

Date: 28 September 2020
Our ref: Case: 10570
Your ref: EN010087



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VIA EMAIL ONLY

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Dear Frances Fernandes,

RE: Application by Norfolk Boreas Limited for an Order Granting Development Consent for the Norfolk Boreas Offshore Wind Farm

The following constitutes Natural England's statutory response at Deadline 16 of the Norfolk Boreas Examination:

- Natural England's response to the Rule 17 Request for Information.

Natural England notes the requirement to update our advice on the compensatory packages for Kittiwakes of the Flamborough and Filey Coast SPA and the Alde Ore Estuary SPA. We have provided our advice within our response to the ExA's questions. Natural England will provide further advice once we have reviewed the Applicant's response to the Rule 17 Request. Therefore, our responses to these questions should be used to provide Natural England's most recent position.

With the exception of any issues arising upon review of the Deadline 16 responses, most notably the updated information regarding compensatory measures. The SoCG as presented by the Applicant represents Natural England's final position.

The ExA requested an update on the agreed mechanism for managing underwater noise in the Southern North Sea. Natural England can confirm that the SNCBs have now been invited to attend part of monthly or bimonthly meetings with the regulator's group. We continue to have dialogue with them over the newly established tracker to ensure it captures the range of activity over which regulators will need to work together to ensure the noise thresholds are not exceeded. We remain committed to reviewing the SNCB guidance to ensure it remains fit for purpose and takes account of best available evidence. However, until a mechanism which can control the in combination impacts is proposed and agreed it is not possible to remove our concerns. Therefore, Natural England's position remains unchanged.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,



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THE PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

Deadline 16

Natural England's response to the Rule 17 Request for Information

28 September 2020

Number	ExA Question	Natural England Response
R17.1.3	<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>Natural England's final position remains that we cannot say beyond reasonable scientific doubt that full recovery would occur. This position is unlikely to change and we would advise given the time remaining in examination further discussion would not yield any results.</p>
R17.1.5	<p>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.</p> <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. 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</i></p>	<p>i) Through a series of meetings and updated drafting Natural England and the applicant have agreed to a further updated condition 20 that addresses any outstanding issues. However, upon reflection of the new condition Natural England's position has changed. It is now considered that, should the SoS determine that there is no AEoI on the HHW SAC then both the updated condition 20 and the updated condition 3 (1) (g) are required. Condition 3 (1) (g) requires the cable protection deployed to be of a type that is more likely to be decommissionable. While condition 20 actually requires removal at the decommissioning stage of the project. Given the importance that decommissioning is likely to take within any determination of no AEoI Natural England considers that it is essential that a condition should be included within either the DCO or DML that ensures it will be decommissioned.</p> <p>ii) Natural England has agreed some update to the condition 20 that the applicant has agreed to submit as part of their deadline 16 response.</p> <p>iii) The wording has been agreed.</p> <p>iv) Natural England is content that the wording could be included in either the DCO as a requirement or the DML as a condition and has agreed wording for both</p>

	<p><i>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) A decommissioning feasibility study on the proposed protection.</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 HHW SAC impacted by cable protection.</i></p> <p><i>(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.</i></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>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>eventualities. We consider that the determination of the location should be an issue for the Secretary of State to determine after consideration of the other participants positions.</p>
R17.1.6	<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>Natural England refers the ExA to our advice provided at deadline 9. However, since deadline 9 we have agreed an updated derogation condition with the applicant that requires predator management measures to be agreed and in place</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 • the view of Natural England in relation to these measures. 	<p>prior to energy generation at the windfarm. Natural England welcomes the further commitment made by the updated wording and considers this is a significant step towards ensuring the compensatory measures. We have provided the applicant with some limited additional advice regarding where there may be options to implement predator management measures and advised they seek to identify the land owners. However, we note that time within examination is highly limited and that to locate landowners and agree the management measures within the remaining time is unlikely in such a short time.</p>
R17.1.6	<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 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>	<p>b) Due to the complex nature of the issue and the short time remaining it is not possible to provide a joint statement on the feasibility of the nesting sites and the probability of success. However, Natural England has engaged with the applicant significantly, and has provided detailed feedback on the applicant's draft Addendum to Rep 11-012 In principle Habitats Regulations Derogation Provision of Evidence. We will provide further comment after review of the applicant's Rule 16 response and submission of the updated Addendum into examination.</p>