. Please be advised that we still have significant concerns in relation to the evidence base for this proposal, which requires much greater analysis, and implementation/legal issues to fully understand and address before this can be considered an appropriate compensatory measure to address collision mortality impacts. We note that no further information has been provided by the Applicant regarding these concerns and hence these still remain.

We also noted in REP9-046 that Natural England does not consider it appropriate to restrict the potential compensation for kittiwakes at the FFC SPA to just the option of provision of artificial nesting sites at this time. Therefore, we would recommend that alternative draft conditions are produced which allow for a range of compensatory measures (e.g. to also include fisheries management). This would allow the Secretary of State (SoS) to consider the appropriateness of a range of potential compensatory measures. Again, no further information has been provided on this issue and our advice remains as that set out in REP9-046.

Natural England discussed the compensatory package with the applicant in a meeting on 24 August. We have agreed to provide some additional advice to the applicant on what could be included to support the compensatory package and that could also be provided within the limited time remaining prior to the end of examination. A further update will be provided at Deadline 15.

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matter' this was following Natural England's advice. Natural England did not communicate a change to this position until the afternoon of 24<sup>th</sup> August 2020.

As stated in the Applicant's response to this question (REP14-036), the Applicant agrees with Natural England that further detail would be required to determine the appropriate location for the proposed kittiwake colony, and submission of such details (including 'location') are secured in the proposed condition for the FFC compensatory package contained in the dDCO. The Applicant considers that these are matters which are best considered following consent determination since it will not be until then that the final impact magnitude has been determined (by the SoS) and the project design has been progressed to enable a better understanding of where the structure supporting the colony could be located. This was again discussed with Natural England on 24<sup>th</sup> August 2020, with an action agreed for Natural England to confirm their position on this by 28<sup>th</sup> August 2020; specifically whether, and if so what, further details are in Natural England's opinion required in relation to the FFC compensation package. The Applicant received further advice from Natural England (on the 28<sup>th</sup> August 2020) which summarised the matters on which Natural England considers the Applicant should provide additional information prior to the close of the examination. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. The Applicant will submit an update to the Examining Authority on this at Deadline 16, following further engagement with Natural England.

It should be noted that, as previously stated by the Applicant, it is not considered appropriate to secure compensatory measures which are not currently considered to be deliverable, either in the short term or long term, because they cannot be implemented within the current legislative framework (such as fisheries management measures).

The Applicant will continue to engage with Natural England during the short time remaining in the Examination in order to resolve aspects as far as possible, although the ExA should be aware that the Applicant has since been advised by Natural England that due to resource constraints Natural England's next availability for a meeting is 7<sup>th</sup>

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	September 2020 (i.e. the day before the final deadline within the Examination process).
R17.1.15 What compensatory measures does NE consider suitable to deliver for kittiwake?	
Please see our response to this point in our Deadline 13 response [REP13-038].	Natural England provided the Applicant with a document on the 28 <sup>th</sup> August 2020 which highlighted those aspects of the Flamborough and Filey Coast SPA kittiwake compensation proposal for which they considered additional information should be provided. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. The Applicant will provide an update to the Examining Authority at Deadline 16, following further engagement with Natural England.
R17.1.16 General The Applicant to inform the ExA whether any of the compensation measures under consideration would require land access rights. If so, what rights would be sought and where and how are these being addressed.	
Natural England remain concerned by the proposal to locate the proposed artificial nest structure within the existing order limits, as this option would seem to be likely to result in any kittiwakes attracted to the platform being subject to considerable collision risk from the Boreas OWF and other neighbouring proposals, reducing the effectiveness of the measure. As noted above, we consider that the proposals require much greater analysis in order to demonstrate that the structure is, among other aspects, located where kittiwake colonisation, productivity and collision mortality will be such that the impacts of the Boreas project will be addressed.	Natural England provided the Applicant with a document on the 28 <sup>th</sup> August 2020 which highlighted those aspects of the Flamborough and Filey Coast SPA kittiwake compensation proposal for which they considered additional information should be provided. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. The Applicant will provide an update to the Examining Authority at Deadline 16, following further engagement with Natural England.
R17.1.17 Updates The Applicant and NE to detail any further updates on agreement to or requirements for compensatory measures.	
No further updates have been provided by the Applicant regarding compensatory measures. Please see our responses to points R17.1.11 and R17.1.14 above.	The Applicant notes that no further updates have been provided to Natural England because the Applicant was following the advice received from Natural England on the 10 <sup>th</sup> July 2020 (as noted in REP14-063) which stated that no further updates to the proposed compensation were required prior to award of consent.

Summary of Submission	Applicant's Comments
	<p>Notwithstanding this, the Applicant understands that compensatory measures relating to lesser black-backed gull are now fully agreed with Natural England (as explained above, R17.1.11 and R17.1.12).</p> <p>Natural England provided the Applicant with a document on the 28<sup>th</sup> August 2020 which highlighted those aspects of the Flamborough and Filey Coast SPA kittiwake compensation proposal for which Natural England considered additional information should be provided. The Applicant is in the process of reviewing this newly provided advice, but considers that it will be possible to submit the further information requested into the examination by 28 September 2020. The Applicant will provide an update to the Examining Authority at Deadline 16, following further engagement with Natural England.</p>
<b>Haisborough, Hammond and Winterton SAC</b>	
<p>Natural England make reference to their submission REP14-067 "<i>Review of the Norfolk Vanguard and Hornsea Project Three decision in relation to the Boreas examination advice on HRA benthic considerations</i>" throughout REP14-065.</p>	<p>The Applicant has provided a full response to REP14-067 in section 1.4 below.</p>
<p>Natural England has no further outstanding comments on the In Principle Monitoring Plan</p>	<p>The Applicant agrees that there are no outstanding points with regard to the IPMP and the SoCG has been updated and submitted at Deadline 16 to reflect this.</p>
<p>In response to Applicant's response to R17.1.20 Natural England state: 'As previously advised throughout the examination [Ref] any area that meets the 'reef' criteria even if 'patchy' should be avoided. To be considered as a reef habitat a clear boundary can be drawn around the feature as its characteristics are distinct from surrounding seabed. Therefore Natural England advises that it would be highly improbable that a clear pathway can be found through a reef for one/two cables even in more patchy areas. Please see Natural England's position submitted at Deadline 14 on the Norfolk Vanguard (NVG) and Hornsea Project 3 (HP3) decision (Our ref: NE.NB.D14.03.BenImp) in relation to potential impacts to reef structures'</p>	<p>The Applicant does not agree with Natural England's position. The Applicant maintains its position as presented in the Applicant's original response to R17.1.20 [REP13-013]. The Applicant has responded to all points raised in Natural England's document NE.NB.D14.03.BenImp [REP14-067] in section 1.4 below.</p>
<p>In response to Applicant's response to R17.1.22 Natural England state: 'Whilst the Applicant has committed to agreeing disposal location/s with the MMO in consultation with Natural England it should be noted that Natural</p>	<p>The Applicant has maintained throughout the Examination that the best way to ensure that disposed sediment is as similar as possible to the seabed on which it is deposited is through the mitigation measures committed to within the mitigation section of the</p>



Summary of Submission	Applicant's Comments
<p>England's advice remains unchanged i.e. that disposal should be with in similar sediment grain size. How the developer will achieve this is uncertain given their responses in both the Boreas and Norfolk Vanguard examination in relation to their ability in real time to adequately sample to ensure like with like. Please see Natural England's position submitted at Deadline 14 on the Norfolk Vanguard (NVG) and Hornsea Project 3 (HP3) decision (Our ref: NE.NB.D14.03.BenImp)</p>	<p>HHW SAC control documents (Document 8.20). Further reasoning for this has been provided in the Applicant's comments on Relevant Representations [AS-024] the written submission for Issue Specific Hearing (ISH) 4 [REP4-014] and the Applicant's comments on Interested Parties responses to Q3.2.0.2 [REP8-015].</p> <p>Furthermore, it is stated by Natural England within the SoCG [REP10-038] that:  <i>"In [REP4-043] Natural England confirmed that the proposed disposal location is acceptable to and welcomed retention within the SAC sandbank system."</i></p> <p>Therefore, although the exact mechanism for determining how to control the sediment size is not agreed with Natural England they are in agreement with the approach to disposal and the locations of such disposal areas. Furthermore, the Applicant has engaged with Natural England (in addition to the MMO) throughout to seek advice on how ensuring similar grain size could be achieved in reality. To date neither the MMO nor Natural England have been unable to provide any practical, workable alternative to the Applicant's proposed approach.</p> <p>The Applicant also notes that the Secretary of State (SoS) has not considered it necessary to impose any further mitigation for either Norfolk Vanguard or Hornsea Project Three to ensure similar grain size. Therefore the Applicant considers that the Secretary of State has accepted the Norfolk Boreas approach, which is identical to that proposed for Norfolk Vanguard.</p>
<p>Please be advised that Natural England doesn't agree with the removal of Condition 3(1)(g). Please see comments on the DCO.</p> <p>In addition Natural England's advice remains unchanged in light of the SoS recent decisions on the certainty of full recovery back to per impacted state and the speed at which this will be achieved. There is limited evidence present to support the Applicant statement that 'rapid' recovery across the Piste is guaranteed. It is our view that recovery will be highly dependent on the interest feature impacted. Even the SoS decision caveated their HRA recognising this uncertainty by stating ' there will be some degree of recoverability'.</p> <p>In relation to applicability of the Dogger Bank decisions to Boreas OWF: Natural England wishes to highlight that updated/evolved knowledge of</p>	<p>As requested by and agreed with Natural England prior to Deadline 14, Condition 3(1)(g) (as amended) has been reinstated in the dDCO and this change will be reflected within the updated version of the dDCO submitted at Deadline 16.</p> <p>The Applicant does not in any submission make the statement that <i>"rapid recovery across the Piste is guaranteed"</i>. The Applicant does however <i>"maintain that the best available scientific evidence indicates that recovery would occur rapidly following the decommissioning of cable protection"</i>.</p> <p>As stated below in section 1.4, the Applicant does not rely upon the Dogger Bank consent to draw the conclusions of no AEoI, it merely wished to point out that the statements made by the SoS support the Applicant's position that AEoI can be ruled out.</p>

Summary of Submission	Applicant's Comments
<p>decommissioning techniques and potential impacts since those decisions in 2015 would likely led to change in Natural England's advice provided at the time of consent and decommissioning is subsequently one of the key pre construction issues that is proving challenging to address by all parties. In addition this only relates to Annex I Sandwave features. Please see Natural England's position submitted at Deadline 14 on the Norfolk Vanguard (NVG) and Hornsea Project 3 (HP3) decision (Our ref: NE.NB.D14.03.BenImp).</p>	
<p>In response to Applicant's response to R17.1.25 Natural England state: Our advice remains unchanged on the use of a SIP/CSIMP. Please see Natural England's position submitted at Deadline 14 on the Norfolk Vanguard (NVG) and Hornsea Project 3 (HP3) decision (Our ref: NE.NB.D14.03.BenImp).</p>	<p>Please see section 1.4 below for the Applicant's response to NE.NB.D14.03.BenImp [REP14-067].</p>
<p>Natural England agree with the Applicants response to R17.1.26.</p>	<p>Noted. The Applicant also notes that Natural England confirm in their cover letter for Deadline 14 [REP14-063] that the compensatory measures package for the HHW SAC was agreed on 10 July 2020.</p>

#### **1.4 REP14-067 Natural England's Review of the Norfolk Vanguard and Hornsea Project Three decision in relation to the Boreas examination advice on HRA benthic considerations**

2. The Applicant provided at Deadline 13 its review of the Implications of the Norfolk Vanguard Decision and Hornsea Project Three Minded To Letter for Norfolk Boreas [REP13-025].
3. Although REP14-067 provides a summary of Natural England's view on the Norfolk Vanguard and Hornsea Project Three decisions, it does not frame this advice in the context of Norfolk Boreas despite that being the aim of the document. The document appears to be more reflective of Natural England's general policy position on such matters as opposed to being specific to the Norfolk Boreas project. It does not take into account the significant progress which has been made by the Applicant during the Norfolk Boreas Examination. For example, the document asserts that the Applicant has not provided sufficient "evidence or certainty that cable protection can be successfully decommissioned". This ignores the fact that the Applicant undertook a significant body of work and made numerous

commitments, starting in January 2020 and concluding at Deadline 10 to provide such evidence and certainty to Natural England, all of which has been welcomed and endorsed by Natural England yet appears to have been largely ignored within this document.

4. In many areas the Applicant has gone beyond what was proposed for Norfolk Vanguard and Hornsea Project Three, and this progress has been acknowledged and welcomed by Natural England in many other documents such as the Statement of Common Ground [REP10-038] and REP9-044, REP9-043 and REP10-064. However, this is not reflected in REP14-067 which makes no adjustment for the further mitigation and measures agreed for Norfolk Boreas. There are many statements within the document which seem to either not be supported by, or directly contradict previous submissions to the Examination and meeting discussions with Natural England.

Summary of Submission	Applicant's Comments
<p><b>Use of SIP</b></p> <p>Both the ExA Report and SoS HRA give a lot of weight to the NVG REP9 – 046 where it was concluded that Haisborough Hammond and Winterton Special Area of Conservation (HHW SAC) Site Integrity Plan (SIP) sufficiently restricted development of NVG until such time that an Adverse Effect on Integrity (AEoI) could be excluded through the adoption of appropriate mitigation measures. <u>Please note this is not the same as NE agreeing that an adverse effect on integrity could be excluded.</u></p> <p>Subsequent to the NVG examination further internal legal guidance was provided on the use of a SIP to determine no AEoI at the consenting phase, which resulted in our position being revised for the Boreas examination; such that we no longer support the use of a SIP to defer Habitat Regulation decisions until post consent. Our view was set out fully in Natural England's position statement submitted into Boreas examination at Deadline 4 [REP4-041] and provided to the Secretary of State on 27th April 2020 in relation to NVG. However, given the breadth of information/evidence submitted on 27th April 2020, the change in position by NE on the use of a SIP may have been over looked by the SoS. We therefore advise that the legal view submitted into the Boreas examination remains unchanged i.e. NE doesn't support the reliance on the SIP to address Habitats Regulations Assessment concerns. NE</p>	<p>In the SoS's decision letter he does not give the HHW SIP such weight as is inferred here by Natural England; instead he views it <i>"as an additional safeguarding mechanism, although it is not critical to our recommendation"</i>.</p> <p>The Applicant understands Natural England's position on AEoI and has always maintained that AEoI can be ruled out at the consenting stage whether the SIP approach is adopted or not (see REP5-057 for further detail).</p> <p>Furthermore, the Applicant has proposed an alternative condition which does not rely on the SIP mechanism referred to here by Natural England; rather it removes the Grampian element and relies on a Cable Specification, Installation and Monitoring Plan (CSIMP) to secure all the mitigation measures that were agreed for the SIP. Natural England and the MMO have indicated a strong preference for the CSIMP over the SIP since Deadline 10 [REP10-038 and REP9-023 respectively]. This information, however, does not appear to have been considered when drafting this particular advice.</p> <p>The option for a Site Integrity Plan has been retained by the Applicant to allow the Secretary of State to maintain consistency between Norfolk Boreas and Norfolk Vanguard if he should wish to do so, and in the event that an additional safeguard is recommended by the Examining Authority (further information is provided in REP13-013).</p>

Summary of Submission	Applicant's Comments
<p>considers that where an AEoI can't be ruled out beyond all scientific doubt in relation to Annex I sandbanks and Annex I reef features of the HHW SAC we advise that this is addressed now as part of the consenting phase not pushed to post consent.</p> <p>NB: This view is in line with the MMO's view throughout both the NVG and Boreas Examinations [REP13 – 035].</p>	
<p><b>3. Certainty in recovery and reversibility</b></p> <p>In addition as set out in our Boreas submission at Deadline 9 and our post examination advice to the SoS on NVG we do not believe that there is currently sufficient evidence/certainty (beyond reasonable scientific doubt) to demonstrate:</p> <ul style="list-style-type: none"> <li>- that Annex I <i>Sabellaria spinulosa</i> reef will fully recover post cable installation;</li> <li>- that sandwave levelling will negate the need for cable protection over the lifetime of the project;</li> <li>- that cable protection won't hinder the conservation objectives for the site over the life time of the project;</li> <li>- that cable protection can be successfully decommissioned;</li> <li>- the reversibility of impacts on Annex I reef and sandbanks after decommissioning; and</li> <li>- that micro siting/ avoidance of impacts to Annex I reef is achievable (especially when taking into account archaeological interest features - something not considered in the NVG examination).</li> </ul> <p>Therefore, our advice provided at Deadline 9 of the Boreas examination remains unchanged.</p>	<p>The Applicant was aware of Natural England's position on all but one of the points listed here and considers that it has provided sufficient evidence to address all of these points within its previous submissions (see REP13-013, R17.1.20 and R17.1.24 for a list of all the submissions where the Applicant addresses these points). Summaries of the Applicant's position are provided against each point in turn below.</p> <p>The Applicant was not aware, however, that Natural England's position was that the Applicant had not provided sufficient evidence that "<i>cable protection can be successfully decommissioned.</i>" The Applicant was of the understanding that due to the considerable work undertaken by the Applicant in consultation with Natural England, this matter had been resolved. Further information is provided in the Applicant's comments on section <b>4. Temporary lasting</b> below.</p>
<p>We note that the NVG ExA considered at 5.1.24 of their report that NE hadn't provide substantive evidence to justify our stance [REP6 -032] in relation to the uncertainties on the recoverability of <i>Sabellaria spinulosa</i> reef post decommissioning, but that the Applicant had provided a persuasive counter argument. However, as set out in our Boreas advice to date we would argue</p>	<p>As was set out by Norfolk Vanguard Ltd in their application and throughout the Examination of the Norfolk Vanguard project (and subsequently adopted and built upon by the Applicant), there is a large body of evidence to demonstrate that recovery would occur.</p>

Summary of Submission	Applicant's Comments
<p>that it is for the Applicant to provide comparable evidence to remove all scientific doubt. We believe that doubt remains, as no known (i.e. regularly monitored) Annex I reef has been cabled through and therefore recovery of reef from this particular activity has not been documented. Whilst we agree that the evidence presented would support the view that <i>Sabellaria spinulosa</i> reef can develop in areas where it hadn't prior to cable installation and/or post storm impacts; there is also evidence of a decline in <i>S. spinulosa</i> reef across Europe, in areas of anthropogenic activities, notably in the Wadden Sea (Reise, K. 1982; Reise, K., &amp; Schubert, A. 1987; and Riesen, W., &amp; Reise, K. 1982). It should also be noted that areas within the UK such as Morecambe Bay, which have been intensively trawled, have also noted a loss of <i>S. spinulosa</i>, which has shown no signs of recovery (Holt et al, 1997).</p> <p>Therefore, the UK has a key role to play in conserving reef habitats and where there is uncertainty a more precaution approach should be adopted. In addition there has been no monitoring of recovery of habitats post removal of cable/scour protection, which have been in situ for 30 years and in areas suitable for Annex I habitats. Again we would agree with the ExA for NVG that there may be a 'degree' of recovery. But whether that undefined level of recovery would be sufficient to support the form and function of the Annex I habitat such that the conservation objectives for the site are not hindered remains unknown and therefore scientific doubt remains.</p>	<p>The Applicant does not consider that the single activity of installing a cable should be directly compared with an intensively trawled area to highlight the possible loss of <i>S.spinulosa</i> reef as Natural England do here with the Morcombe Bay study, and indeed, other more recent studies have found <i>S.spinulosa</i> reef to occur in heavily fished areas (Van der Reijden 2019).</p> <p>The three studies (undertaken in the 1980s) cited here by Natural England from the Wadden Sea are essentially the same work revisited at different times. They attribute the loss of <i>S.spinulosa</i> reef to a number of factors including organic enrichment and regular trawling for shrimp which occurred in the area. As previously explained by the Applicant in its position paper [REP5-057] the single action of installing two cables (essentially a one-off activity as they will be in distinctly different locations) within the HHW SAC will be less damaging than persistent dredging or trawling activities.</p> <p>The Applicant recognises that precaution has to be applied where uncertainty exists, and the Applicant has applied a precautionary approach within the Information to Support HRA Report [APP-201]; this includes assessing the worst case scenario in terms of area impacted and duration of impact. The Applicant has since introduced further mitigation measures such as the commitment to not install cable protection in the areas in which Natural England have the highest confidence that Annex I <i>S.spinulosa</i> reef will be present/ recover (priority areas as defined in the HHW SAC control documents) and the commitment to decommission cable protection (apart from at cable crossings) to address Natural England's concerns. Accordingly, the Applicant considers that Natural England are taking an overly precautionary position on this issue.</p>
<p><b>4. 'Temporary lasting'</b></p> <p>a) Consideration of temporary</p> <p>We note that for both NVG and HP3 decisions the SoS has put a lot of emphasis on the impacts being 'temporary lasting'. NE have sought further legal opinion in relation to this and even if decommissioning of cable protection is considered to be feasible; impacts over 30 years is in Natural England's opinion significantly stretching the definition of temporary beyond current case law and what is considered acceptable in relation to the conservation objectives for the site.</p>	<p>Natural England state, under the fourth bullet point of <b>3. Certainty in recovery and reversibility</b> that the Applicant has not provided sufficient evidence that "<i>cable protection can be successfully decommissioned</i>". Then under '<b>4. Temporary lasting</b>' "<i>that evidence would need to be provided to demonstrate the feasibility of cable protection removal</i>".</p> <p>The Applicant has provided conclusive evidence that cable protection can be decommissioned [REP6-018] and has worked extensively with Natural England throughout this examination (and with Norfolk Vanguard previously) to secure within the DCO and the HHW SAC control documents (document reference 8.20) the</p>

Summary of Submission	Applicant's Comments
<p><u>Therefore evidence would need to be provided to demonstrate the feasibility of cable protection removal and that the impacts to the Annex I habitats are reversible after 30 years. If this cannot be provided a more precautionary approach to decision making should be taken. <b>Therefore, at this time our advice remains unchanged i.e. cable protection would have a lasting/permanent change to habitat form and function, and would therefore hinder the conservation objectives of the site such that an AEoI couldn't be excluded beyond all reasonable scientific doubt.</b></u></p>	<p>Applicant's commitment to decommission cable protection in the HHW SAC (apart from at cable crossings).</p> <p>The Applicant was of the clear understanding that Natural England was in agreement on this matter and that Natural England supported the commitment made, and agreed that the Applicant had demonstrated that it was feasible. A timeline showing this progress is as follows:</p> <p>Through meetings with Natural England held in January and February 2020, Natural England encouraged and endorsed the commitment to decommission cable protection to ensure that the impact was "long term temporary" and not permanent. This led to the Applicant (and Norfolk Vanguard, who were also present at the meetings) undertaking a study to provide evidence that decommissioning of cable protection [REP6-018] was possible, and subsequently making the commitment to decommission within the HHW SAC cable protection (where ground conditions meant it was not possible to bury cables to an optimum depth).</p> <p>In response to that study Natural England stated at Deadline 9 [REP9-043]:</p> <p><i>"Natural England welcomes the comprehensive consideration of possible cable protection decommissioning options. Whilst a commitment to decommissioning is welcomed as best practice and may mean no permanent habitat loss; it does not mean there won't be a 'lasting' effect on the habitat for the lifetime of the project i.e. 30 years or longer as it may take some time to recover."</i></p> <p>This is in contrast to what Natural England are implying in this D14 submission which is that the commitment to decommissioning has not altered the extent of the impact and it still has to be treated as a permanent impact. Natural England also stated in [REP9-043]:</p> <p><i>"Therefore, for decommissioning of cable protection to be considered as mitigation there would need to be a DCO/dML condition specifying concrete mattress (or similar type product) for cable protection".</i></p>

Summary of Submission	Applicant's Comments
	<p>In response the Applicant came to an agreement with Natural England at Deadline 10 to introduce Condition 3(1)(g) to not use gravel or rock dumping within the HHW SAC. This considerable commitment was made on the understanding (which was provided by Natural England at the time) that it would give Natural England confidence that the Applicant would only install cable protection which could be decommissioned and therefore the impact could be seen as long term temporary rather than permanent.</p> <p>This was reflected very positively within Natural England's text added to the SoCG at Deadline 10 [REP10-038]:</p> <p><i>"Following the Applicant's commitment made within the DCO and outline HHW SAC control documents Natural England agree that the impacts due to cable protection placed where it is not possible to bury cables to the optimum depth <u>could be considered long term temporary</u>" and that this "greatly reduced the risk of AEol".</i></p> <p>Other submissions by Natural England have made statements such as [REP9-044]:</p> <p><i>"We reiterate that we can agree that decommissioning cable protection may change the impact to temporary,"</i></p> <p>Most recently within Natural England's response to written questions [REP14-062] it is stated that:</p> <p><i>"Natural England does not agree with the removal of this condition [Condition 3(1)(g)] which secures that the cable protection deployed within the HHW SAC will be possible to decommission."</i></p> <p>Thus, illustrating that the work undertaken by the Applicant is sufficient for Natural England to accept that decommissioning of cable protection will be possible.</p> <p>In summary the content of Natural England's REP14-67 submission indicating that the Applicant has not provided sufficient evidence that cable protection can be decommissioned and therefore the impact must be treated as permanent is contradictory to what has been communicated to the Applicant throughout the</p>

Summary of Submission	Applicant's Comments
	<p>examination and to what has been included in other submissions made by Natural England.</p> <p>The Applicant understands that Natural England will now make a further submission at Deadline 15 to rectify this contradiction by explaining that the advice provided in REP14-067 represents an industry wide position and that it is not specific to the Applicant. However, the Applicant is concerned that this may lead to confusion as to Natural England's position specifically in relation to the Norfolk Boreas project, unless no reliance is placed on REP14-067.</p> <p>The Applicant has provided a comprehensive response to Natural England's concerns with regard to uncertainties around the recovery of Annex I features after decommissioning of cable protection in the Applicant's response to the request for further information R17.1.24 [REP13-013]. In summary, the Applicant agrees with Natural England that there are no studies demonstrating recovery from the precise situation at the Norfolk Boreas project, however, as is standard practice within HRA the best available evidence (of which there is a significant body) from equivalent practices has been used to demonstrate that there can be high confidence that recovery is the most likely outcome.</p>
<p>b) Permanent Impacts</p> <p>In addition we are aware from industry discussions, including with the Applicant, that cable crossing agreements etc. prohibit the decommissioning of cable protection above cable crossings and therefore, there will be some Annex I habitat loss. However, the NVG HRA doesn't reflect the requirement for cable protection at cable crossings to be left in situ, thus being a permanent impact. Natural England reflected in our advice during the NVG and Boreas examinations that where possible cable crossings should be avoided and where unavoidable cable protection should be minimised as much as possible; recognising cable protection at crossings was a necessity for public safety.</p> <p><b><u>Therefore, it is Natural England advice that the SoS condition to remove all cable protection at the time of decommission, doesn't apply to cable crossings. This should be considered further in the Boreas examination and the SoS decision making and Condition 3(1)(g) is retained.</u></b></p>	<p>The Applicant has always specified that the commitment to decommission cable protection does not apply to cable crossings. The HHW SAC control documents have, since the commitment was first made at Deadline 6, stated [REP14-033]:</p> <p><i>"Norfolk Boreas Limited has made a further commitment to decommission cable protection at the end of the Norfolk Boreas project life where it is associated with unburied cables due to ground conditions (where required for crossings this will be left in situ)."</i></p> <p>Indeed, the Applicant had understood that Natural England's position was that existing infrastructure cannot be 'counted' as providing Annex I features (this has been Natural England's position throughout the Norfolk Boreas Examination, most recently presented in REP9-039 and REP9-044) and therefore any cable crossing associated with crossing these existing features would not represent a permanent loss. It is</p>



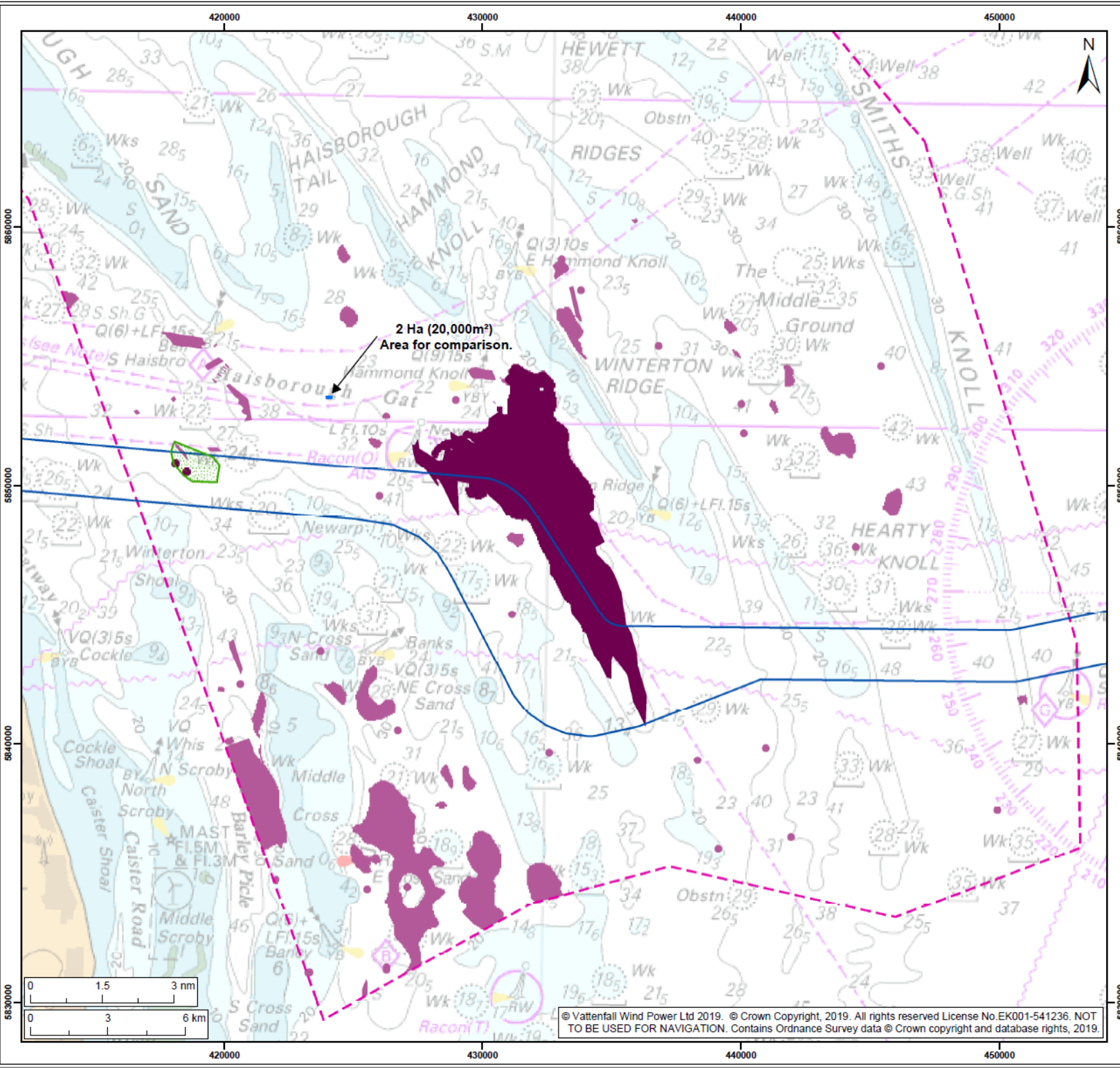
Summary of Submission	Applicant's Comments
	<p>therefore appropriate to omit cable crossings from the assessment of permanent impacts.</p> <p>In summary, yet again the statements made by Natural England are contradictory to Natural England's previous position.</p> <p>Further, in direct response to Natural England's advice to minimise cable crossings within the HHW SAC, the Applicant has sought agreement with BT to cut all out of service cables within the HHW SAC. This has greatly reduced the number of, and therefore, area affected by cable crossings (from 12,000m<sup>2</sup> to 4,000m<sup>2</sup>), which has been reflected in the updated parameters contained in the dDCO and associated documents to be certified under the dDCO.</p> <p>Finally, as agreed with Natural England and the MMO during meetings in August 2020 (see the Applicant's response to written Question 5.8.3.2 REP14-036), the Applicant will reinstate Condition 3(1)(g) with a minor amendment to clarify that it does not apply to cable crossings.</p> <p>Natural England was aware of the above points prior to Deadline 14 and therefore it is unclear to the Applicant why this is not reflected in Natural England's Deadline 14 advice.</p>
<p>c) Decommissioning considerations</p> <p>On speaking with industry we are also aware that it is highly probable that if the projects remain viable there will be applications to extend the lifespan of the OWF beyond the current proposed 30 years. Whilst it is recognised that this will need to be taken into consideration at the time of decommissioning based on best available evidence; the SoS's decision to include a decommissioning condition to the NVG and HP3 DCO/dML infers that the feasibility of decommissioning to remove all AEoI needs to be considered further as part of this examination. Should the OWF be consented we propose as a minimum a revised decommissioning condition to include monitoring of site condition over the lifetime of the project to address uncertainties/residual concerns from the presence of cable protection over 30 years within HHW SAC.</p>	<p>There is no logic to Natural England's request. A condition designed to secure the decommissioning of cable protection to enable the recovery of habitats <u>post decommissioning</u> which includes a requirement to monitor <u>during operation</u> of the project will not achieve the stated aim. Instead, and to achieve that aim, monitoring should be required <u>pre-construction</u>, which is already secured under the HHW SAC control documents (Document 8.20) and then <u>post construction</u>, which the Applicant agrees would form part of the decommissioning licence that would need to be sought from the MMO at the point of decommissioning.</p>

Summary of Submission	Applicant's Comments
<p>d) Reference to 'Dogger Bank' decisions</p> <p>Natural England notes the within the HP3 decision letter and HRA there is heavy reliance on the Dogger Bank Windfarm consents (2015) to support the assumption that rock protection can be fully decommissioned within a sandbank system, and that the habitat will subsequently return to favourable condition.</p> <p>However, much has changed since the Dogger Bank decisions - we now understand that the decommissioning of rock protection is problematic and that the impacts on the Annex I Dogger Bank Sandbanks are likely to be more significant than originally thought. In addition to this the legislative picture has also changed – e.g. Sweetman rulings etc. Therefore it is NE's view that there is not the consistency in SNCB advice and the environmental assessments between the Dogger Bank projects and that of current OWF NSIPs as stated by the Boreas Applicant REP13-025.</p> <p>In addition in relation of habitat similarities it should also be noted that Dogger Bank sandbank is in fact a fixed glacial gill that shows different characteristics to the dynamic sandbank systems of Haisborough Hammond and Winterton SAC and that of the North Norfolk Sandbanks SAC. However, in this instance we consider this difference to be a positive as more dynamics systems have a higher probability of recovery. Though it should be noted that there is no similarity in relation to mixed sediment features and Annex I reef with that of the Dogger Bank projects.</p> <p><b><u>We therefore advise that the SoS should be taking account of the latest evidence available, and that it undermines the robustness of an AA to place undue reliance on previous consenting decisions where there are indications that these decisions may have shortcomings due to the evidence on which they were based.</u></b></p>	<p>The Applicant maintains that conclusions of no AEoI can, and should be reached irrespective of the Dogger Bank decisions. Within the Applicant's Information to Support HRA Report (APP-201) there is <u>no reliance on the Dogger Bank consent</u> to draw the conclusions of no AEoI, and nor were there for Norfolk Vanguard. Indeed the HRA for Norfolk Vanguard does not mention the Dogger Bank consent in the context of impacts to benthic SAC features. Therefore, this section of Natural England's REP14-067 is of no relevance to the Norfolk Boreas Examination.</p>
<p><b>5. Small Scale Losses</b></p> <p>Both NVG and HP3 decision documents compare the impacts from the proposal against the total area of the designated site and interest features,</p>	<p>Firstly, it should be noted that Norfolk Boreas and Hornsea Project Three are not of a comparable scale. The total area of habitat loss within the HHW SAC as a result of Norfolk Boreas is approximately 1/25<sup>th</sup> of that predicted for Hornsea Project Three in the North Norfolk Sandbanks and Saturn Reef SAC (0.02km<sup>2</sup> for Norfolk Boreas and 0.5km<sup>2</sup> for Hornsea Project Three). Furthermore, the Applicant's commitment to</p>

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<p>which are considered to be small scale. However there are three points' NE wishes to highlight the decisions don't take account of:</p> <p>a) changes to form and function listed under the Conservation Objectives: We advise that all regulators when undertaking an HRA should be considering the conservation objectives for the site and should have regard for our conservation advice, which consider more than just extent. This is key because the MMO follow the above approach in their assessments so post consent/pre construction the AAs are unlikely to align with the original SoS HRA.</p> <p>b) the favourable condition of the site: The decision making process needs to understand decisions that have already been made in the site and the implications for favourable condition status which whilst noted in the HRA haven't been fully considered. We advise that the favourable condition status of HHW SAC as published in 2019 should be taken into consideration in any decision making</p> <p>c) the actual scale of the impacts: Whilst we recognise that the impacts are small scale in comparison to the whole site it should be noted that 5% of cable protection within the HHW SAC is equivalent to WCS two residential roads running in parallel for 2km through the site or 4 roads if you take into account Boreas.</p>	<p>decommission cable protection means that the impact is considered long term temporary whereas Hornsea Project Three do not have such a commitment and therefore the impact is permanent.</p> <p>a) The Applicant's Information to Support HRA Report [APP-201] and subsequent supplementary assessments [REP10-043] do consider the extent of the impact using Natural England's advice note regarding consideration of small scale habitat loss within SACs [REP1-057] within the context of the conservation objectives, which takes into account changes in form and function. Natural England has recognised in REP9-045 "<i>the advantages of the low profile</i> [of types of cable protection which the Applicant will be required to use in the HHW SAC to ensure that decommissioning is possible, as secured by condition 3(1)(g)] <i>which is likely to allow natural processes to function.</i>" However the statements made in 5a) appear to contradict this previous advice.</p> <p>b) The Applicant's Information to Support HRA Report [APP-201] and subsequent supplementary assessments [REP10-043] do also consider the status of the site. The site is currently assessed by Natural England as being in unfavourable condition. Although this information was published after the Applicant made its Application in June 2019 (i.e. in November 2019), the Applicant was made aware, through the Norfolk Vanguard examination, that the imminent assessment was likely to conclude that both designated features and therefore the site were in unfavourable condition. Therefore, the Applicant was able to take account of this within its Information to Support HRA Report [APP-201] assessment.</p> <p>c) The Applicant notes Natural England's illustration of the scale of the cable protection and would like to make it clear that this is the maximum possible length that would be occupied by cable protection and that the Applicant would, through development of the HHW SAC control document, seek to minimise the area of cable protection as far as possible which may be to a point where no cable protection is required at all (apart from at the two remaining cable crossings) and furthermore it is very unlikely that this would be for a continuous '2km' stretch, but instead would be broken into sections. Furthermore none of the cable protection would be placed within the areas identified as priority areas to be managed for Annex I <i>S.spinulosa</i> reef (see Figure 4.1 of the CSIMP [REP14-031] and Figure 5.1 of the SIP [REP14-033]). The Applicant also provided an illustration of the scale of the maximum size of the area of</p>

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	<p>impact at Issue Specific Hearing 4 (Offshore effects including the draft Development Consent Order). See Appendix 3 of REP4-014 which has also been reproduced below for ease of reference. More generally, the Applicant questions the usefulness of drawing comparisons to two or four residential roads in this context.</p>
<p><b>6. Disposal Location</b></p> <p>4.20.18 of the NVG ExA report agrees with NE that there needs to be a disposal condition that ensures that dredged material will be disposed of in similar habitat locations. And whilst the SIP was identified in the NVG HRA as having a requirement to agree disposal location/s with MMO in consultation with NE prior to construction; we would welcome some outline agreement on the criteria that should be met for any disposal site beyond those currently included in the CSIP including, but not exclusively, similar grain size.</p>	<p>The Applicant is unsure whether this applies to Norfolk Boreas as it is stated by Natural England within the SoCG [REP10-038]</p> <p><i>"In [REP4-043] Natural England confirmed that the proposed disposal location is acceptable to and welcomed retention within the SAC sandbank system."</i></p> <p>The Applicant has engaged with Natural England (in addition to the MMO) throughout the examination to seek advice on how ensuring similar grain size could be achieved. To date neither the MMO nor Natural England (who made the request originally) have been able to provide any practical, workable alternative to the Applicant's proposed approach.</p> <p>Although it is unclear, the Applicant understands that Natural England is referring to the SIP/CSIMP when it states the CSIP. Hornsea Project 3 use a Cable Specification and Installation Plan (CSIP) as a means of mitigating impacts to the North Norfolk Sandbanks and Saturn Reefs SAC. Norfolk Boreas has not proposed the use of a CSIP at any point.</p>
<p><b>7. Cable Repair Works</b></p> <p>In 6.7.149 of the NVG ExA report we note that any cable protection required as a result of cable repair works over the life time of the project will require a separate marine licence, but we advise that the likelihood of requiring further cable protection in these circumstances should be considered at the consenting phase and assessed accordingly in any HRA. Therefore we would welcome further consideration of how best this can be achieved.</p>	<p>As was the case for Norfolk Vanguard, the Applicant considers cable repair works within the Information to Support HRA Report [APP-201]. The worst case scenario takes into consideration the maximum amount of repair work and reburial work. The Applicant has used its experience at other offshore windfarms to determine what the realistic worst case scenario for these events is likely to be. Detail of what repair and reburial work has been included in the assessment for the HHW SAC is provided within the Information to Support HRA [APP-201] and in Table 3.1 of the HHW SAC control documents [REP14-031 and REP14-033].</p> <p>Therefore, the Applicant confirms that it has undertaken its assessment in accordance with this advice and Natural England's request has already been met. Natural England have made it clear in previous submissions that they consider that cable protection installed during operation must be subject to a separate marine licence [RR-099]. As a direct result of these submission the Applicant amended the Outline Operations and</p>

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	Maintenance Plan (Document 8.11 [REP5-029]) to ensure that this would be the case. Again, the advice provided here does not take any of the above into account.



- Legend:
- Offshore cable corridor
  - EIFCA Byelaw Area
  - Haisborough, Hammond and Winterton SAC<sup>1</sup>
  - Top priority areas to be managed as *S. spinulosa* reef<sup>2</sup>
  - Area to be managed as *S. spinulosa* reef (Natural England)<sup>2</sup>
  - Area for comparison (20,000m<sup>2</sup>)

<sup>1</sup> JNCC, 2019.  
<sup>2</sup> Natural England/MALSF, 2013/2011

Project:	Report:
Norfolk Boreas	for use and ISH: Offshore effects

Title:  
 Geographical illustration of maximum area or cable protection

Figure: 3      Drawing No: PB5640-008-004-004

Revision:	Date:	Drawn:	Checked:	Size:	Scale:
01	16/01/2019	GC	DT	A3	1:145,000

Co-ordinate system: ETRS 1989 UTM Zone 31N EPSG: 25831

**VATTENFALL**

**Royal HaskoningDHV**  
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## 2 References

Van der Reijden, K. J., Koop, L., O'Flynn, S., Garcia, S., Bos, O., van der Sluis, C., ... Aquilar, R. (2019). Discovery of *Sabellaria spinulosa* reefs in an intensively shed area of the Dutch Continental Shelf, North Sea. *Journal of Sea Research*, 144, 85-94. Available at: <https://doi.org/10.1016/j.seares.2018.11.008>