

Norfolk Boreas Offshore Wind Farm Applicant's Response to the Examining Authority's Request for further information

Applicant: Norfolk Boreas Limited
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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
CRM	Collision Risk Modelling
CSIMP	Cable Specification Installation and Monitoring Plan
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine Licence
EIFCA	Eastern Inshore Fisheries and Conservation Association (or Eastern IFCA)
ES	Environmental Statement
ExA	Examining Authority
FFC	Flamborough and Filey Coast
HHW	Haisborough, Hammond and Winterton
HRA	Habitats Regulations Assessment
IPMP	In Principle Monitoring Plan
m	Metres
MMO	Marine Management Organisation
NE	Natural England
NPS	National Policy Statement
RSPB	Royal Society for The Protection of Birds
SAC	Special Area of Conservation
SIP	Site Integrity Plan
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area

The Applicant's Response to the Examining Authority's Rule 17 Request for Information in regard to the Norfolk Boreas Application.

A Rule 17 request for further information was published on the 10 September 2020.

The Applicant has responded to each of the relevant questions, detailed in numerical order in Sections 1 to 7 of this document.

1 Compulsory Acquisition

Reference	Respondent:	Question:	Applicant's Response:
R17.1.1	The Applicant	<p>The ExA notes the Applicant's response to the Relevant Representation submitted by Brown and Co on behalf of Necton Farms Ltd [RR-009; AS-024]. The Applicant is requested to provide a detailed response or signpost where in the Examination documents a detailed response has been given to the points made by D16, 28 September.</p> <p>Necton Farms Ltd (and/or their respective agent/ representative) is requested to comment on the Applicant's response at Deadline 17, 7 October.</p>	<p>The concerns raised in the Relevant Representation submitted by Brown and Co on behalf of Necton Farms Ltd [RR-009; AS-024] related to:</p> <ul style="list-style-type: none"> • Impact on Necton Farms' farming business during construction; including disruption to accessibility of the farm, irregular field shapes, loss of amenity value, and land taken out of production for work to pylons; • Impact on the farm business due to decrease in farm size; and • Devaluation, in monetary terms, of the retained farm. <p>As explained below, the Applicant is close to the conclusion of two agreements with the Landowners, who in turn own the Necton Farms Ltd farming business which operates on the land. These agreements seek to address and compensate for the concerns raised by the landowners and outlined in the Relevant Representation. Initial responses to the Relevant Representations were submitted in the Comments on Relevant Representations (AS-024), however negotiations with the owners of Necton Farms Ltd have been progressing on a confidential basis for over two years.</p> <p>Necton Farms Ltd is a company which is owned by Michael King, Caroline Tomkins, David King and Joyce King - the landowners of the majority of the proposed onshore project substation site and National Grid extension site. Necton Farms Ltd is the occupier and farming business on the land. The Applicant has undertaken extensive discussions with representatives of Necton Farms Ltd (Michael King, Caroline Tomkins, David King and Joyce King and their respective land agent) commencing in 2018. The Applicant has committed significant resources in order to reach agreement with this landowner, principally in recognition of the key role this land holding represents to the project. In summary, Heads of Terms (HoTs) for an agreement have been signed, and the Applicant is</p>

Reference	Respondent:	Question:	Applicant's Response:
			<p>of the view that all but the very final details of the private agreement are agreed.</p> <p>The rights sought by the Applicant are being secured under two distinct Option Agreements. The primary option agreement is for the acquisition of the proposed onshore project substation area and for the creation of the easterly National Grid substation extension. The landowner has signed Heads of Terms for the freehold acquisition of these sites. The Option agreement has been revised by solicitors acting for the landowner and the Applicant envisages this agreement will be entered into in the very near future.</p> <p>The second option agreement secures the cable easement rights. This agreement is less advanced as it has required the participation of third parties (National Grid and TC Dudgeon OFTO plc) in addition to the Applicant and the landowner. Notwithstanding this, the Heads of Terms have been reviewed by the landowner and the Applicant anticipates these to be agreed in the coming days. The drafting of the agreement is already underway alongside negotiation of the Heads of Terms. The Applicant therefore expects that this agreement can be concluded swiftly following agreement to the Heads of Terms.</p> <p>With respect to the point raised in RR-009 about irregular field shapes, the Applicant has agreed to purchase additional land from the landowner in the vicinity of the onshore project substation and National Grid extension areas to leave practical, workable field edges and to avoid leaving any awkward residues or unworkable parcels of land post-construction. Similarly, the Applicant has agreed, in relation to the cable easement land, that the Applicant will purchase additional land from the landowner, should the landowner request this, in the event that the residual land parcel is unworkable or impractical to farm.</p> <p>Alongside the above, the terms of the agreement also provide for the landowner to be compensated for the overall reduction in the farm</p>

Reference	Respondent:	Question:	Applicant's Response:
			<p>holding, including any effect this reduction will have on the operation of the remaining farm holding.</p> <p>The Applicant has agreed, in significant detail, access provisions that will enable Necton Farms Ltd to continue to farm the unit throughout the construction period and to ensure the access routes to be provided do not hinder the operation of the farming business.</p> <p>As the Applicant explains above, the Applicant would hope to be able to sign the agreement in the coming weeks which will resolve all the concerns raised in the Relevant Representation. Necton Farms and the Landowners have engaged constructively and willingly with Vattenfall at all stages of discussions and negotiations; the reason that the Agreements are not quite complete at the time of this response is due to complexities of the Project, as opposed to any stalling of negotiations.</p>
R17.1.2	<p>The Applicant NFU / Land Interest Group</p> <p>Objection 2 – Brown and Co Necton Farms Ltd;</p> <p>Objection 9 Paul King;</p> <p>Objection 20 Savills on behalf of Church Farms</p> <p>Objection 27 Savills on behalf of L Padulli</p>	<p>The ExA notes from the updated Compulsory Acquisition Objections Schedule [REP14-041] that a number of objectors have still to reach agreement with the Applicant. These are Objectors No; 2; 9; 20; 27; 34; 39; 42; 49; 55; 62.</p> <p>The ExA notes the previous evidence submitted to the Examination and requests landowners or their respective land agents if relevant, to provide by Deadline 16, 28 September:</p> <ol style="list-style-type: none"> 1. An update with details of the reasons for the continuing objection, by reference to specific land plots and/or rights that would be affected by Compulsory Acquisition 2. Whether it is anticipated that agreement is likely to be reached between the parties before the end of the Examination. 	<p>The Applicant notes that the ExA refer to the Compulsory Acquisition Schedule [REP14-041] and the previous evidence submitted into the Examination. The Applicant notes that this question is directed to landowners and/or their respective agents for Deadline 16, and the Applicant will comment on the responses at Deadline 17.</p>

Reference	Respondent:	Question:	Applicant's Response:
	Objection 34 Savills on behalf of Mr J Carrick Objection 39 Savills on behalf of Albanwise Ltd Objection 42 Savills on behalf of Stinton Hall Trust Objection 49 Bidwells on behalf of Christopher S Wright Objection 55 Colin King Objection 62 Christian Henry Allhusen and Penelope Amanda Allhusen	3. If agreement has been reached, confirmation of this position. The Applicant is requested to comment on these responses at Deadline 17, 7 October.	

2 Cable Protection Decommissioning after 30 years

Reference	Respondent:	Question:	Applicant's Response:
R17.1.3	The Applicant Natural England	<p>The Applicant and Natural England disagree over whether long term temporary impacts on benthic habitats caused by cable protection would recover to pre impacted states within the Haisborough, Hammond and Winterton Special Area of Conservation (SAC). Both parties have provided evidence for its case throughout the Examination.</p> <p>Both parties to confirm at Deadline 16, 28 September, whether this is their final position or if further discussions may lead to agreement being reached by Deadline 18, 12 October and the close of the Examination.</p>	<p>The Applicant and Natural England have both stated their positions in response to R17.1.24 submitted at Deadline 13 [REP13-013 and REP13-038 respectively].</p> <p>In summary, the Applicant considers that (as stated in REP13-013 R17.1.24) there is a strong body of relevant evidence to demonstrate that recovery of habitats following removal of cable protection will occur. The Applicant understands that Natural England are not advising that recovery of habitats will not occur, but that they are advising that there is not enough directly relevant evidence to demonstrate conclusively that recovery will occur and therefore they cannot rule out AEol.</p> <p>Both parties confirm that this is their final position and as stated by Natural England in REP13-038 "<i>Natural England acknowledges that the Applicant has addressed this concern as much as possible</i>" and that as stated in the SoCG the work done by the Applicant does significantly reduce the risk of an AEol. Therefore, no further evidence will be provided by either party.</p>

3 Decommissioning Development Consent Order (DCO) requirement

Reference	Respondent:	Question:	Applicant's Response:
R17.1.4	The Applicant Natural England Marine Management Organisation	At [REP14-058] the Applicant, the Marine Management Organisation and Natural England agreed that with the reinstatement of an amended DML Condition 3 (1) (g) prohibiting the use of rock or gravel dumping for cable protection, apart from cable crossings, in the Haisborough, Hammond and Winterton SAC, Condition 20 could be removed.	i) The Applicant agrees that, with the inclusion of Condition 3(1)(g), Condition 20 is not required. Condition 3(1)(g) ensures that the cable protection placed on the seabed will be of a suitable type to enable it to be decommissioned. The commitment to decommission the cable protection at the end of the project life is made in the outline HHW SAC control documents (document reference 8.20 [REP14-031 and REP14-033]). This commitment would also form part of the decommissioning

	<p>The MMO consider Condition 20 as drafted, would appear to make decommissioning subject to dual regulation through both the Energy Act 2004 and MCAA 2009 and this could be a cause of confusion. The MMO therefore considers that decommissioning works should not be included in the DMLs.</p> <p>Natural England [REP15-009] provided a draft DCO condition for decommissioning of cable protection, which the Applicant [AS-081] commented on and provided its version of an amended Condition 20.</p> <p>At Deadline 15, the Applicant [AS-081] stated that it is working with the MMO and Natural England on agreed wording for Condition 20, as copied below:</p> <p><i>20.—(1) The obligations under paragraphs (2) and (3) shall only apply in respect of—</i></p> <p><i>(a) cable protection, apart from at cable crossing locations with existing cables and pipelines, which is installed as part of the authorised project within the Haisborough, Hammond and Winterton Special Area of Conservation as at the date of the grant of the Order;</i></p> <p><i>(b) These obligations do not permit the decommissioning of the authorised scheme, and no authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under section 105 (2) of the 2004 Act has been submitted to the Secretary of State for approval and all relevant consents have been granted under the Marine and Coastal Access Act 2009.</i></p> <p><i>(2) No later than 4 months prior to each deployment of cable protection, except where otherwise stated or unless otherwise agreed in writing by the MMO, the undertaker must submit the following documents for approval by the MMO:</i></p> <p><i>(a) decommissioning feasibility study on the proposed</i></p>	<p>licence and programme secured by Requirement 14 of the DCO. The Applicant considers that the provisions in the proposed Condition 20 are already covered by Requirement 14 and the provisions of section 105 and 108 of the Energy Act 2004. It will therefore be unnecessary duplication to include an express condition within the DMLs.</p> <p>The Applicant however now understands that Natural England’s advice has changed since Deadline 15 and that Natural England now consider that both Condition 3(1)(g) and an amended Condition 20 should be included within the DCO. For the reasons stated above the Applicant does not consider that Condition 20 is required in addition to Condition 3(1)(g), and the Applicant does not propose to include Condition 20 within the final draft DCO to be submitted at Deadline 18. The MMO also agree that Condition 3(1)(g) is sufficient and that Condition 20 is not required. The Applicant, Natural England and the MMO agree that it will be for the Secretary of State (SoS) to decide if Condition 20 (or an equivalent) is required in addition to condition 3(1)(g).</p> <p>ii) and iii) Without prejudice to the Applicant’s position as stated in i) the Applicant was content with the wording as proposed at Deadline 15. However, Natural England has requested that the Condition is updated to include a feasibility study every 10 years throughout the operational phase of the project. Following a meeting (18th September 2020) and email exchanges with Natural England and the MMO it was agreed by all parties that the following amendments (shown in red) would be made to the Condition 20 to satisfy requests made by Natural England and to add clarity. Therefore the final agreed wording is as follows:</p> <p><i>20.—(1) The obligations under paragraphs (2) and (3) shall only apply in respect of—</i></p> <p><i>(a) cable protection, apart from at cable crossing locations with existing cables and pipelines, which is installed as part of the authorised project within the Haisborough, Hammond and Winterton Special Area of Conservation as at the date of the grant of the Order;</i></p>
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		<p>protection.</p> <p>(b) A method statement for recovery of cable protection.</p> <p>(c) A Monitoring Plan including appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, along with a method statement for recovery of cable protection.</p> <p>(d) A monitoring plan to include appropriate surveys following decommissioning to monitor the recovery of the area of the HHW SAC impacted by cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, along with a method statement for recovery of cable protection.</p> <p>(3) No cable protection can be deployed until the MMO, in consultation with the Statutory Nature Conservation Body approve in writing the documents pursuant to (2) above.</p> <p>The Applicant, Natural England and the MMO are requested to:</p> <p>i) state by Deadline 16 if it agrees that with the inclusion of Condition 3 (1) (g) Condition 20 is not required;</p> <p>ii) if Condition 20 is deemed to be required, confirm agreement with the Applicant’s draft wording;</p>	<p>(b) These obligations do not permit the decommissioning of the authorised scheme, and no authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under section 105 (2) of the 2004 Act has been submitted to the Secretary of State for approval and all relevant consents have been granted under the Marine and Coastal Access Act 2009.</p> <p>(2) No later than 4 months prior to each deployment of cable protection, except where otherwise stated or unless otherwise agreed in writing by the MMO, the undertaker must submit the following documents for approval by the MMO:</p> <p>(a) decommissioning feasibility study on the proposed cable protection to be updated at intervals of not more than every ten years throughout the operational phase of the project.</p> <p>(b) A method statement for recovery of cable protection.</p> <p>(c) A Monitoring Plan including appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, along with a method statement for recovery of cable protection.</p> <p>(d) A monitoring plan to include appropriate surveys following decommissioning to monitor the recovery of the area of the Haisborough, Hammond and Winterton Special Area of Conservation HHW-SAC impacted by cable protection.</p> <p>(3) No cable protection can be deployed in the Haisborough, Hammond and Winterton Special Area of Conservation HHW-SAC until the MMO, in consultation with the Statutory Nature Conservation Body approve in writing the documents pursuant to (2) above.</p>
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		<p>iii) if wording of Condition 20 is not agreed provide suggestions as to how the Condition might be amended together with a reasoned explanation;</p> <p>iv) if the provision was to be included, provide reasoned views as to whether it should be in the DMLs or the dDCO and if so, at what location.</p>	<p>The Applicant understands that all parties are now agreed with the above wording for Condition 20 should the SoS consider that it is required.</p> <p>(iv) Should the SoS decide to secure the principle for decommissioning of the cable protection, the Applicant would be content for the wording proposed to be included as a Condition of the Transmission DMLs (Schedules 11 and 12) or for it to be amended so that it can be secured as a Requirement in the DCO. If included in the DMLs, Condition 20 of the Transmission DMLs is the correct location as it is only applicable to cable protection within the HHW SAC and is not applicable to cable protection placed within the Norfolk Boreas site (governed by the Generation DMLs in Schedules 9 and 10) nor is it applicable to the project interconnector search area (governed by the Project Interconnector DML in Schedule 13).</p> <p>The Applicant is aware that the MMO consider that this provision would be better suited as a Requirement of the DCO rather than a Condition. As stated in i) the Applicant does not consider it necessary to include this within either the DCO or the DMLs, however if the SoS does decide it is required the Applicant would be content for it to be included at Requirement 14 of the DCO. Should this be the case the Applicant and the MMO have agreed the following wording for Requirement 14, which mirror the provisions contained in the Condition 20 (with additions to the existing requirement shown in red):</p> <p>Offshore decommissioning</p> <p>14. <i>(1) No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.</i></p> <p><i>(2) The obligations under paragraphs (3) and (4) shall only apply in respect of cable protection, apart from at cable crossing locations with existing cables and pipelines, which is installed as part of the authorised</i></p>
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			<p><i>project within the Haisborough, Hammond and Winterton Special Area of Conservation as at the date of the grant of the Order.</i></p> <p><i>(3) No later than 4 months prior to each deployment of cable protection in the Haisborough, Hammond and Winterton Special Area of Conservation, except where otherwise stated or unless otherwise agreed in writing by the Secretary of State, the undertaker must submit the following documents for approval by the Secretary of State:</i></p> <p><i>(a) A decommissioning feasibility study on the proposed cable protection to be updated at intervals of not more than every ten years throughout the operational phase of the project;</i></p> <p><i>(b) A method statement for recovery of cable protection;</i></p> <p><i>(c) A Monitoring Plan including appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, along with a method statement for recovery of cable protection;</i></p> <p><i>(d) A monitoring plan to include appropriate surveys following decommissioning to monitor the recovery of the area of the Haisborough, Hammond and Winterton Special Area of Conservation impacted by cable protection.</i></p> <p><i>(4) No cable protection can be deployed in the Haisborough, Hammond and Winterton Special Area of Conservation until the Secretary of State, in consultation with the MMO and the Statutory Nature Conservation Body approves in writing the documents pursuant to (3) above.</i></p> <p>The agreed position by all three parties is reflected in the SoCGs with Natural England and the MMO which have been submitted at Deadline 16 (ExA.SoCG-17.D16.V5 and ExA.SoCG-10.D16.V6 respectively).</p>
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4 Compensatory Packages: Alde-Ore Estuary Special Protection Area (SPA)

Reference	Respondent:	Question:	Applicant's Response:
R17.1.5	The Applicant Natural England	<p>The ExA notes the Applicant's position in relation to discussions with landowners regarding proposed compensatory measures [REP14-036]. However, in the absence of compensatory measures being secured, there is limited weight that the ExA could give to these proposed measures.</p> <p>If the SoS should be minded to conclude on no AEoI for either or both of the Alde-Ore Estuary Special Protection Area (SPA) and Flamborough and Filey Coast SPA, what evidence can the Applicant provide that the compensatory measures could be secured, to include:</p> <ul style="list-style-type: none"> evidence that landowners would agree to their land being used for provision and maintenance of compensation measures, for example an Option Agreement signed by all parties; whether any additional licences or agreements would be required for measures at either of the SPA sites; and <p>the view of Natural England in relation to these measures.</p>	<p>The requirement to put forward a full derogation case, and particularly "<i>possible compensatory measures</i>" needs to be viewed in the wider context of the Norfolk Vanguard decision where, despite a full derogation case being submitted post-Examination, including possible compensatory measures, the Secretary of State concluded no AEoI and hence no derogation case, or compensation, was required.</p> <p>In relation to considerations of in-combination impacts at the Alde Ore Estuary (AEO) Special Protection Area the Appropriate Assessment for Norfolk Vanguard states:</p> <p><i>"Having considered the information presented following closure of Examination, the Secretary of State does not agree that the Project in-combination will have an adverse effect on the lesser black-backed gull feature of the Alde-Ore Estuary SPA. Using NE's preferred collision risk modelling approach, the Secretary of State has concluded that the potential loss of a relatively very small number of birds through collision does not contribute in a significant way to the total number of birds predicted to be impacted in-combination. Although, the site has a 'restore' objective the potential loss of an additional three birds per year as part of an in-combination total will have a de minimus effect on that objective. The Secretary of State has therefore concluded that collision risk to lesser-black-backed gull from the proposed Development alone and in-combination would not represent an AEoI."</i></p> <p>In the case of Norfolk Boreas, using Natural England's preferred parameters (which the Applicant considers to be highly precautionary), the annual lesser black-backed gull mortality apportioned to the AOE SPA is 2.1 individuals, and using the Applicant's evidence based parameters this is reduced to 1.6 individuals. Norfolk Boreas' contribution to in-combination impacts therefore is less than that for</p>

			<p>Norfolk Vanguard. No new evidence has been submitted during the course of the Norfolk Boreas examination which suggests that the Secretary of State should take a different approach in assessing impacts of Norfolk Boreas as anything other than 'de minimis'.</p> <p>Given this, the level of detail put forward on the proposed compensatory measures for the AOE SPA is wholly sufficient at this stage. It is unreasonable (and unrealistic) to expect landowners to spend time and resource engaging in detailed discussions unless and until a requirement for compensation has been determined by the Secretary of State. If required, the condition which secures compensation for the AOE SPA in the dDCO ensures that the compensation must be delivered prior to any AEoI occurring.</p> <p>Notwithstanding this, following further discussions with Natural England it is apparent that there are a number of different land holdings with a number of different landowners where compensation could be provided. As well as land owned by the National Trust and the RSPB in the AOE SPA, Natural England has advised that predator control measures could be undertaken in the Lantern Marshes area which is outside of the National Trust and the RSPB's ownership. Alternatively, Natural England has advised that land which is functionally linked to the AOE SPA could provide suitable compensation land, such as within the Alde Ore floodplain where lesser black-backed gull utilise areas in the vicinity of Sudborne marshes and Snape marshes. As a result Natural England has advised that the condition securing the compensation in the dDCO be widened to allow for 'predator management measures', such that all options above (and possibly others) can be explored post consent. The Applicant has agreed to amend the dDCO condition accordingly in the next version of the dDCO to be submitted at Deadline 18.</p> <p>Given the range of options available, across a number of different landholdings and with different land owners, there can be confidence that landownership is not a barrier to delivering compensation measures for the AOE SPA. Neither is the need for any further consents or licences a barrier to delivery, as even if further consents or licences are required (for example, where Natural England's agreement to operations in a SSSI</p>
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			<p>is required under section 28E of the Wildlife and Countryside Act 1981), the measures will already have been agreed with Natural England as the approving authority. In this respect, the Applicant's position on compensatory measures for the AOE SPA has already been agreed and accepted by Natural England who has not requested any further information on these measures, or specifically required that agreements with landowners or other consents/licences (if any) are secured at this stage.</p> <p>With respect to in-combination impacts at the Flamborough and Filey Coast Special Protection Area (FFC SPA), the Appropriate Assessment for Norfolk Vanguard states:</p> <p><i>"[The Secretary of State] recognises the precautionary nature of the NE approach to CRM upon which this assessment is based. He is also aware of the potential for lower numbers of predicted collisions than previously calculated based on built scenarios as opposed to the assessed or consented scenarios (the 'head room'). He considers the potential loss of no more than 21 kittiwakes per year is de minimus in that it will not have any material effect to predicted total of in-combination impacts nor alter the significance or the likelihood of an adverse effect on the integrity of the SPA.</i></p> <p><i>On the basis of the above, the Secretary of State has concluded that the project will not have an adverse in-combination effect on the integrity of the kittiwake feature of the Flamborough and Filey Coast SPA."</i></p> <p>In the case of Norfolk Boreas, using Natural England's preferred parameters (which the Applicant considers to be highly precautionary), the annual kittiwake mortality apportioned to the FFC SPA is 14, while using the Applicant's preferred parameters it is 6.1 individuals. Therefore, again, the Norfolk Boreas contribution to cumulative impacts at the FFC SPA is less than Norfolk Vanguard's contribution, and no new evidence has emerged during the course of the Norfolk Boreas examination which suggests that the Secretary of State should take a</p>
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			<p>different approach in assessing impacts of Norfolk Boreas as anything other than 'de minimis'.</p> <p>Notwithstanding this, the Applicant outlines its position on delivery mechanisms and how rights or agreements would be secured in the Addendum to REP11-012 submitted at Deadline 16 (ExA; Dero.App1.Add.D16.V2). In summary, any offshore structures are likely to be within the existing Order limits, for which the Applicant has entered into an Agreement for Lease with the Crown Estate, albeit any new structures would require a separate Marine Licence. For onshore structures, similar to compensation measures for the AOE SPA, there are a number of locations where artificial nesting sites could be located. One example is at port locations, and in this regard, the Applicant has provided written confirmation of potential landowners' willingness to enter into further discussions to host compensation should this be required by the SoS (this is appended to the final version of the Addendum to REP11-012 submitted at Deadline 16, ExA; Dero.App1.Add.D16.V2). In addition, depending on the nature of the structure proposed, this would not necessarily require separate consent, such as planning permission. As with the dDCO condition for the AOE SPA, the condition which secures compensation for the FFC SPA also ensures that the compensation must be delivered prior to any AEol occurring.</p> <p>Given the lengths which the Applicant has already gone to (in the time available) to achieve agreement on the compensatory measures with Natural England, and in the context of the very small scale of impact (which the Applicant firmly asserts does not amount to AEol), the Applicant considers it has fully addressed the requirements in the Secretary of State's decision letter on Norfolk Vanguard at paragraph 5.2, namely:</p> <p><i>"The Secretary of State is clear that the development consent process for Nationally Significant Infrastructure Projects is not designed for consultation on complex issues, such as Habitats Regulations Assessment, to take place after the conclusion of the Examination. On occasion, <u>as a pragmatic response to particular circumstances</u>, he may</i></p>
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			<p> <i>undertake such consultation, but no reliance should be placed on the fact that he will always do so. In this instance, he has exercised his discretion, and allowed the Applicant to make further representations on the matter of possible compensatory measures for those sites. However, he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting system, he may not always request post-examination representations on such matters. Indeed, it should be assumed that he will not do so, and he may, therefore, make decisions on such evidence as is in front of him following his receipt of the ExA's report. It is, therefore, important that <u>potential Adverse Effects on the Integrity 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.</u>" (emphasis added)</i> </p> <p> It is clear that the Applicant has fully addressed each of these matters. In particular, potential AEol has been identified, full consideration has been given to the need for derogation, the Applicant has engaged constructively with Natural England, and the Applicant has provided evidence of possible compensatory measures which have also been agreed with Natural England. </p> <p> At paragraph 5.3, the Norfolk Vanguard decision letter states: </p> <p> <i>"The ExA will be required to provide an <u>opinion on the sufficiency of the proposed compensation</u> even if it considers that compensation is not required (in case the Secretary of State disagrees with that conclusion), but such measures would only be required if the Secretary of State were to find that there would be significant adverse impacts (and that the proposed compensatory measures are appropriate)."</i> (emphasis added) </p> <p> In the circumstances that, for whatever reason, the ExA concludes that, "if the Secretary of State were to find that there would be significant adverse impacts" the "possible compensation" is not "sufficient", and the </p>
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			<p>Secretary of State were to agree with the opinion of the ExA, the Applicant considers it would be wholly unreasonable for the Secretary of State to make decisions solely on the basis of evidence submitted during the examination and referred to in the ExA's report without first having "<i>as a pragmatic response to particular circumstances</i>", undertaken such further consultation as may be required to address any such matters as the ExA consider to be insufficient. This would be the only proper and rational approach in the context of:</p> <ol style="list-style-type: none"> 1. The scale and nature of the Norfolk Boreas impacts on European sites in light of the Norfolk Vanguard decision; 2. Agreement having been reached with Natural England on the details of the compensatory measures proposed; and 3. Compensatory measures being appropriately secured in the dDCO such that they are delivered before AEoI occurs.
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5 Compensatory Packages: Flamborough and Filey Coast SPA

Reference	Respondent:	Question:	Applicant's Response:
R17.1.6	The Applicant Natural England RSPB MMO	<p>a) The Applicant to provide full details of the proposed offshore additional nesting sites, to include:</p> <ul style="list-style-type: none"> • potential locations; • what implications this has for the ES; • additional amendments that would be required, if any, to the dDCO; • evidence relating to the success or otherwise of these novel facilities specifically in relation to Kittiwake; and • Given that this is a novel approach, what alternative compensatory package is proposed. <p>b) The Applicant, Natural England, RSPB and the MMO to provide a joint statement on the feasibility of the nesting</p>	<p>a) Through their discretionary advice service, Natural England provided the Applicant with details of additional information that were considered necessary in order to address Natural England's outstanding concerns about the proposed kittiwake compensation. The Applicant produced a detailed response to the points raised, which has been consulted on with Natural England. Natural England provided further comments on the Applicant's draft response and these have been addressed in the final version of the Addendum to REP11-012 submitted at Deadline 16 [ExA; Dero.App1.Add.D16.V2]. It should be noted that this is an addendum to the Applicant's original submission [REP11-012] and the two documents should be read in conjunction. This addendum covers the following key points raised by Natural England:</p>

		<p>sites and probability of success. If a joint statement is not agreed, all parties to comment on each other's submissions at Deadline 17, 7 October.</p>	<ul style="list-style-type: none"> • Spatial analysis to identify sustainable locations for nest site provision; • Assessment of evidence regarding potential recruits; • Detailed calculations of number of nests required; • Detailed description of structure; and, • Delivery mechanisms. <p>With respect to the specific points in this question, the Applicant considers that the Addendum referred to above has addressed potential locations and evidence relating to the success or otherwise of these 'novel' facilities specifically in relation to kittiwake. It is important to note, however, that there is considerable evidence for kittiwake nesting on artificial structures, both onshore and offshore, and therefore the proposed measures should not be regarded as 'novel', but rather as well established options. Some sites have been studied over many years, and therefore there is robust evidence that this approach would be successful at compensating for the predicted losses at Norfolk Boreas.</p> <p>On this basis the Applicant does not consider there to be any need to propose alternative compensation. Nonetheless, the Applicant has provided further discussion in ExA;Dero.App1.Add.D16.V2 on Natural England's alternative suggestion of sandeel fishery management. In addition, in response to the points raised by Natural England, the Applicant has amended the wording for Schedule 19, Part 1 of the dDCO to provide flexibility regarding the potential nature of compensatory measures, rather than referring specifically to artificial nesting structures. By introducing this flexibility, management of fishery stocks is not precluded as a compensation option to the extent that this subsequently becomes deliverable within the required timescales. The condition wording is provided in the Addendum (ExA; Dero.App1.Add.D16.V2) and will be included in the final dDCO as agreed with Natural England.</p> <p>With regard to the two remaining points in this question:</p> <ul style="list-style-type: none"> • What implications this has for the ES; and
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			<ul style="list-style-type: none"> • What additional amendments, if any, would be required for the dDCO) <p>Potential environmental impacts of the compensatory measures (if any) would be considered post DCO consent as part of securing any further consents required, such that there would be no implications for the existing ES. In the same way, to the extent that any further consents are required to deliver the compensation this would be dealt with outside of the DCO itself (i.e. by way of a separate marine licence for offshore aspects or planning permission for onshore aspects, through separate landowner agreements etc) and therefore does not require further amendments to the dDCO.</p> <p>As set out above, following further discussions with Natural England, in order to provide flexibility, the dDCO has been updated to ensure that while the condition identifies the need to undertake appropriate compensation (if it is required by the Secretary of State) with respect to kittiwake from Flamborough and Filey Coast SPA and lesser black-backed gulls from Alde-Ore Estuary SPA prior to operation, the actual compensation measures themselves are not specifically stated, but rather the underlying aims of the compensation (i.e. improving productivity to compensate for predicted collisions). Accordingly, the purpose of the measures for both of the above SPAs is expressly recognised in both of the draft conditions at Schedule 19 of the dDCO and is, if compensatory measures are considered necessary, secured.</p> <p>No amendments to the dDCO are proposed as a consequence of the possible compensatory measures, save for the changes agreed with Natural England to the conditions securing compensation as referred to above.</p> <p>b) As a first step, the Applicant drafted a joint statement for Natural England (and the MMO) to review, with the aim to initially agree the position with Natural England following which the Applicant would seek to do the same with the RSPB, and this approach was proposed to the RSPB. However Natural England informed the Applicant that Natural</p>
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			<p>England would be unable to enter into a position statement within the timescales required. This was explained to the RSPB and it was agreed that each party would submit their own response at Deadline 16, for comment at Deadline 17.</p> <p>In addition, the Applicant shared with Natural England the draft addendum to the kittiwake compensation proposal [ExA; Dero.App1.Add.D16.V2] prior to it being submitted at Deadline 16 in order to obtain feedback on whether the additional information addressed the comments raised by Natural England at Deadline 15 [REP15-009]. The Applicant received comments from Natural England on 22 September 2020 and has undertaken further work and updated the addendum for Deadline 16 accordingly.</p> <p>Consequently, the Applicant's position on the feasibility of the nesting sites and probability of success is set out in the Deadline 16 submission [ExA; Dero.App1.Add.D16.V2]. It should be noted that this is an addendum to the Applicant's original submission [REP11-012] and the two documents should be read in conjunction.</p> <p>The Applicant will provide comments on the other parties' Deadline 17 responses as necessary.</p>
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6 Licence and property agreements

Reference	Respondent:	Question:	Applicant's Response:
R17.1.7	Highways England Applicant	In its Further Written Questions, the ExA requested an update from the Applicant and Highways England on the current position relating to obtaining appropriate licences and property agreements from HE [Q2.3.0.12, PD-009]. The Applicant explained that Licences have been sought once detailed designs and method statements had been approved with HE prior to construction; property agreements would be sought once the detailed design and methodology had	<p>The appropriate licence and property agreements have been sought from Highways England for which detailed design and method statements will need to be approved by Highways England once these are available prior to construction.</p> <p>Highways England have agreed to enter into a Deed of Easement, subject to the provision of the appropriate technical information. All matters are</p>

		<p>been approved by Highways England [REP5-045]. Highways England did not respond to the ExA's question. The ExA requested a further update from the Applicant [Q3.3.0.18, PD-014]. The Applicant confirmed it was still in discussion with Highways England [Q3.3.0.18, REP8-015]. The final SoCG between the parties does not provide confirmation that Highways England is content with the approach proposed [REP9-021].</p> <p>Highways England is requested to confirm its position by Deadline 16, 28 September. The Applicant may also wish to comment.</p>	<p>currently being actively progressed by both parties, however, the Deed of Easement is likely to be completed post-examination.</p> <p>The Applicant will continue to engage with Highways England to obtain the appropriate licence and property agreements as the project progresses.</p> <p>The Statement of Common Ground has been updated to capture the agreed approach and progress on obtaining licence and property agreements. An updated SoCG (Version 3) [ExA.SoCG8.D16.V3] has been submitted at Deadline 16.</p>
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7 Cumulative effects at port(s)

Reference	Respondent:	Question:	Applicant's Response:
R17.1.8	Highways England Applicant	<p>In its fifth written questions the ExA asked a question about cumulative effects at port(s) (Q5.4.0.6). The Applicant's response to the question together with the Applicant's response to Norfolk County Council's response can be found [REP15-003, Q5.4.0.6].</p> <p>In its response, Norfolk County Council said <i>"If Great Yarmouth is chosen as the preferred port (rather than Kings Lynn), there may be potential impacts to traffic on the Trunk Road network if the Great Yarmouth third river crossing project (NSIP ref TR010043) is implemented at the same time. However, given we anticipate the impact would arise on the trunk road network, rather than the county highway, the ExA may wish to also direct this question to Highways England."</i></p> <p>Highways England is requested to comment by Deadline 16, 28 September. The Applicant may also wish to comment.</p>	<p>The Great Yarmouth Third River Crossing was granted development consent by the Secretary of State for Transport on the 24th September 2020. The proposed construction start date is early 2021 with the crossing being completed and open in early 2023. The Applicant's programme for offshore construction works does not commence until Q4 2025 (ES Chapter 5, Table 5.26 and 5.27 [APP-218]), after the completion of the Third River Crossing project. The projects are not, therefore, currently scheduled to be implemented at the same time.</p> <p>Notwithstanding this, an approach to considering any potential cumulative impacts of the Great Yarmouth Third River Crossing project and any of the proposed improvement schemes for the A47 as part of the Road Investment Strategy (RIS) is agreed with Highways England. The OTMP [REP14-022], Section 1.6.2 specifically lists the proposed improvements schemes for the A47 including the Third River Crossing which could potentially impact on the project as follows;</p> <ul style="list-style-type: none"> • A47 North Tuddenham to Easton dualling;

			<ul style="list-style-type: none"> • A47 / A11 Thickthorn Junction; • A47 Blofield to North Burlingham dualling; • A47 Third River Crossing (Great Yarmouth); and • A47 Great Yarmouth junction improvements. <p>With respect to these projects the OTMP states that;</p> <p><i>‘To manage potential cumulative traffic impacts, it has been agreed with HE that the management of the potential cumulative impacts can be addressed in the final submitted Traffic Management Plan (post consent) when there is greater certainty with regard to RIS scheme construction traffic data.</i></p> <p><i>Norfolk Boreas’s commitment to engage with HE to establish opportunities to co-ordinate activities and avoid significant impacts resulting from cumulative peak traffic is captured in the OCoCP (document reference 8.1) through the development of a Communication Plan.’</i></p> <p>Any potential cumulative impacts associated with the offshore base port will be determined and considered through the ongoing engagement with HE, secured through the proposed Communication Plan in the OCoCP, once a base port has been confirmed.</p> <p>The Applicant has engaged with Highways England and the Statement of Common Ground has been updated to capture the agreed approach. An updated SoCG (Version 3) [ExA.SoCG8.D16.V3] has been submitted at Deadline 16.</p>
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